



AMERICA'S PRIMARY PROBLEM

Replacing primary elections with
One National Vote can increase
competition and empower voters

FairVote

About FairVote

FairVote is a non-partisan non-profit organization that seeks to make democracy fair, functional, and more representative. We research and propose common sense changes to strengthen American democracy and ensure all voices are heard and every vote counts in every election. Operating since 1992, FairVote works with scholars, civic leaders, policymakers, journalists and national, state and local reform partners to advance fairer elections.

FairVote
6930 Carroll Avenue, Suite 240
Takoma Park, MD 20912

www.FairVote.org
info@fairvote.org
301.270.4616

About the Author: Paul Schimek, Ph.D.

Paul Schimek is a data scientist and transportation researcher with Effective Data Associates in Boston, MA. He holds a doctorate in urban planning from MIT. He blogs about democracy and voting reform at DefectiveDemocracy.com and is working on a book outlining the defects of American democracy and providing a guide for fixing them.

More Choices, Stronger Voices

© Copyright December 2018. We encourage readers of this report to use and share its contents, but ask that they cite this report as their source.

Editor's Note

America's Primary Problem is a report principally authored by Paul Schimek, Ph.D. FairVote advocates for different approaches to primary elections depending on the context, including eliminating them, as the report advocates, and keeping them with ranked choice voting, as was used in Maine. In all cases, our advocacy seeks to promote more fair and competitive elections.

TABLE OF CONTENTS

Introduction	4
How America Instituted Primary Elections	4
The Role of Primaries Today	5
Analysis of the 2016 U.S. House Elections	6
The Power of Incumbency	6
Open Seat Elections	8
Runoff Primary Elections	10
Two Round Systems	11
Voter Turnout	13
Findings	16
Was 2016 Unusual?	17
Alternatives to Party Primaries	19
Two-Round Systems	19
Ranked Choice Voting	20
Unequal Treatment of Political Parties	20
Congress Can Create One National Vote	21
Conclusions	23
The 2018 Elections: Exceptions Prove the Rule	24

INTRODUCTION

According to the civics class model of American democracy, every two years voters pick a representative in Congress from the nominees of the two major parties. With two candidates, the winner is guaranteed to have the support of the majority. To provide even more choice, voters pick the party nominee in primary elections. American elections are open to any political party, but Americans by tradition consistently prefer Democrats and Republicans. As this analysis of the 2016 election returns for the U.S. House of Representatives demonstrates, almost every element of the civics class model is at odds with the facts.

This report looks at the state of democracy in the popular branch of Congress and finds that it is not very healthy. An essential ingredient, competition, has been too often removed from the recipe for American democracy, and the results are not very tasty. The party primary system, far from enhancing democracy, often means that the decisive contest is a low-turnout race in which some voters are excluded by law, and the winner frequently does not have majority support of those voting, let alone majority support of all voters in the district. In conjunction with ballot access rules that discriminate against new parties, the primary system prevents the development of effective political parties that could serve as a counterweight to the power of incumbency.

Democratic elections do not require government-run, mandatory party primaries: in fact their use in the U.S. is unique among the world's democracies. Congress has the power to create a uniform election system

for federal elections, and it could use this power to bring the country up to international standards of fair elections by eliminating primaries in favor of a system that treats all political parties and candidates fairly, restores competition, and enables parties to establish meaningful brand names.

HOW AMERICA INSTITUTED PRIMARY ELECTIONS

According to the textbook account, the “direct primary” was an important step in making American elections more democratic by breaking up the power of party leaders to give nominations to donors and friends in “smoke-filled rooms.” However, this account does not hold up to historical scrutiny.

In the 19th century, the candidate nomination process of American political parties was characterized by mass involvement of party sympathizers.¹ Beginning in the 1830s, party members attended caucuses to

elect delegates who would later attend county or state conventions to select party nominees. In many cases, the caucus was essentially a party-run indirect primary election, where self-selected party members could vote for slates of delegates, often pledged to a candidate. Under the caucus-convention system, party leaders did not have firm control over nominations, and often, different factions competed. As the country urbanized toward the end of the 19th century, larger numbers of people participating in caucuses and conventions made the system unwieldy and chaotic. Beginning in the 1890s, state governments adopted regulations to manage the election process, first by requiring the use of official ballots (as opposed to party-printed ballots). Reformers proposed the direct primary as a simple solution to the cumbersome and messy nomination process: make the indirect primary a direct one and eliminate the need for a convention with its potential for faction fights and vote-buying. Although reformers of various types embraced the change as a way to reduce the influence of party bosses (in the cities) or railroad interests (in the western states), party leaders were generally supportive. They saw the direct primary as a way to solve the problems of the pre-existing nomination system. A government-run direct primary became the only serious contender for reform by 1905, and by 1915, was required by most states for most elections.

In the South,

party-controlled direct nominations were a means of further excluding black people from electoral politics. By making the Democratic primaries fully into elections, elections from which black participation was expressly prohibited, they could become the ‘real’ election, in place of the general election, and in doing this made it even more difficult for dissident white movements seeking to unite with black supporters to become established.²

Although the primary in the southern states had different origins than in the north, the purpose was to thwart rather than enhance democracy by maintaining all-white, Democratic control. Nomination reform was a central concern because the only realistic route to office was through the Democratic or Republican parties. When states started using official ballots, pre-existing parties, which had achieved a certain share

of the vote in a prior election, were given the right to have their candidates included automatically, but new parties had to collect substantial numbers of voter signatures. Moreover, parties were prohibited from nominating a candidate who was also nominated by another party. This ban on multiple nominations — or “fusion” — was expressly designed to damage the Populists, who previously had successfully fused with a major party (the Democrats, outside of the South) for races at the top of the ticket while promoting their own candidates for lower offices. In the ensuing decades, most states made it even harder for new parties to compete by increasing the signature collection burden and by prohibiting those who failed to win nomination in a primary election from appearing on the general election ballot in what were known as “sore loser laws.”

THE ROLE OF PRIMARIES TODAY

It took decades for the effects of direct primary laws to be fully realized. With the advent of political advertising on television, the primary system enabled American politics to become candidate-centered to the point that parties now have a minor role in the key tasks of recruiting and nominating candidates. However, this has not shifted power from parties to voters, but rather from parties to incumbents. The result has been politics dominated by incumbents and frequently with minimal competition.

Political scientists L. Sandy Maisel and Walter Stone found that primaries deter, rather than promote, competition because would-be challengers seek to compete in districts where their party is strongest, but it is in those very districts that incumbents are almost impossible to beat. They conclude:

primary elections do not serve to stimulate more competition . . . If holding primary elections serves to restrict effective choice more than to enhance it, they stand as a far too infrequently criticized step in the wrong direction. They appear to be a reform the consequence of which approximately a century after their invention may well be the opposite of what was intended.³

They “wonder whether stripping parties of their *raison d’être* led to weak institutions that now cannot perform what was once their most important function for democratic purposes.”⁴

It is indeed time to reconsider whether America needs primary elections. The second section of this report updates the evidence on the role of primaries in U.S. House elections, focusing on the power of incumbency and the lack of competition, and the prevalence of non-majority winners in open seat elections — those few contests without an incumbent which frequently determine who will occupy the seat for the next decade or more. This report finds that U.S. House elections are rarely competitive when an incumbent runs, and describes the unusual circumstances in which 12 incumbents failed to be re-elected in 2016. When

there is no incumbent, voters are generally faced with a competitive election, but often that competition is limited to only the primary, and the large number of candidates frequently means that the winner fails to get a majority of the vote. This analysis compares the party primaries that are used in 47 states to the nonpartisan primaries that are used in the other three. It also compares voter participation in primary and general elections. Primary electorates, even in competitive open-seat races, are typically a small fraction of the general election electorate (which is itself sometimes less than half of those eligible).

