The Law of Primary Elections

Noel Gharrett Sargent

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THE LAW OF PRIMARY ELECTIONS*

4. REGULATIONS AS TO THE ELECTIONS AND SUFFRAGE.

Under this head I shall consider primarily only those laws and provisos concerned with the conduct of elections so far as they relate to the suffrage. In this and the succeeding sections, it will be observed, many of the decisions hinge on the point already discussed of whether the primary is to be regarded as an election within the constitutional meaning of that term.

A Washington law requiring first and second choice voting was upheld, though the constitution said nothing of it. Compulsory second choice voting does not limit or revoke the constitutional provision for "the free and lawful exercise of the right of suffrage." But a law limiting the voters to the right to cast one ballot for each of the nominees for representatives in the general assembly, said candidates being named by the senatorial committee, contravenes the constitutional provision allowing cumulation or division of votes.

In the following section we shall consider the regulations affecting the voter and the suffrage.

5. THE VOTERS AND THE SUFFRAGE.

There are two main questions presented under this head: the problems of registration and the requirement of a test of party affiliation.

Registration. One of the special topics coming under the general head of "Registration," concerning the requirement of oaths of party membership, will be treated subsequently. In general, we may say that where a statute has the effect of disfranchising citizens who are legal voters under the constitution, it will not be upheld. This disfranchisement may be direct or indirect. Thus, in Michigan a law which amounted to a denial of the elective franchise to a large number of voters through no fault of their own, and making unjust and unlawful discrimination be-

*Continued from 2 MINNESOTA LAW REVIEW, 97.
70 State ex rel. Zent v. Nichols, (1908) 50 Wash. 508, 97 Pac. 728.
71 Adams v. Lansdon, (1910) 18 Idaho 483, 110 Pac. 280.
72 People v. Strassheim, (1909) 240 Ill. 279, 88 N. E. 821.
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between the rights of native and naturalized citizens, is unreasonable and void.73 A law forbidding persons to vote whose names did not appear on the precinct register used at the last general election or upon its supplement, was declared invalid. It was held to debar native-born becoming eligible since the last general election, as well as persons naturalized since then and those who had changed their place of residence.74 Requirement of proof of naturalization by the foreign born is unconstitutional.75 This is true generally as it would disfranchise those in other states when admitted to the union (and enfranchised by the enabling act of Congress) and subsequently moving to the state enacting the law; it is also true in those states containing foreign born living in the state at the time of its admission. One who is registered as a member of a political party cannot compel the registry agent to change his party affiliation before election.76

Tests of party affiliation. The question as to whether a voter can be compelled at the time of registry or at the primary election to put himself on record or take oath as to his general affiliation with a political party is one of some importance. These tests, which take various forms, are provided as a means of preserving the integrity of the party. Their success depends both on their form and on the manner in which they are enforced. For instance, even though one might have all the desire and reason in the world to enforce some particular test he might be unable to do so. An enormous sum of money, for example, would be required to have challengers provided at all the polls in Chicago or any other large city, and even if this could be done their acquaintanceship would be limited and they could only perform the services expected of them to a limited extent. There is no doubt that in many cases voters of one party participate in large numbers, often sufficiently so to determine the party candidate, at the primary of another party. Thus, in the primary elections of September, 1916, in the state of Washington, the Democrats, having few contests of any importance in their own party, took part in the Republican primary (by a concerted and precon-

75 State v. Flaherty, (1912) 23 N. D. 313, 136 N. W. 76.
76 State v. Keith, (1914) 37 Nev. 452, 142 Pac. 532.
ceived action and plan, many charge) with the avowed purpose of nominating Senator Poindexter for re-election and defeating Congressman Humphrey, Senator Poindexter's only formidable opponent. And there is no doubt that they accomplished their purpose.

We have just seen that the requirements of voters at primaries cannot be greater than those at general elections, as provided in the constitution. An exception, however, may be made in the case of tests of party affiliation, which are generally upheld.

