The Law of Primary Elections

Noel Sargent
THE LAW OF PRIMARY ELECTIONS

INTRODUCTION.

"The primary system has been so long and so generally recognized that it has become an essential part of our political system."¹ The first primary law was enacted in California in March, 1866, closely followed by a New York act of April of the same year. In 1871 Ohio and Pennsylvania and in 1875 Michigan followed suit. Since then the primary has spread to all parts of the country.

The primary is not only a comparatively recent development, but the great body of decisions relating either to the principles of primary legislation or to details or regulations of primaries have occurred in very recent years; not enough, indeed, have taken place to enable us to say that a well-defined body of primary election law exists at the present time.

The present paper proposes, nevertheless, to examine the decisions of recent years especially, with the purpose of classifying them and indicating possibly the general trend and the possible future decisions of the courts on primary laws. We shall first examine the decisions relating to primary acts per se and then the various features of these acts and the subsequent laws passed to regulate primary elections.

1. The General Principle of Primary Legislation.

There have been very few cases in which primary laws were attacked on the general principle involved; nearly all of the attacks are devoted to specific points contained in the acts. "The right of the legislature to require that nominations shall be by primary and to prescribe additional qualifications for the voters participating in same has been recognized by the weight of authority in the states of the Union."² The attacks that have been made have taken the form of declarations that primary laws deprive citizens of the right of forming political parties—voluntary associations of men, holding political be-

¹ State v. Cole, (1911) 156 N. C. 618, 72 S. E. 221.
² Ledgerwood v. Pitts, (1910) 122 Tenn. 571, 125 S. W. 1036. The decision in this case is one of the best discussions of the questions arising from primary legislation.
liefs in common (such, at least, is the legal view of the reason for party organization)—or that the legislature undertakes to form parties for them; in other words, it is alleged that the destruction of political parties is threatened. This view, however, is not upheld by the courts. It has even been declared that where a statute attempts to regulate nominations, political parties must be recognized, though they are voluntary associations, since "we live in the days of party government." This is analogous to the recognition of partnerships as actual entities.

The following powers held to be inherently vested in the legislature give it constitutional authority to enact a primary law; authority to provide for registration, to regulate the suffrage, to protect the purity of elections, its power to determine the manner of holding elections and the making of returns therefrom; the only limitation that it cannot violate is a section of the constitution in terms fixing who are entitled to the right of suffrage. In line with this it has been held that the legislature may provide for primary laws and the regulation of the same when not prohibited by the constitution from so doing. "The general assembly being, then, the depository of all legislative power except when restrained by the organic law, it follows that it is clothed with full power to enact a primary election law, if there is no provision in the constitution depriving it of that authority." Primary election laws, being of a highly remedial nature, are not in contravention of the common law.

It would seem that in many cases the courts have adroitly avoided being forced to declare as to the relative merits of the primary and convention systems and the wisdom of primary legislation by supporting such acts under the police power and asserting that they are of a political nature with which the court is not concerned. An appeal from the legislative

3 Hopper v. Stack, (1903) 69 N. J. L. 562, 56 Atl. 1; Katz v. Fitzgerald, (1907) 152 Cal. 433, 93 Pac. 112; Riter v. Douglass, (1910) 32 Nev. 400, 109 Pac. 444. This case probably embodies a discussion of a greater number of primary law problems than any other.
4 State v. Houser, (1904) 122 Wis. 534, 100 N. W. 964.
5 Riter v. Douglass, (1910) 32 Nev. 400, 109 Pac. 444.
6 Kenneweg v. County Commissioners, (1905) 102 Md. 119, 62 Atl. 249; State v. Miles, (1908) 210 Mo. 127, 109 S. W. 595; Primary Election Case (McInnis v. Thames), (1902) 80 Miss. 617, 32 So. 286.
7 Kenneweg v. County Commissioners. supra.
8 State v. Swanger, (1908) 212 Mo. 472, 111 S. W. 7.
decision must be made to the people rather than to the courts.9 "A proper administration of the affairs of a sovereign state vitally affects the welfare of the existence of its citizens, and, where such a matter of vital importance is at stake, the state has the right, under the police power vested in its legislature, to make such reasonable regulations in the interest of public welfare for the nomination of the candidates of the various parties as it may determine" and the advisability of such legislation "is a matter solely for the legislature to determine."10