The third section of this report considers potential solutions to these problems. It describes alternatives to party primaries, including two-round systems and ranked choice voting. Finally, the report proposes a reform that would replace party primaries with a single ranked choice election while giving both existing and new parties the exclusive right to permit the use of party labels. The report suggests a future Congress could adopt this reform as part of a package of improvements to federal elections under a new Voting Rights Act. A final section compares 2016 to results of the “Blue Wave” election of 2018.

ANALYSIS OF THE 2016 U.S. HOUSE ELECTIONS

THE POWER OF INCUMBENCY

The first important truth about elections to the U.S. House is that there is very little competition: incumbents who seek re-election won 97% of the time in 2016 (see Table 1). Incumbents were even more likely to win their party primaries, winning nearly 99% of the time. That’s as close to certainty as possible in politics. The real action — where voters actually get to make a choice — is when there is an “open” seat: when an

incumbent member finds a better job, retires, or dies. In 2016, open seats occurred in only 10% of districts.

In nearly one out of 10 contests for re-election, House incumbents faced no opponent at all on the general election ballot (see Table 2). In about one out of six contests, the incumbent faced either no opponent or no opponent of a major party. On average, there were 2.6

candidates on the ballot, meaning that it is not unusual to have three or more candidates. Whenever there are three or more candidates competing for a single seat, it is possible that the candidate with the most votes (a plurality) will not have an absolute majority (more

than half). However, winners failed to receive a majority only 3% of the time when an incumbent was seeking re-election. This is not surprising because, on average, incumbents received two-thirds of the vote.

Table 1: Winner Vote Share, Re-election Rate, and Party Change, Incumbent Participating, All States, 2016⁵

Incumbent Party	Districts	Winner share of vote (avg)	Incumbent won primary (avg)	Incumbent re-elected (avg)	District changed party (freq)
D	176	70%	98.9%	95%	3.4%
R	215	65%	98.6%	98%	0.5%
Total	391	67%	98.7%	97%	1.8%

Table 2: General Election Competition and Results, Incumbent Participating, States with Party Primaries, 2016

Incumbent Party	Districts	Unopposed (freq)	No Major Party Opponent (freq)	Candidates (avg)	Winner share of vote (avg)	Plurality Winner (freq)
D	133	10%	18%	2.6	71%	3%
R	196	8%	15%	2.6	65%	3%
Total	329	9%	16%	2.6	68%	3%

Table 3: Primary Election Competition and Results, Incumbent Participating, States with Party Primaries without Runoffs, 2016

Incumbent Party	Districts	Winner share of vote in winner's party's primary (avg)	Plurality Winner (freq.)	Democrats on Ballot (avg.)	Republicans on Ballot (avg.)
D	116	91%	3%	1.5	1.4
R	138	86%	2%	1.6	1.7
Total	254	88%	2%	1.5	1.6

As shown in Table 3, incumbents are frequently unopposed in their party's primaries, and, on average, win nearly 90% of the party primary vote. It is unusual for voters to have a choice of more than one candidate. Not surprisingly, plurality wins are extremely rare.

There were 12 incumbents who failed to win re-election in 2016: five lost in the primary and seven lost in the general election. One California incumbent Democrat lost to another Democrat under that state's Top Two rules; in the remaining six cases, the incumbent lost to a candidate of the opposing party. With an open seat there is a greater likelihood of a change in parties — nevertheless in nearly 90% of the contests party control did not change. A total of five open seats switched parties in 2016.

What did it take to defeat an incumbent in 2016? Of the five incumbents who lost their primary elections, three were running in an altered district due to court-ordered redistricting, one had been indicted, and the fifth, Kansas incumbent Tim Huelskamp, lost his seat on the House Agriculture Committee, which led to the powerful Kansas agriculture groups supporting and funding his challenger, who ended up outspending the incumbent, \$1.6 million to \$1.3 million. Of the seven incumbents who lost in the general election, two had challengers who formerly held those House seats, one was defeated by a former governor of his state, and one beat a one-term incumbent in a four-way race. That leaves only two general election contests in which long-time incumbents were defeated by challengers who had never previously held the seat or a higher office:

- In California's 17th Congressional District, Democrat Ro Khanna defeated fellow Democrat Mike Honda, an 18-year incumbent, after having come close to winning in 2014. Khanna outspent Honda, \$3.7 million to \$3 million (after having spent \$4.4 million, \$1 million more than Honda, in the previous contest).
- In New Jersey's 5th Congressional District, Josh Gottheimer beat 14-year incumbent Scott Garrett, with 51% of the vote in a race that included a Libertarian who received 2%. Gottheimer, a former White House speechwriter, spent \$4.7 million,

more than any other previous U.S. House candidate in New Jersey, compared to \$4.3 million spent by his opponent.

As Turner found in 1953, primary elections are no substitute for competitive general elections; primary election challengers in 2016 were only successful when the incumbent had been indicted or had to compete in an altered district. The sole example of a successful primary challenge under ordinary conditions involved a major shift in allegiance and campaign spending by a key interest group. Beating a long-term incumbent in the general election in 2016 was, if anything, more difficult. Only two challengers succeeded, and both had strong credentials and buckets of money. These exceptions, of course, prove the rule: most voters in U.S. House races have no real choice when incumbents are running, not in the general nor the primary.

OPEN SEAT ELECTIONS

Open seat elections are extremely important, since they generally determine who will represent the district not just for the two-year mandate but for many years beyond, given the likelihood that the winner will face little serious opposition in future elections. There is never a lack of candidates interested in an open seat. With no incumbent running, there were at least two candidates on the general election ballot in every case in 2016, and at least two major party candidates in all but 3% of the contests (Table 4). On average, there were nearly three candidates on the ballot, and a plurality win occurred 8% of the time — still rare, but much more likely compared with plurality wins in re-election contests.⁶ Winners in these elections averaged 62% of the vote, not much less than the 68% average for elections with incumbents participating. In most districts, even when there is an “open” seat, the main uncertainty is which candidate will be the nominee of the dominant party, not which party will win the seat.

Table 4: General Election Competition and Results, Open Seat, States with Party Primaries, 2016

Incumbent Party	Districts	Unopposed (freq)	No Major Party Opponent (freq)	Candidates (avg)	Winner share of vote (avg)	Plurality Winner (freq)
D	12	0%	0%	3.2	62%	0%
R	25	0%	4%	2.8	62%	12%
Total	37	0%	3%	2.9	62%	8%

Table 5: Primary Election Competition and Results, Open Seat, States with Party Primaries without Runoffs, 2016

Incumbent Party	Districts	Winner share of vote in winner's party's primary (avg)	Plurality Winner (freq.)	Democrats on Ballot (avg.)	Republicans on Ballot (avg.)
D	11	46%	73%	5.0	2.8
R	23	47%	59%	2.1	5.5
Total	34	47%	64%	3.0	4.6

In general elections, open seat contests attract more candidates, are more competitive, and are more likely to have plurality winners than contests with incumbents — but only marginally so. The difference between elections with and without an incumbent participating is much starker for party primary elections. Open seat primary elections had on average five or more candidates for the nomination of the incumbent party (Table 5). The winner of these contests fails to receive a majority of the vote *nearly two-thirds of the time*.