The chief objection on principle to such tests is that they violate the secrecy of the ballot. But the right to vote a secret ballot is neither a natural nor a constitutional right. And the oath required has been held not to violate the secrecy of the ballot. Yet another court seems to admit that such tests violate the secrecy of the ballot when it says: "It is the secrecy of the ballot which the law protects, and not secrecy as to the political party with which the voter desires to act." In short, there is, seemingly, no unanimity among the courts which do support the principle of such tests, as to why they do so.

A leading case has held that the legislature may provide that a party committee may establish qualifications for voters at primary elections in addition to those prescribed by the general election laws. This would, however, probably be limited to qualifications connected with the party as such, and go no farther than to require some test of party affiliation. Provisions that voters not members of a political party are excluded are reasonable and proper, where independent nominations may be made by petition. One case has even held that the absence of a test of party affiliation will render a primary law inoperative. Personally, I doubt if that decision would be very generally followed,

77 Hopper v. Stack, (1903) 69 N. J. L. 562, 56 Atl. 1; State v. Felton, (1908) 77 Ohio St. 554, 84 N. E. 85; Riter v. Douglass, (1910) 32 Nev. 400, 109 Pac. 444; State v. Michel, (1908) 121 La. 374, 46 So. 430.
78 Hopper v. Stack, supra; Rebstock v. Superior Court, (1905) 146 Cal. 308, 80 Pac. 65.
80 State v. Michel, (1908) 121 La. 374, 46 So. 430. Contra, In re Sweeney, (1913) 144 N. Y. S. 60, affirmed 209 N. Y. 567.
81 Ex parte Wilson, (1912) 7 Okla. Cr. 610, 125 Pac. 739; Riter v. Douglass, (1910) 32 Nev. 400, 109 Pac. 444.
and believe the decision of the Wisconsin court, that a primary law permitting one to vote for candidates of another party, whom he does not intend to support, is not unconstitutional, is the more logical.83

Requiring a voter at the time of registration to declare his party allegiance and to vote only that party’s ballot at the primary is not illegal.84 He may also be required to express his intention at the time of enrollment to support generally the candidates of his party at the next general election.85 One may be required either when enrolling or at the polls to declare that he voted for a majority of the candidates of the party at the last general election or intends to do so at the next.86 That is, one may vote only in the party with which he is affiliated. Such requirements are not unconstitutional as prescribing added franchise requirements, or restricting the right of suffrage, or violating the secrecy of the ballot.87 It has been held, though it is probably doubtful if it would be generally so, that one who has registered as a member of a political party cannot compel the registry agent to change his party affiliation before the time of election.88 Requiring the elector to declare that he will not sign a petition for another candidate after voting at the primary has been upheld.89 A provision that one could not vote at the primary who has signed the petition of a candidate of any other party has been upheld.90 But provisions preventing signers of one petition from signing a second petition nominating other candidates for the same office, will not ordinarily prevent persons participating in nominating candidates at the primaries from signing an independent nominating petition for candidates for the same office.91 It will be seen that while the requirements designed

83 State ex rel. Van Alstine v. Frear, (1910) 142 Wis. 320, 125 N. W. 961, 20 Ann. Cas. 633.
84 Schostag v. Cator. (1907) 151 Cal. 600, 91 Pac. 502.
85 People v. Democratic General Committee, (1900) 164 N. Y. 335, 58 N. E. 124.
88 State v. Keith, (1914) 37 Nev. 452, 142 Pac. 532.
89 Katz v. Fitzgerald, (1907) 152 Cal. 433, 93 Pac. 112.
90 Rouse v. Thompson, (1906) 228 Ill. 522, 81 N. E. 1109; State v. Michel, (1908) 121 La. 374, 46 So. 430.
to determine party affiliation and to preserve the integrity of the political party vary in different states, yet in many respects, certainly so far as the underlying principle is concerned, they are similar in all. The various tests provide the only method by which the purposes of the statutes confining the voter to one ballot may be so effectuated as to in any appreciable degree prevent the voters of one party from invading the primaries of another, especially when there are contests in the latter.\textsuperscript{92}