Primary laws, as any other laws, must not contravene general constitutional provisions. They must be reasonable.11 Primary laws have been upheld as not invalid as denying electors the right to determine the political principles their candidates must espouse or enabling the electors of opposite political faith to name the candidates of their opponents;11 they are not invalid as impairing the right of citizens to assemble together and instruct their representatives.12 Nor are they invalid as using public funds for the use of private or voluntary associations.13 It was argued that taxation to support primaries was not due process of law. This view was untenable, said the court, since the protection of the purity and expedition of elections is a fundamental function of state governments, unbridged by the constitution.

The completeness of the law and the sufficiency of the title are technical questions which have been invoked against primary legislation. Such laws should be complete in all their terms and conditions.14 Not only must the title be sufficient but there must be only one subject and that expressed in the title.15 The legislature has the power to frame regulatory

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9 State ex rel. Zent v. Nichols, (1908) 50 Wash. 508, 97 Pac. 728.
10 Riter v. Douglass, (1910) 32 Nev. 400, 109 Pac. 444. In accord see Hopper v. Stack, (1903) 69 N. J. L. 562, 56 Atl. 1; State v. Felton, (1908) 77 Ohio St. 554, 84 N. E. 85.
11 Ladd v. Holmes, (1901) 40 Ore. 167, 66 Pac. 714. See also State ex rel. Nordin v. Erickson, (1912) 119 Minn. 152, 137 N. W. 385.
12 Katz v. Fitzgerald, (1907) 152 Cal. 433, 93 Pac. 112. See also State ex rel. Van Alstine v. Frear, (1910) 142 Wis. 320, 125 N. W. 961, 20 Ann. Cas. 633.
14 People v. Election Commissioners, (1906) 221 Ill. 9, 77 N. E. 321; Rouse v. Thompson, (1906) 228 Ill. 522, 81 N. E. 1109.

Laws held not to violate such provisions in: State v. Cox, (1911)
laws and decide their terms; this power cannot be again delegated.\textsuperscript{16}

Primary laws and laws to regulate primary elections must likewise meet the requirement of uniformity. The problem is to see just how this requirement has been interpreted by our courts. Citations are not necessary to support the general statement that all laws and regulations must be reasonable, uniform, and impartial. But the mere fact that a law has only a local application does not prevent its being a general or public law, for it may be uniform in its operation as to a particular class.\textsuperscript{17} And legislation may be class legislation but not be repugnant to the constitution if it is at the same time general.\textsuperscript{18} Let us now examine some of the laws considered.

Laws exempting certain offices from the primary election are not unconstitutional on the ground of special or class legislation.\textsuperscript{19} A law providing for and regulating the holding of primaries in a certain county was upheld with, seemingly, little opposition.\textsuperscript{20} That but one city falls in a class attempted to be regulated does not make a law invalid.\textsuperscript{21} Both these latter

\footnotesize 234 Mo. 605, 137 S. W. 981; Commonwealth v. Wilcox, (1911) 111 Va. 849, 69 S. E. 1027; State v. Bethea, (1911) 61 Fla. 60, 55 So. 550; Socialist Party v. Uhl, (1909) 155 Cal. 776, 103 Pac. 181; Morrow v. Wipf, (1908) 22 S. D. 146, 115 N. W. 121; State ex rel. Zent v. Nichols, (1908) 50 Wash. 508, 97 Pac. 728; State v. Michel, (1908) 121 La. 374, 46 So. 430.