In 2016, Ted Budd was the champion of getting elected while having most people vote against him. His 6,300 votes (20%) in a 17-person field was sufficient to win the Republican Party nomination for North Carolina's 13th Congressional District. He readily beat his

Democratic competitor in the general election by 12 percentage points. Fewer than 32,000 voters in the district participated in the primary that selected Budd, compared to 355,000 in the general election. David Kustoff in Tennessee's 8th Congressional District was nominated with only 27% of the vote. Andy Biggs in Arizona's 5th Congressional District won with 29%. Claudia Tenney in New York's 22nd Congressional District became the Republican Party nominee with 41% of the primary vote, but with low turnout she had only 9,549 votes. She won the general election in a three-way race with 46.5%.

RUNOFF PRIMARY ELECTIONS

Some states require runoff contests following primary elections if no candidate wins a majority of the vote. The requirement is mostly a historical remnant of the one-party South. Between 1902 and 1931, nine southern states adopted laws to require a runoff in the absence of a majority winner in a party primary. Louisiana replaced its party primary and primary runoff with a two-round system (described below) in 1975. Two states more recently eliminated the runoff due to cost and turnout concerns: Florida in 2002 and North Carolina in 2016. The remaining six states still require runoffs, but in 2016, runoffs were needed in only two of these, Georgia and Texas. One non-southern state,

South Dakota, adopted a primary runoff rule in 1929, but it apparently has never been needed.⁷

Tables 6 and 7 summarize primary election results, by incumbent participation, for the seven states that currently require runoffs for primaries if no candidate wins a majority. The statistics for contests with an incumbent present are very similar to the other states with party primaries. In the three contests with an open seat, there were even more candidates than in states without runoffs: six in the one Democratic-held seat and an average of eight in the two Republican held-seats. Although the runoff requirement eliminates the possibility of a plurality winner (which would have otherwise occurred in all three of the open seats), the turnout in the second round is inevitably lower than in the first.

Table 6: Primary Election Competition and Results, Incumbent Participating, States with Party Primaries and Runoff Requirement, 2016

Incumbent Party	Districts	Winner's share of vote in winner's party primary (avg.)	Democrats on party ballot (avg.)	Republicans on party ballot (avg.)
D	17	92%	1.4	1.2
R	58	84%	1.0	2.0
Total	75	86%	1.1	1.8

Table 7: Primary Election Competition and Results, Open Seat, States with Party Primaries and Runoff Requirement, 2016

Incumbent Party	Districts	Winner's share of vote in winner's party primary (avg.)	Democrats on party ballot (avg.)	Republicans on party ballot (avg.)
D	1	42%	6.0	3.0
R	2	27%	1.0	8.0
Total	3	32%	2.7	6.3

TWO-ROUND SYSTEMS

The party primary evolved from a purely party-run nomination system to a regulated party-run system, then to a completely state-run system. In the public’s mind, party primaries are fully governmental functions. Three states have taken this impression to its logical conclusion and transformed their party primary systems into genuine two-round systems. In California and Washington, all candidates compete in a first round election months before Election Day, and the top two finishers compete in the general election. Competing in the first round is the only means to get to the second round. In Louisiana, all candidates compete in a first round in November, and in the event no candidate receives an absolute majority of the vote, a second round (“runoff”) election is held a month later. In all three states, the eventual winner will have received an absolutely majority of votes, either in the first or second round.

The general election results in Top Two states show that, at least in 2016, no elected House candidate ran unopposed, as shown in Table 8. (By design, no candidate can be elected with a plurality.) The winner’s average vote share was comparable to the winner’s share in states with party primaries. In Louisiana, the four incumbents seeking re-election received 72% of the vote on average, and none were forced into a runoff. However, for the two open seats in Louisiana,

no candidate received a majority in the first round. If California and Washington had used the Louisiana system in 2016, they could have avoided many elections, since the first-round winner received an absolute majority more than three-quarters of the time (in 83% of the 92% of contests where an incumbent participated).

In the three states with two-round systems, the first and second rounds are two parts of the same system. In California and Washington, the first round is the “primary” and occurs in August (Washington) or June (California).⁸ In the first round in these states, when an incumbent is running, there were on average 3.4 candidates on the ballot — almost all either Democrats or Republicans (Table 9). The first-place finisher had a majority of the vote in 83% of these 58 contests. For the five open seats in 2016 (all in Democrat-held districts), on average there were more than 8 candidates per contest, four Democrats, two Republicans and two third-party or unaffiliated candidates (Table 10). In only one of the five contests (20%), the top vote getter in the first round had a majority. Since incumbent candidates are still heavily favored in two-round systems, California and Washington could reduce public expenditures and likely boost participation by holding the first round on Election Day and hold a later second round only if needed — the Louisiana system.

Table 8: General Election Competition and Results, by Incumbent Presence, Top Two States (California and Washington), 2016

Incumbent Party	Incumbent Participating		Open Seat Contest	
	Districts	Winner share of vote (avg.)	Districts	Winner share of vote (avg.)
D	40	69%	5	60%
R	18	59%	0	-
Total	58	66%	5	60%

Table 9: First Round Competition and Results, Incumbent Participating, States with Top Two System, 2016

Incumbent Party	Districts	1st place share of vote (avg.)	1st place >50% (freq.)	Democrats on ballot (avg.)	Republicans on ballot (avg.)	Names on ballot (avg.)
D	40	66%	92%	1.7	1.4	3.3
R	18	52%	61%	1.9	1.8	3.8
Total	58	61%	83%	1.7	1.5	3.4

Table 10: First Round Competition and Results, Open Seat, States with Top Two System

Incumbent Party	Districts	1st place share of vote (avg.)	1st place >50% (freq.)	Democrats on ballot (avg.)	Republicans on ballot (avg.)	Names on ballot (avg.)
D	5	46%	20%	4.0	2.4	8.2
R	-	-	-	-	-	-
Total	5	46%	20%	4	2.4	8.2

In Louisiana, shown in Table 11, the first-round election (that is, the general election) never required a run-off when there was an incumbent on the ballot, even though there were an average of 4.5 candidates per race. The incumbents still earned an average 72% of the vote, more than the 68% average that incumbents achieved in general elections in other states, but less than the 88% average for incumbents running in party primaries in those states. However, in the two open seat races (Table 12), there was an average of 10 candidates on the ballot, and the first-place finishers averaged only 28% of the vote.

Two-round elections mitigate, but do not completely solve, the problem of failing to win majority support. For example, in North Carolina's 13th Congressional District, 17 candidates sought the Republican Party nomination for an open seat in 2016. The first-place finisher received 20% of the vote; the second-place finisher had 10.4%. Together, they had just over 30% of the vote — meaning that almost 70% of the voters favored another candidate. North Carolina had just

eliminated its runoff requirement prior to the 2016 election. Even if there had been a runoff, voters still would have had to pick between the top two finishers, though it is quite possible that a majority would have ultimately preferred the third-place finisher — who also won 10.4% of the vote — or the fourth-place finisher who won 10.3%.

This problem can be seen more clearly in the Top Two system, under which candidates of different parties compete. In 2012, the first year that California's Top Two law went into effect, two Republicans and four Democrats contested the open 31st Congressional District. Although Democratic candidates received almost half the vote, the strongest among them, Pete Aguilar, finished third. The general election was a contest between two Republicans even though more voters in the district were registered Democrats. In 2014, with three Republicans and four Democrats in the primary, the Democrats came very close to being shut out again, but this time Aguilar finished second by a narrow 209 votes, and later won the general election.