But a voter at a primary election cannot be required to declare his intention to support the nominee\textsuperscript{93} or that he will support the nominees selected by delegates selected at the primary, since such a requirement is special legislation in favor of and against certain classes of individuals. However, this is not really inconsistent with the previously cited cases requiring an elector to state his intention to support generally the party nominees.

It has been held that the voter has a right to vote for persons not named in the printed ballot and that statutes specifically granting that right are not unconstitutional.\textsuperscript{94} In Nevada, however, though provision is made for blank spaces on the ballot, the voter, with one exception, cannot write in names.\textsuperscript{95}

6. Regulations Concerning Candidates.

A. Definitions; Nominations; Withdrawals. One who offers himself, or is offered by others, for an office is a candidate.\textsuperscript{96} He may be a candidate even though not nominated.\textsuperscript{97} Just when does a man become a candidate? Since the law of primary elections is still in a rather formative stage there have been few decisions upon the point. The two leading cases are in direct conflict. An Idaho law of 1909\textsuperscript{98} prohibited a candidate for nomination from expending to promote his nomination over 15% of the salary of the office sought and made mandatory the filing of an itemized statement of expenditures not over 10 days after the

\textsuperscript{92}In addition to the previously cited cases upholding such tests, see Commonwealth v. Rogers, (1902) 181 Mass. 184, 63 N. E. 421; Sherman v. People, (1904) 210 Ill. 552, 71 N. E. 618; People v. Election Commissioners, (1905) 221 Ill. 9, 77 N. E. 321; State ex rel. Zent v. Nichols, (1908) 50 Wash. 508, 97 Pac. 728-31; Bell v. State, (1914) 11 Okla. Cr. 37, 141 Pac. 804.

\textsuperscript{93}Spier v. Baker, (1898) 120 Cal. 370, 52 Pac. 659, 41 L. R. A. 196.

\textsuperscript{94}Farrell v. Hucken, (1914) 125 Minn. 407, 147 N. W. 815; State v. Tallman, (1914) 82 Wash. 141, 143 Pac. 874.

\textsuperscript{95}In re Primary Ballots, (1910) 33 Nev. 129, 126 Pac. 643.


\textsuperscript{97}Leonard v. Commonwealth, (1886) 112 Pa. 622, 4 Atl. 220.

\textsuperscript{98}Idaho Laws 1909 p. 126.
primary election. In a case coming before it the court held:99

(1) a person is a candidate when expending money in any way de-
signed to increase or enhance his ultimate chances of nomination;
(2) in the itemized statement must be included all items con-
tracted or paid prior to filing the nomination papers as well as
those subsequent thereto. In Minnesota the law100 said all can-
didates must file within 30 days after the primary a verified state-
ment of expenditures. The court declared101 that one becomes a
candidate at the time of filing his affidavit of intention to become
a candidate, and the statement need not include items of expense
incurred or paid prior to the time of filing such affidavit. The
Minnesota view simply means that a man might delay filing his
nomination papers until the last minute, in the meanwhile spend-
ing as much money as he wished to secure the nominations. The
Idaho viewpoint on the whole seems more conducive to fair
elections.102 Candidates at the primaries for positions on party
committees are not candidates for public offices.103 Where nom-
ination by convention is forbidden, the nominees of conventions
may subsequently become candidates at the primaries.104 Where
the legislature forbids the withdrawal of candidates nominated at
the primary, the court cannot allow a candidate to withdraw even
for deserving reasons.105