\footnotesize 16 People v. Election Commissioners, (1906) 221 Ill. 9, 77 N. E. 321.

\footnotesize Power given the county central committee to decide whether nominations should be by (1) voters or delegates chosen at primary, or (2) by majority or plurality vote: Held, invalid delegation. Cf. Morrow v. Wipf, supra.

In Rouse v. Thompson, supra, the county committee was given power to determine the delegate districts in county. Void.

\footnotesize 17 Ladd v. Holmes, (1901) 40 Ore. 167, 66 Pac. 714.


\footnotesize 19 Hodge v. Bryan, supra; Ledgerwood v. Pitts, (1910) 122 Tenn. 571, 125 S. W. 1036.

\footnotesize State v. Cole, (1911) 156 N. C. 618, 72 S. E. 221. A California law of 1895 applying to two counties only was declared unconstitutional, since in this case it was held that a law having uniform operation could be made applicable. Marsh v. Hanley, (1896) 111 Cal. 368, 43 Pac. 975. An act applying a different standard to Cook than to the other counties in Illinois was held to conflict with the constitutional prohibition of special laws regulating county affairs. People v. Commissioners, (1906) 221 Ill. 9, 77 N. E. 321.

\footnotesize 20 State v. Cole, (1911) 156 N. C. 618, 72 S. E. 221.

\footnotesize In accord see Hopper v. Stack, (1903) 69 N. J. L. 562, 56 Atl. 1; Commonwealth v. Commissioners, (1914) 22 Pa. Dist. 674; Kesler v. Commissioners, (1914) 22 Pa. Dist. 678. Contra: opposing the last two cases is Commonwealth v. Commissioners, (1914) 22 Pa. Dist. 654. A law applying only to cities of the first grade of the first class was declared unconstitutional. City of Cincinnati v. Ehrmann, (1899) 6 Ohio N. P. 169.
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statements have, however, been denied by the courts, as will be seen by an examination of notes 20 and 21. The legislature has been held to have the power to distribute the expense of primary elections by imposing the expense of a city primary on the county wherein it is located, but it is doubtful, in the writer's opinion, whether such legislation would be generally upheld by the courts.

Summing up the doctrines set forth in the decisions of the courts we may say that primary laws and statutes regulating primary elections are upheld because of the public importance of securing proper party nominations; but that they must not contravene constitutional provisions. Many of these provisions relate specifically to elections; the question, which will be treated in the following section, therefore arises, as to whether primary elections are "elections" in the sense in which the term is used in the constitution or in general statutes. The conservative view is that they are, even though the primaries were not a part of the election system at the time of framing the constitution or passing the acts. Other courts, however, question the applicability of provisions framed when the primary system was not in use.

The whole primary act or regulatory statute may or may not fall when a particular portion of the same is declared unconstitutional. If the invalid part goes to the root of the act and is vital to its existence, then the whole law will be invalid. But if the void part is not of such a nature as to render the continued operation of the other sections of the law impossible or illogical then the remaining portions will stand. To put it in another way, we should ask the question, "Would the legislature have passed the act, or statute without the section regarded as invalid?"

2. Is a Primary an "Election?"

Introduction. The importance of this question, as just stated, is very great. If the primary is to be regarded as an election within the meaning of every reference to that term in the constitution and general statutes then the ability to legally include many provisions in primary election laws is either

22 Ladd v. Holmes, supra.
23 People v. Election Commissioners, (1906) 221 Ill. 9, 77 N. E. 321.
abolished or greatly restricted. To illustrate: the constitution, let us say, provides for the secrecy of the ballot. Granting, for the sake of argument, though the courts are not unanimous by any means on the point, that the secrecy of the ballot is invaded by requirements for the voter to designate his party affiliation, then the very important question arises as to whether the primary should be included in the constitutional provision. Or bets on any election are prohibited. Does the primary come within the term “any election?” An attempt will be made to analyze the decisions on various laws and provisions before forming our conclusions as to what the judgment of the courts seems to be.