Table 11: First Round Election Competition and Results, Incumbent Participating, Louisiana, 2016

Incumbent Party	Districts	1st place share of vote (avg.)	1st place >50% (freq.)	Democrats on ballot (avg.)	Republicans on ballot (avg.)	Names on ballot (avg.)
D	1	70%	100%	3.0	0	3.0
R	3	73%	100%	1.7	1.7	5.0
Total	4	72%	100%	2	1.3	4.5

Table 12: First Round Election Competition and Results, Open Seat, Louisiana, 2016

Incumbent Party	Districts	1st place share of vote (avg.)	1st place >50% (freq.)	Democrats on ballot (avg.)	Republicans on ballot (avg.)	Names on ballot (avg.)
D	-	-	-	-	-	-
R	2	28%	0%	1.5	6.5	10
Total	2	28%	0%	1.5	6.5	10

VOTER TURNOUT

Table 13 shows the average vote count per district in 2016 primary and general election contests with an incumbent. Table 14 shows those without. Since open seats are generally the only elections in which the outcome is not completely predictable, the prospect of competition should theoretically lead to higher voter participation. In 2016, the total number of votes in open seat general election contests was 6% higher than contests in which the incumbent was participating, as shown in Table 15. The bump in turnout was much more apparent for primaries, especially Democratic Party primaries, in which there was on average 14% more votes for open seats. Nevertheless, in both type of contests, total voter participation in primary elections was on average only 30% of the voters who participated in the general election in November (Tables 13 and 14). When seats are non-competitive between the two main parties — which is more often than not — the

only meaningful primary is the dominant party's. The votes in the winner's party primary averaged only 22% of general election turnout, regardless of incumbent participation. Although open seat competition does lead to greater turnout, it does not come close to erasing the gap in turnout between primary and general elections, which is particularly problematic because the key decision — who will represent the voters — is typically made in the primary.

Most states use party primaries as their principal means to nominate candidates for the U.S. House. There has been a trend of opening up primary contests to voters other than just party members (as the term is defined under state law). Ten states have closed party primaries that restrict primaries to those previously registered as a member of a party (and in some states, such as New York, voters have to wait a year before changing parties).

Table 13: Primary and General Election Average Vote Count, Incumbent Participating, States with Party Primaries, 2016⁹

Incumbent Party	Districts	General	Primary	Winner's Party Primary	Primary / General
D	107	284,393	79,399	60,972	28%
R	165	307,749	96,560	68,403	31%
Total	272	298,561	89,809	65,480	30%

Table 14: Primary and General Election Average Vote Count, Open Seat, States with Party Primaries, 2016

Incumbent Party	Districts	General	Primary	Winner's Party Primary	Primary / General
D	12	301,118	100,107	69,397	33%
R	24	323,763	92,316	70,684	29%
Total	36	316,215	94,913	70,255	30%

Table 15: Percent Change in Average Vote Count, Open Seat compared to Incumbent Participating, States with Party Primaries, 2016

Incumbent Party	General	Primary	Winner's Party Primary
D	6%	26%	14%
R	5%	-4%	3%
Total	6%	6%	7%

Twelve states have semi-closed party primaries, in which those not registered in a party can vote in any primary, but party members can only vote in their own party's primary. The remaining states have open party primaries, in which anyone can decide which party's primary ballot to take for a particular election. Even open party primaries are more restrictive than the nonpartisan primaries used in California, Louisiana, and Washington because voters must choose only one party's ballot for each election, and therefore must vote for candidates of the same party for every office on the ballot.

Table 16 compares the average vote per congressional district by type of primary used. The drop-off in participation between the primary election (here represented by the votes in the winner's party primary) and the general election was, in fact, less in states with open primaries when compared with states with closed or semi-closed primaries. This suggests that voters who are not members of the party holding the primary, if given the opportunity, will vote in the primary where their votes are likely to be most meaningful.¹⁰ However, the effect of the type of primary is completely dwarfed by the overall gap, regardless of primary type, between participation in primaries and in general elections.

Table 16: Average Vote Count per District, by Electoral System, 2016¹¹

System	Primary	Primary Runoff	General	General Runoff	% change, first and runoff	Primary / General
Primary Runoff	58,952	27,057	233,804	-	-54%	25%
Two-Round with Runoff	-	-	303,220	136,191	-55%	-
Two-Round with Nonpartisan Primary	144,004	-	262,779	-	-	55%
Closed Party Primary	73,322	-	314,567	-	-	23%
Semi-Closed Party Primary	47,061	-	306,019	-	-	15%
Open Party Primary	82,347	-	283,452	-	-	29%

The key party primary vote was only 15% to 25% of the general election vote (which itself was less than 60% of eligible voters in 2016).¹² Only the Top Two states, with their unified non-partisan primaries, show a first-round participation that is significantly greater than 25%, though still much less than general election participation.

Runoff elections are a means to address the plurality winner problem, but what is their impact on turnout? As shown in Table 16, the number of votes in primary runoff elections was less than half the votes for a first-round primary in states that provide for a runoff. In Louisiana, the number of votes per district in the runoff

election held a month after Election Day was similarly fewer than half of those in November. This drop-off may be particularly acute in a presidential year, since the contest for presidency is on the ballot in November but not in December. In the Top Two states, the average number of voters in the first round "primary" contests was more than half of the participation in November, but not much more.

One factor affecting turnout is what else is on the ballot. In every state, the presidential contest was the main attraction on Election Day in November. In 2016, 19 states held a presidential primary on the same day as their state primary (for U.S. House and, depending on

the state, U.S. Senate and state offices). The remaining states held separate presidential primaries (or caucuses). All else being equal, one would expect primary turnout to be higher in states that hold presidential and state primary elections on the same day. Not only are voters more motivated to vote in an election that will help decide the presidency, but there is typically much more media coverage. By contrast, when there is a state primary only, and when due to the vagaries of state and federal rules there is no statewide contest (e.g. for U.S. Senator or governor), only the most dedicated voters are likely to turn up at the polls. In fact, there may be so little media attention that many people are unaware that the election is taking place.

Some voters are formally excluded from party primaries, particularly in states that hold closed or semi-closed primaries. The two states that open the primary to all voters have much higher participation. However, the larger of these states, California, held its presidential primary on the same day as the state primary, which surely helped boost the turnout figures in 2016.

Whatever the reason, the extremely low participation in primaries, even in the relatively rare cases when there is intense competition, is troubling because there is no guarantee that primary election voters are representative of the electorate. This situation has persisted for decades but has not received much attention from political scientists, although it has not gone completely unnoticed:

low turnout in primary elections, contested or uncontested, is a poorly recognized element of American politics. Were those who participate in primary elections broadly representative of the population of potential voters, low turnout in single-party district elections would not necessarily be a problem. It is the extraordinary low and unrepresentative turnout in primary elections in combination with uncompetitive general elections that creates a crisis for American democracy.¹³

FINDINGS

This review of the 2016 U.S. House elections has documented a number of serious deficiencies in the way members of Congress are elected. First, it is essential to democracy that voters have a meaningful choice of candidates. With a 97% success rate, the re-election of members of the House is almost a foregone conclusion, even when there is technically another choice available (and nearly 10% of the time there is not even a second name on the ballot). When seats become “available,” there is a scramble by office-seekers to take advantage of the rare opportunity, and the surfeit of candidates frequently overwhelms the electoral system, resulting in winners who have been rejected by as much as 80% of the voters.

Not only do open seat contests result in a plurality winner 64% of the time, but the universe of voters participating in these elections is on average only 30% of the general electorate, typically less than 60% of those eligible (in a high-turnout presidential year). The few states with a runoff requirement for primary elections avoid the plurality winner problem — but at the cost of giving the decision to an electorate of less than half the already small number who participate in a first-round primary.