B. Qualifications. Requiring a candidate to state that he is a
member, and that he supported the ticket at the last general elec-
tion, of the party in which he is a candidate, is valid.106 Provi-
sions by statute that votes cast for one as candidate of a political
party with which he is not enrolled be not counted, have been up-
held.107 Yet one may become the candidate of a new party,
though not enrolled as a member thereof.108 A provision requir-

100 Minn. Rev. Laws 1905 Sec. 350.
104 State v. Dykeman, (1912) 70 Wash. 599.
ing one to say he is a candidate before placing his name on the ballot is unconstitutional, since it restricts the voters from choosing one who declines himself to seek office.\(^\text{109}\)

C. Name on Two Ballots. Can a candidate have his name placed on two ballots—be the candidate of two parties—at the primary? So far as I am aware no cases have arisen where a man tried to be a candidate for two different offices at the same primary election, but any such attempt would probably be discountenanced by the courts. As to whether he may be a candidate in two parties for the same office is disputed by the courts. A New York statute forbidding a committee of a political party, said committee being authorized to make nominations, to nominate for an office on the party ticket a person who is the candidate of another party for the same office is unconstitutional.\(^\text{110}\) Said Mr. C. J. Cullen: “Legislation to be valid, must not only not deprive the elector of his right to vote for whom he will, but for what candidate he will, and it must not discriminate in favor of one set of candidates against another set.” On the filing of a legal petition in both parties, it has been held in Illinois, though not by the court, that the election commissioners must put a name on the primary ballots of both parties, and the board has no power to require the candidate to elect on which primary ballot his name shall appear.\(^\text{111}\) Where the members of a party only may participate in the primary of that party and in the absence of legislative restrictions on the candidates, one may become the candidate of two parties for the same office.\(^\text{112}\) “The right which the law gives a person to be the nominee of two parties is a valuable right, and it cannot be taken away by anyone or in any manner other than as provided in the code.”\(^\text{113}\)

On the other hand, it has been declared that under a “closed primary” law no political party can be compelled to present as its candidate at a general election one who does not affiliate with


\(^{110}\) Matter of Callahan, (1910) 200 N. Y. 59, 140 Am. St. Rep. 626. In accord: Hopper v. Britt, (1912) 204 N. Y. 524, 98 N. E. 86. That a person has a right to vote for anyone eligible see also People v. Election Commissioners, (1906) 221 Ill. 9, 18, 77 N. E. 321. Supporting the view that one may be a candidate in two parties, see also State v. Seibel, (1914) 262 Mo. 220, 171 S. W. 69; In re Clerk, (N. J. 1913) 88 Atl. 694.

\(^{111}\) Opinion to Election Commissioners by Donald R. Richberg, 47 Chicago Legal News 31-32.

\(^{112}\) Hart v. Jordan, (1914) 168 Cal. 321, 143 Pac. 537.

\(^{113}\) State v. Superior Court, (1912) 70 Wash. 662, 127 Pac. 310.
Again, a candidate cannot file nomination papers under a second party. Another court holds that one is not entitled to have his name on two ballots, though one party might nominate all the nominees of the other party. That is the most radical and far-reaching decision on the point enunciated by our courts. In Kentucky it has been held that nominations on two party ballots are not practicable under their primary law. On the whole, I think we may safely say that in general one will be permitted to have his name, if properly presented, on two, or even more, ballots at the primary election, provided there is no qualification that a candidate must be a member of the party whose nomination he seeks.

D. Filing Fees. There is no doubt that a filing fee may be required of a candidate at the primary. A leading case holds that the fee required is a regulation, and not an additional qualification for office-holding. The court declared that it was justified under the police power, since it would prevent persons from placing names on the ballots for fraudulent purposes, such as to draw strength in small localities from one candidate to benefit another. Yet such fees must be imposed with caution, since every eligible person has the right to be a candidate without being subjected to arbitrary and unreasonable burdens of any character.