A. Laws and Statutes in General Considered. It has been held that the word “election” as used in some constitutional or statutory provisions includes primary elections. And primaries have been held to be “elections” within a constitutional provision prescribing qualifications of electors at “all elections authorized by law” and within the provision of the Bill of Rights saying “all elections shall be free and equal.” The effect of these decisions is to say that primary laws and regulations must not contravene constitutional and statutory provisions relating to elections.

On the other hand many cases hold that laws and constitutional provisions regulating elections in general do not apply to primaries. They are not within a constitutional require-

27 People v. Election Commissioners, (1906) 221 Ill. 9, 77 N. E. 321. This is but one of a number of Illinois cases in accord: People v. Derreen, (1910) 247, Ill. 289, 93 N. E. 437; People v. Strassheim, (1909) 240 Ill. 279, 88 N. E. 821; Rouse v. Thompson, (1906) 228 Ill. 522, 81 N. E. 1109; Sanner v. Patton, (1895) 155 Ill. 553, 40 N. E. 290.
29 State v. Johnson, (1902) 87 Minn. 221, 91 N. W. 604, 840; in accord see State ex rel. Nordin v. Erickson, (1912) 119 Minn. 152, 137 N. W. 385; Ledgerwood v. Pitts, (1910) 122 Tenn. 571, 125 S. W. 1036; State v. Flaherty, (1912) 23 N. D. 313, 136 N. W. 76; Line v. Board of
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ment that "all elections shall be equal." Three primary elections to choose delegates to conventions are not within constitutional or statutory requirements. Primary elections are not part of the general election because held at the same time as the latter, and using the same machinery merely for convenience and economy; the same case held that primaries were not "general elections" within the constitutional guaranty of the secrecy of the ballot at a general election. Primaries are not elections within the common-law meaning of the term.

A typical illustration of the reasoning of those holding that a primary is an election is found in the following:

"The words 'primary election,' we may say, are as well understood to mean the act of choosing candidates by the respective political parties to fill the various offices, as the word 'election' is to mean the final choice of all the electors of the persons to fill such offices. So that the words 'any election' clearly include primary elections, and such elections come within the letter of the statute."

By courts taking the opposite stand it has been declared that the words in the constitution referred to elections for office and not to elections for party nominations; a similar view was taken by another court in saying the primary is merely a


In the opinion in United States v. Gradwell, (1917) 243 U. S. 476, 61 L. Ed. 857, 37 S. C. R. 407, Justice Clarke seems to believe that the word "elections" as used in the constitution would not include primary elections. He says: "Primary elections, such as it is claimed the defendants corrupted, were not only unknown when the constitution was adopted, but they were equally unknown for many years after the law (in question) was first enacted." But Justice Clarke is very careful to note that the court is not called upon to decide the question whether primaries are "elections," as "such admission would not be of value in determining the case before us."


State ex rel. McCue v. Blaisdell, (1908) 18 N. D. 55, 118 N. W. 141.

State v. Woodruff, (1902) 68 N. J. L. 89, 56 Atl. 204. Decision applied only to primaries to choose delegates to convention. Quaere, would the same rule be applied to primaries to choose candidates to represent the party in the general election?


substitute for the caucus or convention. \textsuperscript{36} "A primary election is not an election to public office. It is merely the selection of candidates for office by the members of a political party in a manner having the form of an election." The elections referred to in the statute were "elections where persons are given public offices by a plurality of the votes of all the electors voting thereat." \textsuperscript{37}

B. Some Specific Provisions of Primary Laws. Primary elections have been held not to be within the meaning of a statute permitting the use of voting machines at all state, county, city, village and township elections; \textsuperscript{38} nor within a constitutional declaration of the necessary qualifications of electors. \textsuperscript{39} A primary election law making no provision for leaving blank spaces on the ballots as required in the constitution at all elections, is not void. \textsuperscript{40} In another case the court distinguished between the oath of fealty to a party as a candidate and the oath made on taking office. \textsuperscript{41} Laws providing for the determination of contested elections do not apply to primary election. \textsuperscript{42} The above cases all declared, directly or indirectly, that primaries are not elections.