These three problems compound each other, since the plurality winner of a low-turnout primary typically wins the general election in a district that is safe for his or her party, and then becomes an incumbent who may well sail through the next eight or 10 election cycles with no serious competition. For example, in the 1998 Democratic primary for Massachusetts’ 8th Congressional District, Michael Capuano had the most votes of 10 candidates, but this was only 23% of votes cast. He coasted to an easy victory in the general election with 82% of the vote. Furthermore, he was completely unopposed in the next nine primary and general elections, with the exception of 2006, when he held his non-party opponent to 9%, and 2012, when his token opponent, also a non-party candidate, got 17%. While this is an extreme example, it illustrates the normal situation of elections to the House. When

Capuano finally faced a quality opponent in the 2018 primary, he lost by 17 percentage points. This defeat of a House incumbent was so unexpected that it made national headlines.

WAS 2016 UNUSUAL?

Our analysis so far has only looked at 2016. To what extent was it typical of recent trends? Just under 10% of the contests were open seats, which is in line with the average of 9.2% over the 1976-2016 period (see Table 17). The range for 1946-2016 was 6% to 12%, with the exception of 1992, when 15% of the seats were open.

There were only four House incumbents defeated in primaries in 2016. In every year since 1976, the number of incumbents defeated in a primary in a year with no redistricting ranged from one to five. 2016 was typical in this respect, too. (In 2018, four incumbents were defeated in a primary.) In the redistricting years of 1982, 1992, 2002, and 2012, a total of 10, 19, eight, and 13 incumbents, respectively, were defeated in primaries (an average of 12.5 per year).

In 2016, only eight incumbents were defeated in the general election. This was lower than the average of 18

between 1976 and 2016. However, it was not unusual: there were six other House elections over that period in which eight or fewer incumbents were defeated in the general election. (The record for least turnover belongs to 1988, when there were only 26 open seats, only six incumbents defeated in the general, and only one incumbent defeated in the primary.)

Of these three factors, setting aside the effect of redistricting on primary competitiveness, the one that fluctuates most is incumbent success in general elections. There are some “wave” years when national trends favoring one or the other party lead to much larger than normal change. The most notable example in recent years was 2010, when Tea Party organizing and reaction against Obama’s election (coupled with lower midterm turnout) led to massive losses for the Democrats and a total of 54 incumbents losing seats. Prior to that year, no more than 34 incumbents had lost in a general election since the post-Watergate year of 1974.

The average election between 1976 and 2016 had 10 more incumbents lose in the general election compared to 2016. Still, open seat elections accounted for an average of 62% of the turnover in that period. It is likely that plurality wins in low-turnout primaries were a feature of many of these.

Table 17: Incumbents Seeking Re-election, Open Seats, and Defeated, U.S. House, 1946-2016¹⁴

Election year	Seeking re-election	Re-elected	Open seat	Defeated in primary	Defeated in general	Open seat rate	Re-election rate	Return rate
1946	398	328	37	18	52	9%	82%	75%
1948	400	317	35	15	68	8%	79%	73%
1950	400	362	35	6	32	8%	91%	83%
1952	389	354	46	9	26	11%	91%	81%
1954	407	379	28	6	22	6%	93%	87%
1956	411	389	24	6	16	6%	95%	89%
1958	396	356	39	3	37	9%	90%	82%
1960	405	375	30	5	25	7%	93%	86%
1962	402	368	33	12	22	8%	92%	85%
1964	397	344	38	8	45	9%	87%	79%

Table 17: Continued

Election year	Seeking re-election	Re-elected	Open seat	Defeated in primary	Defeated in general	Open seat rate	Re-election rate	Return rate
1966	411	362	24	8	41	6%	88%	83%
1968	409	396	26	4	9	6%	97%	91%
1970	401	379	34	10	12	8%	95%	87%
1972	393	365	42	11	13	10%	93%	84%
1974	391	343	44	8	40	10%	88%	79%
1976	384	368	51	3	13	12%	96%	85%
1978	382	358	53	5	19	12%	94%	82%
1980	398	361	37	6	31	9%	91%	83%
1982	393	354	42	10	29	10%	90%	81%
1984	411	392	24	3	16	6%	95%	90%
1986	394	385	41	3	6	9%	98%	89%
1988	409	402	26	1	6	6%	98%	92%
1990	406	390	29	1	15	7%	96%	90%
1992	368	325	67	19	24	15%	88%	75%
1994	387	349	48	4	34	11%	90%	80%
1996	384	361	51	2	21	12%	94%	83%
1998	402	395	33	1	6	8%	98%	91%
2000	403	394	32	3	6	7%	98%	91%
2002	398	383	37	8	8	9%	96%	88%
2004	404	395	31	2	7	7%	98%	91%
2006	403	379	32	2	22	7%	94%	87%
2008	399	376	36	4	19	8%	94%	86%
2010	397	339	38	4	54	9%	85%	78%
2012	391	351	44	13	27	10%	90%	81%
2014	392	374	43	5	13	10%	95%	86%
2016	392	380	43	4	8	10%	97%	87%
1946-1974 average	401	361	34	9	31	8%	90%	83%
1976-2016 average	395	372	40	5	18	9%	94%	86%

The re-election rate averaged 94% over the past 40 years. This figure may overstate the lack of effective competition because members who face uncertain prospects of victory may choose to take another job or retire rather than seek re-election. A metric that avoids this problem is the share of the 435 members who

served in the previous Congress. Over the past 40 years, this has averaged 86%. Under current election laws, it is impossible to imagine a result at all resembling that of France following the 2017 legislative elections, when only 25% of those elected had previously served in the National Assembly.¹⁵

ALTERNATIVES TO PARTY PRIMARIES

The party primary system may seem like a majoritarian system; with state laws cementing the Democrats and Republicans as the only two “major parties,” elections become a contest between one nominee from each of the two. But this theory breaks down in practice. Frequently, there are plurality winners in primary elections, at least in the primary of the incumbent’s party when there is an open seat — and these few elections can determine who represents the district for many future elections. State laws that deliberately restrict the choices available to voters, although sanctioned by the Supreme Court, are profoundly undemocratic. Bringing the U.S. up to international standards in terms of political rights by equalizing access to the ballot for all political parties could lead to more plurality winners. The solution is to fix the election system to deliver more fair outcomes rather than prevent parties from participating.

TWO-ROUND SYSTEMS

California, Louisiana, and Washington have eliminated party primaries, which has reduced, but not eliminated, the problems identified in this report. In terms of turnout, the Top Two states have much greater primary participation than states with partisan primaries, but this was aided by the presidential contest in California in 2016, and in any case was only just over half the turnout in November. The Louisiana system is more inclusive: all candidates compete on Election Day, when the most voters participate. Still, when a decisive second-round is needed, there is a drop-off in participation of more than 50%.

Unlike the party primary system, the two-round system used in these three states is designed to produce a majoritarian outcome. It eliminates the possibility of

a candidate winning with 20% of the vote (or even less). However, the two-round system does not eliminate the plurality problem; when there are many similar candidates, the one preferred by the majority of voters may not survive the first round. As with plurality elections, the number of candidates on the ballot can affect the outcome.

Despite these significant benefits, there has been no increase in competitiveness in two-round states. In 2016, only one incumbent of the 62 running for re-election lost in these three states for a re-election rate of 98%, which is essentially the same as the 96% rate in the remaining 47 states. There was not much of an effect on candidate participation: in California and Washington, on average, 4.1 candidates participated in the first-round elections. In the remaining states, there was an average of 3.9 candidates per district (considering those that participated in party primaries and/or in the general election). In Louisiana, there was an average of 6.3 candidates per district; this higher-than-average rate is a product of a greater share of open seats (33% compared to the national average of 10%), and candidate qualification rules that are not as burdensome as in some states.