With this is coupled the voter's right to choose any eligible person as a candidate. Such fees must be reasonable, and not arbitrary, unwarranted, and unnecessary. They must bear a relation to the service performed by the recording officer. The problem, in every case, is one of fact, as to whether the fee re-

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115 State ex rel. Thatcher v. Brodigan, (Nev. 1914) 142 Pac. 520.
116 State v. Anderson, (1898) 100 Wis. 523, 76 N. W. 482, 42 L. R. A. 239.
118 Some leading cases are Riter v. Douglass, (1910) 32 Nev. 400, 109 Pac. 444; State ex rel. Larsen v. Scott, (1910) 110 Minn. 461, 126 N. W. 70 (citing other Minnesota cases in accord); Socialist Party v. Uhl, (1909) 155 Cal. 776, 103 Pac. 181; State ex rel. Zent v. Nichols, (1908) 50 Wash. 508, 97 Pac. 728.
121 Ballinger v. McLaughlin, (1908) 22 S. D. 206, 116 N. W. 70.
quired does bear a reasonable relation to the services performed in filing the petition.

Provisions for the payment of filing fees from $10 to $50 have been upheld. In Nevada a $100 filing fee for a salaried state office has been upheld. A requirement that 1% of the yearly salary be paid as a fee has been upheld. For one, I do not believe that any fee based on a proportion of the salary to be received should be upheld, it being very difficult to see how this can be reconciled with the view, held by practically all the courts, that the fee should bear a relation to the services performed by the recording and filing officers. Surely there is no more service performed in filing the petition of a candidate for governor than for one who wishes to go to the state legislature. This, however, is not the attitude adopted by the courts, and even where requirements are not upheld, it is because they are exorbitant and unreasonable.

A requirement that a candidate should pay 2% of the salary of the office for which he filed was declared unconstitutional. A requirement of 1% of the term's salary is invalid. Fees ranging from $25 to $100 for the same primary election have not been upheld since they bore no relation to the services rendered in filing the papers or to the expenses of the election. The fees of an election can not be assessed among the candidates, the amount varying, with the office sought. No refund is allowed if the candidate withdraw before the election. A defeated candidate cannot recover his fee, and the law is not invalid because of that fact, since he was not compelled to become a candidate and to deposit the money. But where the fee has been exacted under an unconstitutional statute and paid under protest, it may be re-

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124 State ex rel. Boomer v. Nichols, (1908) 50 Wash. 529, 97 Pac. 733.
127 People v. Election Commissioners, (1906) 221 Ill. 9, 77 N. E. 321. Similarly, fees ranging from $10 to $500, Ledgerwood v. Pitts, (1910) 122 Tenn. 571, 123 S. W. 1036.
128 Ledgerwood v. Pitts, supra.
129 State ex rel. Thatcher v. Brodigan, (Nev. 1914) 142 Pac. 520.
130 State v. Michel, (1908) 121 La. 374, 46 So. 430.
covered by action. Where the voter has a legal right to write or paste on the ballot the name of any person, candidates are not required to pay any filing fee when nominated by the writing of their names on the ballots, or otherwise than by filing a regular declaration of candidacy or by seeking nomination at the hands of a nominating convention.

E. Contributions and Expenditures. Limiting one's expenditures to a certain percentage of the salary of the office sought does not deprive one of the right of free speech. Corrupt practice acts requiring candidates for public office at the primary to file statements of expenses in connection therewith do not apply to members of party committees elected at such elections, they not being candidates for public offices.

F. Election Pledges. The pledges required or implied of legislators who, under our old system, were to vote for United States Senators, and of presidential electors, will be considered later. A provision requiring one to say he is a candidate before placing his name on the ballot has not been upheld. It was held to restrict the voters from choosing one who declined himself to seek office. But a provision making mandatory the filing by a candidate of a declaration that if successful he will qualify for office is not invalid as prescribing qualification for office additional to the constitution.