But there is no unanimity of opinion on the question even in interpreting specific statutes or provisions and saying whether they shall be put into effect. Primaries have been declared within constitutional provisions prescribing the qualifications of voters at "any election." \textsuperscript{43} Constitutional provisions as to the mode of nominating and number of nominees must be regarded. \textsuperscript{44}

C. Criminal Statutes and Corrupt Practices Provisions. Primary acts have been held not to be within the meaning of

\textsuperscript{36} Ledgerwood v. Pitts, (1910) 122 Tenn. 571, 125 S. W. 1036.
\textsuperscript{38} Line v. Board of Election Canvassers, supra.
\textsuperscript{39} State v. Johnson, (1902) 87 Minn. 221, 91 N. W. 604, 840; State ex rel. Zent v. Nichols, (1908) 50 Wash. 508, 97 Pac. 728.
\textsuperscript{40} State v. Johnson, supra.
\textsuperscript{41} Riter v. Douglass, (1910) 32 Nev. 400, 109 Pac. 444.
\textsuperscript{43} Johnson v. Grand Forks County, (1907) 16 N. D. 363, 113 N. W. 1071, later overruled; People v. Strassheim, (1909) 240 Ill. 279, 88 N. E. 821.
\textsuperscript{44} People v. Strassheim, supra; Rouse v. Thompson, (1906) 228 Ill. 522, 81 N. E. 1109; People v. Election Commissioners, (1906) 221 Ill. 9, 77 N. E. 321; People v. Deneen, (1910) 247 Ill. 289, 93 N. E. 437.
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statutes prohibiting a wager on the success of any candidate at "any election," in a leading case.\(^{45}\) Similarly, statutes making it a misdemeanor to place any bet or wager on any election do not apply to primaries.\(^{46}\) Going still further in this line, a statute disqualifying a person from holding office during term elected for when he shall have given a bribe, threat, or reward to secure his election, was held not to apply to primaries.\(^{47}\) Nor is it an offence for officials at primaries to electioneer, when the general election laws forbid it.\(^{48}\)

But a statute forbidding fraudulent voting at a primary was sustained as valid under the Pennsylvania constitution\(^{49}\) providing for the disqualification for holding office and the deprivation of the right of suffrage of anyone convicted of wilful violation of the election laws.\(^{50}\) Primaries have been held to be within the letter and spirit of a statute prohibiting the sale of intoxicants on "the day of any election."\(^{51}\) A general criminal statute referring to "elections" applies to the "September primary."\(^{52}\)

Analysis and Conclusions. Can any general conclusions as to the tendencies of our courts be drawn from the conflicting opinions cited? Let us review the cases and discover how many courts adopt each view.


\(^{47}\) Gray v. Seitz, (1904) 162 Ind. 1, 69 N. E. 456.

\(^{48}\) State v. Simmons, (1915) 117 Ark. 159, 714 S. W. 238.

\(^{49}\) Pa. Constitution, Art. 8, Sec. 9.

\(^{50}\) Leonard v. Commonwealth, (1886) 112 Pa. 622, 4 Atl. 220.

\(^{51}\) State v. Hirsch, (1890) 125 Ind. 207, 24 N. E. 1062, 9 L. R. A. 170. Overruled in Gray v. Seitz, (1904) 162 Ind. 1, 69 N. E. 456. The decision in State v. Hirsch may be explained by the general tendency which has existed for the courts to interpret laws in a way they would not otherwise do when the liquor interests are concerned.