The two-round system would also appear more hospitable to minor parties, given that voters can more freely express their first choice without fear that doing so will lead a win for the least-favored candidate. Yet the top-two system is not necessarily more inclusive of minor parties: there were only four minor party candidates for U.S. House in California in 2016, compared to an expected 31 if the proportion of minor party candidates to available seats had been the same as nationally.

RANKED CHOICE VOTING

A much better solution than two rounds of elections is available. Ranked choice voting (RCV) eliminates the need for two elections, increasing turnout and reducing administrative cost. Furthermore, it considers the wishes of the majority more reliably than a two-round system. Instead of automatically eliminating all candidates who rank in third position or lower, it eliminates candidates sequentially, starting with the lowest-ranked candidate, while allowing that candidate's voters to progress to their next-preference candidate. With ranked choice voting, the outcome is very unlikely to be distorted by too many similar candidates — an outcome that is likely in multi-candidate plurality elections and possible in two-round elections.

In the early decades of primary elections, some states experimented with preferential voting systems (typically permitting only a second or third choice), but these experiments were abandoned, in part because vote casting and counting technology of the time made preferential voting more difficult than today.¹⁶

RCV is used in a dozen cities and was used for the first time in statewide elections in Maine (June 2018 primary elections and November 2018 Federal elections).¹⁷ While RCV in Maine mitigates the plurality winner problem, it does not address the turnout problem since only party members can vote in party primaries and party primaries inevitably have lower participation than elections held on national Election Day. Moreover, as noted previously, there is tension between the desire to hold the primary close to Election Day and the desire to hold the primary on the same day as the presidential primary, which states prefer to hold as close to New Hampshire's January primary as possible.

Compared to the two-round systems used in California, Louisiana, and Washington, RCV has the significant benefit of accommodating many candidates without thwarting the wishes of the majority. When combined with eliminating primary elections, RCV provides much greater benefits by increasing voter participation and lowering administrative costs. However, it can

otherwise be expected to have similar results to what we have seen in the states that have already eliminated party primaries. Specifically, without additional changes to the rules, incumbents will almost always win, new and minor party candidates will have a hard time getting their names on the ballot, and political parties will not be able to control their brand name, and thus not be able to act like political parties. Therefore, other reforms are needed in addition to the use of RCV in a single election.

UNEQUAL TREATMENT OF POLITICAL PARTIES: UNIQUELY AMERICAN

The requirements in the U.S. for recognizing political parties are completely unlike those of peer democracies. Australia, Canada, Ireland, New Zealand, and the UK all have procedures for national registration of political parties that require a party only to produce a list of between 250 and 500 party members, and/or the payment of a nominal fee. Candidates of registered political parties can then appear on the ballot in any district in the country by submitting nomination papers that need the endorsement of 100 district voters in Canada, 10 in the UK, and none in the other countries. Whether party-affiliated or not, candidates pay a filing fee equivalent to US \$800 or less. In all of these countries, the filing fee is refundable if the candidate gets more than 5% of the vote.

In the U.S., on the other hand, there is no national party registration; a party seeking to be represented in

the federal government must separately qualify in all 50 states. In almost every state, a new party is required to collect a large number of signatures for the privilege of using its name on the ballot — even though the signatures are not necessarily of party supporters but of random registered voters in the district. If a new political party had wanted to nominate candidates for all 435 House seats in the 2016 elections, the party would have first had to collect 1,129,191 signatures of registered voters, an average of 2,600 per district, under the widely varying requirements of 50 different electoral codes.¹⁸ It is always necessary to collect more than the minimum number of signatures, since inevitably some come from people who are not registered to vote, who do not live within the district, or who write illegibly.

The petitions must be collected by qualified people, during specific time periods, and can be invalidated if technical requirements are not met, typically without any opportunity to make corrections. By contrast, to appear on the primary ballot of a “major party,” no signatures are required in 29 states, and only 25 to 100 signatures are required in six.¹⁹ The filing fees in U.S. states can be five to 10 times higher than in peer countries, and they are never refunded, regardless of the candidate’s electoral performance. Our peer countries do not discriminate between new and old parties, whereas American states make it much harder to use the name of a party that has not received a minimum share of the vote in a previous election.

CONGRESS CAN CREATE ONE NATIONAL VOTE (1NV)

Under Article 1, Section 4 of the Constitution, Congress has always had the right to “make or alter” rules concerning the election of representatives, and, since 1913, of senators. The Supreme Court has ruled that this is a plenary power involving all aspects of elections.²⁰ Congress has created requirements that states must follow in administering elections:

- hold elections on national Election Day,
- use single-member districts for U.S. House,
- use standardized mail-in voter registration forms and accepted them if postmarked at least 30 days prior to the election,
- offer a provisional ballot if a voter claims to be registered but is not allowed to vote, and
- provide absentee ballots for citizens serving in the military or living abroad.

In addition, Congress created campaign finance limits and reporting requirements, administered by the Federal Elections Commission, that all candidates for federal offices must follow. Congress also created an Election Assistance Commission that produces voluntary voting systems guidelines and provides funding to states to improve voting machinery.

Congress could use its power to create uniform national rules for voter identification, redistricting, voting rights

for felons and ex-felons, candidate nominations, and political party registration, at least with regard to federal elections. Congress should create a national registry of federal political parties, with filing requirements based on proof of organization, not signatures collected. Candidates for federal offices, regardless of party, would be included on official ballots upon submission of 25 voter signatures (the requirement in Tennessee) and payment of a deposit refundable should the candidate receive at least 5% of the first-preference vote in a ranked-choice election. Candidates could only use a party name with the written consent of a registered party representative. However, parties would be free to endorse any number of candidates for a single seat. Federal rules for determining names used on official ballots would supersede any state laws, including those mandating primary elections. The rules would also require the use of ranked choice voting, thus eliminating the one sound objection to offering voters many choices.

This proposed package of reforms would in some ways be a minor evolution from the current system. Americans think of the primary system as the first round of a two-round election system. Three states have already made the transformation from party primaries to a two-round system. Judging from the results in those states, this change by itself does not reduce the

dominance of incumbents, who still benefit from name recognition, fundraising ability, and other advantages. Ranked choice voting has been used in several major American cities and was used, with success, in the 2018 Maine elections. Removing unnecessary and discriminatory ballot access rules would not lead to an unmanageable number of candidates on the ballot. The states with two-round systems have included eight to 10 candidates per congressional district when there is an open seat. The proposed changes would likely lead to a similar number of candidates per district.

The idea that candidates need an official endorsement in order to use a party's name is novel in America today but standard everywhere else. Many state party organizations already make endorsements (and sometimes can even use official primary ballots to advertise this fact). This change would necessarily mean that some prospective candidates could be excluded from using the name of a "major party." Such a rule would be unconscionable today, because to be excluded from the use of a major party name subjects a candidate to invidious discrimination. For this reason, reform of nominations must be coupled with equitable ballot access. Creating a uniform set of rules for national elections would bring the U.S. up to the standard of every other democracy. It seems self-evident that all members of Congress should be elected under the same rules.

Although initially modest in impact, this proposed reform package could lead to significant changes over the long term. First, by moving the key decision-making point from primary elections to general elections, voter turnout would automatically increase from the current 10-25% (in primaries) to 40-60%. Second, by creating a national registry of political parties, and requiring that candidates use party names only when authorized by registered representatives of the party, voters could be assured that the label next to the candidate name is meaningful. With a national party registration procedure and ballot access rules following international norms, new parties could easily form and run an entire slate of candidates for Congress — an outcome that is inconceivable under current laws. Those who the political scientists call "quality" candidates (those with prior government experience and attractive resumes) might be interested in running

as a candidate of a new party. Parties could take over much of the responsibility for fundraising, publicity, and campaign infrastructure. There are many American political groups that today serve all of these functions, even endorsing candidates; these proto-parties could easily transform themselves into full-fledged ones. Conservative candidates who no longer want to be part of a party that includes President Trump would be able to identify themselves as something other than "Democrat," as would the supporters of Sen. Bernie Sanders — who in his long political career has never been a member of the Democratic Party, even though he sought that party's nomination for the highest office in the land.