G. Unsuccessful Candidates. Laws forbidding defeated candidates to run on an independent ticket have been upheld. In all of these cases the right has existed to write in names on the final ballot. It is doubtful if such laws would be upheld if such a provision did not exist, since it would absolutely preclude the voters from choosing for an office someone whom the majority desired to elect.

132 State v. Tallman, (1914) 82 Wash. 141, 143 Pac. 874. Decided by a divided court, 3-2.
133 Adams v. Lanson, (1910) 18 Idaho 483, 110 Pac. 280.
7. PRESIDENTIAL ELECTORS AND SENATORIAL PRIMARIES.

Before the direct election of senators was provided for by the seventeenth amendment many states had senatorial primaries, in which the voters were to ballot as to their choice for senator, and the party legislators were expected to select the choice of the people, as indicated by popular vote. The United States constitution, however, gave the choice to the legislators; the question arose as to whether they could be restricted in any manner in their choice of senators.

Many of the state laws required candidates for the legislature to pledge themselves to support the candidate receiving the majority vote of their party at the primary. Such laws, when brought before the courts, were not upheld. In these two cases the court rather dodged the issue, however, by saying that in the last analysis the question could only be determined by the United States Senate anyway. There is only a moral obligation existing on the legislators. These cases rest on the proposition that to permit the voters to choose senators, or to allow their selection to be binding on the legislators, would be an invalid delegation of legislative power. A provision that United States senators be nominated in the primary does not bind the legislators to vote for the party nominee or restrict their choice to persons voted for at the primary, and hence is not in violation of the United States constitution and statutes. Only in one case, so far as I am aware, was it held that the requirement of a promise from legislative candidates to support their party nominee was valid.

In the state of Nebraska in 1912 certain men were selected by the Republicans as presidential electors. After the progressive revolt the majority of these men announced their intention to support Colonel Roosevelt. Suit was brought to compel the secretary of state to place on the ballot as Republican presidential electors the names of certain "regular" Republicans in place of the "bolters." The court upheld the right of the Republican party to place other names on the ballot, declaring that presi-

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140 See note in 22 L. R. A. (N. S.) 1135.
141 State ex rel. Van Alstine v. Frear, (1910) 142 Wis. 320, 125 N. W. 961, 20 Ann. Cas. 633.
142 State v. Michel, (1908) 121 La. 374, 46 So. 430.
dential electors impliedly pledge themselves to vote, if elected, for the persons who may subsequently be nominated by the national convention of their party. If they announce their intention to do otherwise after the convention their office is forfeited and a vacancy occurs. They cannot continue as electors of a party and refuse to support the party candidate.

8. Results of Elections; Contests; Vacancies.

A. Election Results. After an election the right of successful candidates to their offices is not affected by the unconstitutionality of the primary act under which they were nominated.\footnote{People v. Strassheim, (1909) 240 Ill. 279, 88 N. E. 821.} This is presumably on the ground that the people having spoken, and the popular will being above that of any department of the government, the judiciary would be powerless to put a man out of office on such a ground. The case is analogous to the adoption of a constitution framed in an unconstitutional manner. A provision that a candidate getting over 50% of the total vote for the office sought and of the total ballots cast be the sole nominee on the ballot at the general election has been upheld.\footnote{Winston v. Moore, (1914) 244 Pa. 447, 91 Atl. 520, Ann. Cas. 1915C 498; L.R.A. 1915A 1190.} Limiting the names on the official ballot to the two candidates receiving the highest votes at the primary does not violate the provision that all elections shall be free and equal.\footnote{Note 145, supra.}

B. Contests. In two Arkansas cases it was held that laws making the chancery court a tribunal to hear and determine primary election contests were invalid, holding in the first case\footnote{Hester v. Bourland, (1906) 80 Ark. 145, 95 S. W. 992.} that primaries were not such elections as the legislature was in the constitution authorized to provide contest boards for, and in the second case\footnote{Walls v. Brundige. (1913) 109 Ark. 250, 160 S. W. 230, Ann. Cas. 1915C 980.} that parties being unincorporated and voluntary associations involving no rights of property or personal liberty could not come into equity and the Democratic party already having a tribunal to hear contests its decisions are final. "The legislature may, within constitutional limitations, regulate primary elections; but there is a diversity of opinion as to how far legislation may go in creating a tribunal to hear and determine contests outside and beyond the councils of the party and in regu-
lating the procedure therein.”