\(^{52}\) State v. Robinson, (1912) 69 Wash. 172, 124 Pac. 379. But it is doubtful if this should be considered as fully upholding the principle that primaries are elections, since the court upheld Commonwealth v. Wells, (1885) 110 Pa. 463, 1 Atl. 310, and endeavors to distinguish the facts in this case from those in the Pennsylvania case. What the court says in effect is: The words "any election" as used in general election laws or a constitutional article on elections do not apply to primaries; as used in general criminal statutes or other statutes not aimed at or concerned with elections per se they will apply.
Supporting the view that primaries are elections we have a number of decisions from the Illinois supreme court. Most of the Illinois cases rest on the cumulative voting provisions of the constitution, the courts declaring they must be made to apply at the primaries. In Oklahoma and Nebraska the courts have supported the Illinois view; in California, Pennsylvania, and Washington they have done so by overruling former decisions, but in the latter state the decision applies only to a limited extent.

In the following states the contrary position has been uniformly taken: Minnesota, Tennessee, Michigan, Arkansas, Kentucky, Missouri, Nevada and Iowa. In Indiana and North Dakota decisions holding that primaries are elections have been overruled. A New Jersey decision to this effect applies only to a limited extent. The Tennessee and Nevada cases are perhaps the best discussed of the recent cases involving the validity of primary laws and provisions.

Eliminating the Washington and New Jersey decisions, as offsetting each other, we have five courts supporting the view that primaries are elections and ten holding that they are not. In the writer's opinion the tendency is to hold that they are not; but as new state constitutions are framed and statutes drawn with more skill the problem will to some extent be solved in the future. At present, however, it must be considered in the framing of any primary bill or regulation of primaries, and in determining their constitutionality.

3. Regulations Regarding Parties.

The principal question arising in this connection is the attempt to exclude the smaller parties from the primaries. Such laws typically say that parties not having polled a certain percentage of the total vote cast at the last general election shall not be entitled to a place on the primary ballot.

The principle underlying such laws is upheld by the courts, and the author has been unable to find any cases in which laws were declared unconstitutional merely because smaller parties

53 These decisions are reviewed and attacked by Professor L. M. Greeley of Northwestern University in 4 Ill. L. Rev. 227-42 and 5 Ill. L. Rev. 502-08. People v. Czernecki, (1912) 256 Ill. 320, 100 N. E. 283, seems to in some measure hold the opposite view, but not sufficiently so to permit us to say that they are overruled.

54 Ledgerwood v. Pitts, (1910) 122 Tenn. 571, 125 S. W. 1036; Riter v. Douglass, (1910) 32 Nev. 400, 109 Pac. 444.
were excluded. "The legislature has the undoubted right, in
the regulation of primary elections, to prescribe qualifying
classification for political parties who desire to avail them-
seves of the privilege of getting on the official ballot through
the means prescribed by law."\textsuperscript{55}

The necessity for such classification has been pointed out.
"Some classification is made necessary, else any two, three, or
four men might call themselves a party, and impose the burden
of placing their candidates upon the ballot provided by the
state law . . . a condition which could easily be made in-
tolerable to the state, as well as to the voter."\textsuperscript{56} The court in its
argument from a hypothetical case has, as courts are prone to
do, greatly exaggerated and magnified the possible evils; still,
there is a germ of truth in the court's statement, at least as far
as the principle goes. One of the best analyses is that made in
\textit{State v. Phelps},\textsuperscript{57} "Some test of party capacity, having refer-
ence to numbers, for representation on the official ballot is
necessary. Otherwise the number of parties and names of
candidates might be so great as to render the single ballot
sheet unsuitable for exercise of the constitutional right to
vote." Three arguments were used to uphold the court's con-
clusion; (1) to keep the ballot within a reasonable size such
regulation is necessary; (2) "to promote such party integrity
as the only legitimate basis for legal conservation of party
existence, as to discourage electors, claiming to belong to one
organization from invading the primary of another;" (3) "to
stimulate exercise of the right to participate by voting in the
activities of the social state," with particular emphasis on the
first of these, the latter two, indeed, seeming to be somewhat
stretched for the purpose of argument.