With single-member districts and RCV, parties win by appealing to the median voters in the district. Although it is certain that today's Libertarian and Green parties would compete, it is unlikely that they would elect many representatives, given their narrow appeal among the electorate. Over time, new parties might mobilize parts of the electorate that currently do not participate. Indeed, many non-voters might be attracted to the novelty of having meaningful choices on Election Day. Parties that appeal to a significant portion (say 5% or more) of the national electorate based on first preferences but fail to win any seats would at least legitimately represent the true preferences of millions of voters in a way that cannot happen under the current system. Minor parties can form alliances with larger ones, instructing their followers to give their second preferences to the allied party in exchange for specific policy promises. This is exactly how the system works in Australia, which has 100 years of experience of using ranked choice voting. Small parties would have an incentive to start a national conversation about reforming the electoral system to better represent all voters. Electoral reform has been seriously discussed in most other large democracies that have not already made the switch to a more proportional system. This outcome would retrace the historical path of other democracies: the existence of multiple parties leads to proportional representation, not the other way around.²¹

The problems of democracy in the U.S. House are as apparent, if not more so, in state elections.²² Just as Congress has the power to create one national vote,

every state can create a single state election using the same package of reforms: eliminate primary elections, treat all parties equally, ease ballot access, and use ranked choice voting. Reformers should propose a model law and encourage states to adopt it. Reform at the state level can be a catalyst to one national vote, but only the federal government can create uniform national laws and national party registration.²³

CONCLUSIONS

Due to unique historical circumstances, the U.S. is among the only democracies to have developed a system of government-run political party elections to determine nominees to almost all state and federal offices. When electoral reform swept America in the early part of the 20th century, the public was used to a system dominated by the Democratic and Republican parties. This electoral dominance of these two parties had its roots in the patronage system, which gave an enduring advantage to a large national party with a proven ability to control governments and thereby dole out jobs and contracts to party members. After the patronage system was limited due to civil service reform, the preferential position of the two dominant parties was maintained through the adoption of statutes that made it harder for other parties to be listed on the ballot.

The nomination process of the two parties involved mass participation in caucuses that were essentially party-run primary elections to elect delegates. As the urban population increased, caucuses and conventions were seen as chaotic and unmanageable. The seemingly simple solution was to eliminate conventions in favor of direct nominations, and to write this requirement into statutes, instead of letting the parties decide how to nominate. Although reformers of various types embraced the change as a way to reduce the influence of party bosses (in the cities) or railroad interests (in the western states), party leaders were generally supportive, seeing the direct primary as a way of solving the problems of the pre-existing nomination system.

Over time, it became clear that the reform had unintended consequences. Whereas in the 19th century, American politics was all about party and candidates were merely agents of their party, by the mid-20th century, American politics was all about candidates: their personal appeal, their success in raising (or providing) campaign funds, and, above all, their incumbency. This trend was further reinforced by the use of TV for campaign advertising, which made it unnecessary to have legions of party members to conduct a successful run for office.

American political parties used to take on the cost of running campaigns, even in districts where the odds of success were low. In the system that developed after the mandated use of primary elections, parties “lacked the resources to compel reluctant candidates to challenge incumbents and had fewer incentives to bear the collective action costs of campaigning for the party slate.”²⁴ The result has been the domination of incumbents and the disappearance of competitive elections. In 2016, 97% of incumbent members of the House who sought re-election were successful. This is not unusual: the re-election rate has been over 90% for decades.

The power of voters to exercise effective choices mostly occurs in open-seat primary elections. In 2016, 10% of House races were open seats. Of these, almost two-thirds were won without majority support. Even when there was an open seat, and thus genuine competition, primary election turnout was only 30% of the average on Election Day. Yet, open-seat primaries typically determine who will represent a district for many years, not just the immediate two-year term.

California, Louisiana, and Washington have eliminated party primary elections and replaced them with a two-round system. It is far better to use ranked choice voting in a single, high-turnout national election. Compared to two-round systems, RCV increases participation, reduces administrative costs, and prevents a situation where the participation of more candidates is likely to change the outcome. With RCV, there is no need for two elections and no excuse for refusing to permit all serious candidates on the ballot. Whether a candidate is serious should be determined by willingness to pay a deposit linked to performance in that election, not

based on a party's performance in a prior contest. This report proposes that a future Congress create one national vote using ranked choice voting and uniform and equitable national rules for party registration and candidate nomination that would supersede all state-run primary elections and ballot access requirements. Registered political parties could endorse any number of candidates per district, and candidates could

accept the endorsement of any number of registered political parties. These reforms would allow parties to recruit complete slates of candidates and have primary responsibility for raising funds and promoting candidates. Over time, a new party system would increase competition and involve more citizens in elections.

THE 2018 ELECTIONS: EXCEPTIONS PROVE THE RULE

Alexandria Ocasio-Cortez made national news in June 2018 when she defeated 10-term incumbent Joe Crowley in an upset victory in the New York state primary election. There were more national headlines when Ayanna Pressley defeated Michael Capuano, another 10-term incumbent, in Massachusetts' September primaries. Capuano had never previously had a serious challenger in all his elections following his 23% plurality victory in 1998. Crowley was first elected under even more dubious circumstances: the previous seven-term incumbent, Thomas Manton, resigned after the deadline to file for candidacy in the primary election had passed. Since Manton was also chairman of the Queens Democratic Party, he filled the vacancy on the general election ballot with his former employee, Crowley, who did not face serious opposition in that first or any subsequent election.

These two headline-generating cases were the only two losses for incumbent House Democrats in 2018. Two incumbent Republicans were defeated in primaries. This total of four incumbents losing primaries represents no significant change when compared with the five who lost in 2016.

Ocasio-Cortez and Crowley collectively received 29,778 votes — fewer than 13% of registered Democrats and fewer than 9% of all registered voters in the district. Voter participation was much higher in

the Massachusetts upset. The two candidates received between them 102,067 votes (although this is still a small fraction of the electorate, given that there are about 780,000 residents in the 7th Congressional District).²⁵

Other than Maine and the states that use a two-round system, the problem of minority winners was most apparent in primary elections for open seats or where the current-party incumbent was vulnerable. For example, challenger Sharice Davids won the six-person Democratic primary for Kansas 3rd Congressional District with 37% of the vote. Sean Casten won the seven-person Democratic primary for Illinois 7th Congressional District with 29% of the vote. In Massachusetts' 3rd Congressional District, an open seat attracted 10 candidates. Lori Trahan was declared the winner of the Democratic primary with 18,368 votes, only 52 more than her closest challenger, Daniel Koh. Each of them had only 22% of the vote. The 58% of the voters who chose a different candidate had no opportunity to cast a second-choice ballot to help pick the final winner. They would have under ranked choice voting.

Ranked choice voting was used in Maine in its first appearance in U.S. House elections. In Maine Congressional District 2, the Republican incumbent received the most first choices but lost after two

independent candidates were defeated and their voters' second preferences were redistributed. The 2018 U.S. House general elections had remarkably high turnout - 49.4% of eligible voters, the highest since 1914 (which had the lowest turnout since 1824).²⁶ There were 54 open seats, significantly more than the average of 40 open seats over the past 40 years, and the highest number since 1992. A total of 16 open seats switched parties, including all five of the seats that opened due to redistricting in Pennsylvania.