It has been declared that the right of an ineligible person to hold office cannot be tested by the unsuccessful candidate at the primary, but only in a suit brought in the name of the state. The county auditor or clerk cannot pass on the eligibility of candidates and refuse to place names on the ballot at the general election. On mandamus the court will take cognizance of the question as to which candidate should appear on the official ballot, before the time for printing the ballot arrives. The fact that votes were not challenged at the polls does not preclude showing their illegality. Indeed, if that were to be the case the stuffing of the ballot box would be made much easier than it now is, owing to the difficulty and expense involved in challenging. The principal of estoppel may enter to prevent one from contesting the election of a successful candidate. In case a contest is successful “no election” will be decreed and the office declared vacant.

C. Vacancies. Vacancies may occur in several ways. In case a candidate dies before the general election ballots cast for him will not be counted. In the latter of these two cases it was held that the ballots were counted as blanks and no vacancy occurred, even if a majority of the votes were cast for the deceased. A majority of the cases hold that the party committee has power to fill vacancies only after a candidate has been nominated at the primary. That is, no vacancy can occur until a candidate has been nominated. If there is a tie vote a vacancy occurs which the party committee may fill. A statute provid-
ing that the successful candidate must file an acceptance within ten days after the primary and that a vacancy occurs if he does not, which the party committee may fill, has been upheld.\textsuperscript{109} If presidential electors refuse to support the nominees of their party their office is forfeited and a vacancy occurs.\textsuperscript{106} In case a successful contest occurs "no election" will be decreed by the courts and the office declared vacant.\textsuperscript{101} That is, the contesting party or the runner-up in the primary obtains no right to a place on the ballot because his rival's nomination is thrown out.

9. Conclusion.

The principle of primary laws has been upheld by all courts, due perhaps, in some cases at least, to the fact that the courts refrain, so far as is possible, from any attempt to pass on the validity of measures of a political nature. Many provisions of primary laws and of statutes passed to regulate them have, however, been declared invalid. Quite often this has occurred where the court has taken the view that primaries are within the meaning of constitutional references to "elections;" the more general view is that primaries are not "elections." On the whole, we may say that primary regulations are quite generally upheld, unless they are clearly arbitrary or unreasonable. "In no field of legislation has the judiciary shown itself more friendly to experiment than in the regulation of political organizations. . . . No particular property rights have been involved, the pressure of public opinion has been strong and steady, the judges have been conversant with the facts and the philosophy of the party system, and hence have experienced little difficulty in justifying almost every kind of a primary system that has been adopted by a legislative body. . . . If primary laws are not perfect, the courts cannot be blamed."\textsuperscript{102}

\textsuperscript{109} State ex rel. Sayer v. Junkin, (1910) 87 Neb. 801, 128 N. W. 630.
\textsuperscript{106} State v. Wait, (1912) 92 Neb. 313, 138 N. W. 159.
\textsuperscript{101} Francis v. Sturgill, (1915) 163 Ky. 650, 174 S.W. 753.
\textsuperscript{102} Merriam, Primary Elections, 115. Written in 1908, but equally applicable today. Mr. Merriam states that "in California and in Illinois considerable difficulty has been experienced in securing the passage of a law that would meet the approval of the courts." (p. 115.) After repeated attempts, the legislatures of both of these states have partially succeeded in passing laws which meet the approval of the courts, though, especially in Illinois, the laws might be much improved if the courts took a different attitude towards the constitutional nature of primary laws.