It would seem that restrictions of the nature referred to
are constitutional only when independent nominations may be
made by petition.\textsuperscript{58}

Laws have been upheld in which parties not having polled
1 per cent of the total vote in the last preceding general election

\textsuperscript{55} \textit{Riter v. Douglass}, supra.
\textsuperscript{56} \textit{Katz v. Fitzgerald}, (1907) 152 Cal. 433, 93 Pac. 112.
\textsuperscript{57} \textit{State v. Phelps}, (1910) 144 Wis. 1, 128 N. W. 1041.
\textsuperscript{58} \textit{Ex parte Wilson}; (1912) 7 Okla. Cr. 610, 125 Pac. 739; \textit{Riter v.
Douglass}, (1910) 32 Nev. 400, 109 Pac. 444.
were excluded from the primary;\textsuperscript{59} 2 per cent;\textsuperscript{60} 3 per cent;\textsuperscript{61} 5 per cent;\textsuperscript{62} 10 per cent;\textsuperscript{63} and 20 per cent.\textsuperscript{64} A law restricting the primary to the two parties which had polled the largest vote was upheld.\textsuperscript{65} The primary of the largest party was to be held first.

Unless such restrictions were imposed there would be no limit to the number of parties and candidates whose names would appear on the official ballot. Where a party is unable to hold a primary or to participate in the general party, either because of legal restrictions, or because it would be impracticable for it to do so, it may nominate by convention. While it is lawful to prescribe a condition as to numerical strength and to classify, yet such classification cannot be arbitrary. The court may very properly inquire as to (1) the rationality of the classification; (2) the imposition of unequal burdens; (3) the conferring of special privileges.

A primary law providing for a limitation of 20 per cent in Cook county and 10 per cent in the state as a whole was declared unconstitutional as being special and local legislation and as interfering with equality of rights and the freedom of the voters in the different counties.\textsuperscript{66} A law that only parties having polled 3 per cent of the total vote could use the primaries to elect delegates to state conventions, was held invalid as class legislation; the smaller parties were practically prevented from having conventions, though they might place their


\textsuperscript{60} Corcoran v. Bennett, (1897) 20 R. I. 6, 36 Atl. 1122.


\textsuperscript{63} State v. Jensen, (1902) 86 Minn. 9, 89 N. W. 1126; Davidson v. Hanson, (1902) 87 Minn. 211, 91 N. W. 1124, 92 N. W. 93; State ex rel. Webber v. Felton, (1908) 77 Ohio St. 554, 84 N. E. 85; State v. Michel, (1908) 121 La. 374, 46 So. 430; Ledgerwood v. Pitts, (1910) 122 Tenn. 571, 125 S. W. 1036.

\textsuperscript{64} State v. Phelps, (1910) 144 Wis. 1, 128 N. W. 1041. The vote must have been 20 per cent of that cast for governor in the official district.

\textsuperscript{65} Kenneweg v. County Commissioners, (1905) 102 Md. 119, 62 Atl. 249. Slightly different from the general form of primary law; for our purposes, it must be remembered, it makes little difference whether a law is mandatory or optional.

\textsuperscript{66} People v. Election Commissioners, (1906) 221 Ill. 9, 77 N. E. 321.
candidates on the general election ballot in another way. A provision that the primary should not be used by any party to make nominations in any district where the party’s vote had not been at least 30 per cent of that cast for secretary of state at the last general election, was unconstitutional as arbitrary, unnatural, and not uniform.

A law providing that nominations by petition must be, for certain offices, of 5,000 votes, not over 500 in any county, was declared unconstitutional, as depriving the voters in counties where there were 5,000 and more voters of equal rights.

(To be concluded.)

NOEL SARGENT.

ST. THOMAS COLLEGE,
ST. PAUL, MINNESOTA.