Thirty incumbents, all Republicans, were defeated in the 2018 general election, significantly more than the average of 18 over the past 40 years, but similar to or fewer than the number defeated in 1980, 1982, 1994, 2010, and 2012. Overall, 91% of incumbents seeking re-election were successful, and 80% of the new House will consist of members who served in the previous House. These figures do not represent a significant break with recent trends.

ENDNOTES:

1. This account of the development of party primaries is based on the careful historical research in Alan Ware, *The American Direct Primary* (New York: Oxford University Press, 2002).
2. Ware, *The American Direct Primary*, 103.
3. L. Sandy Maisel and Walter Stone. “Primary Elections as a Deterrence to Candidacy for the U.S. of Representatives.” in Peter F. Galderisi, Marni Ezra, Michael Lyons. *Congressional Primaries and the Politics of Representation*. (Lanham, MD: Rowman & Littlefield, 2001), 43-44.
4. Maisel and Stone, “Primary Elections.” 47.
5. Author’s calculations for Tables 1 through 16 are based on *Federal Elections Commission*, Federal Elections 2016, <https://transition.fec.gov/general/FederalElections2016.shtml>.
6. The three open-seat districts with plurality winners in 2016 had a Republican incumbent; in each case, one or two center-right candidates from the Independence or Reform parties captured 8% to 12% of the vote.
7. Several other states have previously required runoffs for primaries: Maryland from 1929 to 1939, Kentucky from 1935 to 1936, Utah from 1937 to 1947, and Virginia from 1952 to 1969. See Charles S. Bullock III and Loch K. Johnson, *Runoff Elections in the United States* (Chapel Hill, NC: University of North Carolina Press, 1992).
8. According to a law adopted in 2017, the California primary will move to March of even-numbered years, beginning in 2020, because of the desire to hold an earlier presidential primary and to conduct both types of primaries at the same time to reduce administrative costs.
9. Tables 13-15 exclude 20 districts where no primary was held. Primary election votes include all votes cast in any party’s primary in that race.
10. The result for the semi-closed primary states is contrary to expectations, in that the drop-off is greater than for closed primary states. There are multiple factors that affect turnout: the competitiveness of the race (i.e., if an incumbent is participating), the date of the primary (which varies widely among states), the demographics and political leanings of the district, the number of candidates, and voter registration and qualification laws.
11. Excludes 73 districts that did not hold primaries. Primary counts are for winner’s party only, except for Two-Round with Nonpartisan Primary, which includes all parties. Primary runoff states are AL, AK, GA, MS, OK, SC, SD, TX (but primary runoffs were only held in GA and TX in 2016). Two-Round with Runoff is Louisiana only. Two-Round with Nonpartisan Primary is CA and WA. Closed Party Primary is DE, FL, NY, MD, NM, NV, NY, OR, PA. CT also has closed primaries but none were needed in 2016. Semi-Closed Party Primary is AZ, CO, ID, KS, MA, NC, NE, NH, NJ, RI, UT, WV. Open Party Primary includes all other states. The type of primary used in each state is based on National Conference of State Legislatures, *State Primary Election Types*, last modified June 26, 2018, <http://www.ncsl.org/research/elections-and-campaigns/primary-types.aspx>.
12. One could argue that it is more accurate to look at total voter turnout in the primary, considering both party primaries, rather than just the winner’s party’s vote. However, as I have previously demonstrated, competition in either phase of the election process is exceedingly rare when an incumbent is seeking re-election, and when there is an open seat, it is almost always the dominant party’s primary that is determinative.
13. Harvey J. Tucker. “Low Voter Turnout and American Democracy.” Paper prepared for presentation at the European Consortium for Political Research Joint Sessions of Workshops. (Uppsala, April 2004). <https://ecpr.eu/Filestore/PaperProposal/1a867436-9099-42f4-826c-9d96904fb0cc.pdf>
14. The Brookings Institution. *Vital Statistics on Congress*, Table 2-7, House Incumbents Retired, Defeated, or Re-elected, 1946 - 2016. Updated May 2018. <https://www.brookings.edu/multi-chapter-report/vital-statistics-on-congress/>.
15. “French election: Macron team complete rout with Assembly win.” *BBC News*. June 19, 2017. <https://www.bbc.com/news/world-europe-40178118>.

16. "The future of the direct primary." *Editorial research reports 1926* (Vol. III). (Washington, DC: CQ Press. 1926). <http://library.cqpress.com/cqresearcher/cqresrre1926091100>
17. In 2016 there was only one contested primary in Maine for U.S. House, and it had only two candidates. In 2018 there was again only one contested primary, and it had only two candidates as well. However, in the 2018 general election for Maine's 2nd District, Democrat Jared Golden, despite placing second in first preferences, defeated the Republican incumbent after the transfer of votes from two defeated candidates.
18. This estimate comes from Richard Winger, "2016 Ballot Access Requirements for New Party US House Candidates," an unpublished table of requirements for each state. About 61,000 of these signatures, mostly in California, need to be official voter registration forms with the signer publicly declaring his or her new party affiliation.
19. Based on the author's analysis of Richard Winger, "2000 Primary Ballot Access Requirements for U.S. House Candidates," an unpublished table of requirements for each state. This chart is the most recent summary of these rules that has been collected. Many states also require a filing fee to appear on a House primary election ballot, although the fee is \$1,000 or more in only ten states. Indiana requires only a declaration of candidacy --no signatures or filing fee -- to get on a major party primary ballot (but to qualify as the candidate of a new party one must submit a petition with valid signatures amounting to at least 2% of the Secretary of State vote cast in the district in the previous election, which in 2016 was approximately 3,000 signatures per U.S. House district).
20. In *Smiley v. Holm*, the court said, "It cannot be doubted that these comprehensive words embrace authority to provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns -- in short, to enact the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved." *Smiley v. Holm*, 285 U.S. 355 (1932).
21. Josep M. Colomer, "It's Parties that Choose Electoral Systems (Or, Duverger's Laws Upside Down)," *Political Studies* 53, no. 1 (March 2005): 1-21. <https://doi.org/10.1111/j.1467-9248.2005.00514.x>.
22. See Paul Schimek, "Democracy Isn't Working in Massachusetts," *Commonwealth Magazine*.(Fall 2017), <https://commonwealthmagazine.org/politics/democracy-isnt-working-massachusetts/>
23. The powers of Congress to regulate presidential elections are more limited, since the Constitution grants states to appoint presidential electors "in such Manner as the Legislature thereof may direct." The Congressional Research Service found that "The case law on this issue is ambiguous, although Congress's regulatory authority over presidential elections does seem to be more extensive than it might appear based on the text of the Constitution." *Congressional Authority to Direct How States Administer Elections*. (Washington, DC: Congressional Research Service), December 4, 2014 <https://www.everycrsreport.com/reports/RL30747.html>. Still, it is clear that uniform national rules for electing the president (e.g. a direct election) would require a constitutional amendment.
24. J. Carson, E. Engstrom, and J. Roberts, "Candidate Quality, the Personal Vote, and the Incumbency Advantage in Congress." *American Political Science Review* 101, no. 2, (2007), 289-301. doi:10.1017/S0003055407070311
25. Census Reporter, "MA-7 Congressional District Population" <https://censusreporter.org/profiles/50000US2507-congressional-district-7-ma/>.
26. Michael McDonald, United States Elections Project, "2018 November General Election Turnout Rates," <http://www.electproject.org/2018g>, estimate as of 11/19/2018 and "National General Election VEP Turnout Rates, 1789-Present" <http://www.electproject.org/national-1789-present>.