

# The Presidential Primary and Caucus Schedule: A Role for Federal Regulation?

Leonard P. Stark<sup>†</sup>

The 1996 California presidential primary was held on March 26, ten weeks earlier in the electoral calendar than California's June 1992 primary. New York's 1996 primary was held on March 7, a month earlier than the state's 1992 primary. These "great leaps forward" exemplify an important trend in the presidential nomination process: the increasing concentration of primaries and caucuses at earlier points in the nomination schedule. While just twelve percent of the delegates to the 1968 national nominating conventions were chosen before the beginning of April that year, in 1996 fully seventy-seven percent of the delegates had been chosen by the same point in the electoral calendar.<sup>1</sup>

States keep moving their primaries and caucuses forward because they hope to share in the disproportionate influence typically enjoyed by those states that choose their delegates earliest. Being early in the schedule seems to be one of the most important determinants of a state's relevance in the nomination process. Thus, even after California and New York's recent moves, these two most populous states were still far less important in the 1996 nomination contest than the two states that traditionally kick off the nomination season: Iowa and New Hampshire. But despite California and New York's failures, states' quest for greater influence is almost certain to continue.<sup>2</sup>

This Note analyzes the constitutional and policy issues surrounding the presidential nomination schedule, with particular emphasis on whether there is a role for the federal government to play in regulating the nomination schedule. Part I briefly describes the evolution of the presidential nomination process. It shows that the post-1968 growth in the number of presidential primaries has resulted in nominations being effectively decided during the delegate selection period, well before the national party conventions convene. Part II explores two of the most prominent features of the current presidential nomination

---

<sup>†</sup> Judicial Law Clerk to Hon. Walter K. Stapleton, U.S. Court of Appeals for the Third Circuit; J.D., Yale, 1996; D. Phil., Oxford, 1993; M.A., B.A., B.S., University of Delaware, 1991. I am grateful to Professor George Priest of Yale Law School for his assistance with an earlier version of this Note.

1. See NELSON W. POLSBY, CONSEQUENCES OF PARTY REFORM 251-52 n.19 (1983); *A Datebook for the Selection of Presidential Nominees*, SAN DIEGO UNION-TRIB., Feb. 10, 1996, at A18 [hereinafter *Datebook*].

2. On these themes, see *infra* Parts II, III.

schedule: the disproportionate influence of early states like Iowa and New Hampshire and the frontloading of delegate selection. Part III discusses the consequences of disproportionate influence and frontloading for voters, candidates, and the political system. If the presidential nomination schedule needs to be reformed, Part IV explains why the national parties, the state parties and state legislatures, and presidential candidates are unlikely to be adequate reformers. Instead, the most effective reforms could be implemented only by the institutions of the federal government. Part V explores the possibility of a federal court challenge to the constitutionality of the unregulated schedule, based on alleged infringements on the right to vote of voters in states selecting their presidential nomination delegates late in the schedule. While concluding that such a challenge is unlikely to succeed, this Part argues that the plaintiffs' claims nonetheless have arguable merit. Assuming the current schedule is constitutional, Part VI shows that Congress has constitutional authority to regulate the timing of presidential primaries and caucuses. Finally, Part VII reviews various reform plans and proposes that Congress pass legislation requiring each state to select its presidential delegates on one of five randomly assigned dates between March and June of the presidential election year.

#### I. AN OVERVIEW OF THE PRESIDENTIAL NOMINATION PROCESS

Before examining the presidential nomination schedule in detail, it is useful first to briefly describe the presidential nomination process as a whole. Both of the major political parties, the Democrats and the Republicans, formally choose their nominees for president and vice-president at quadrennial national nominating conventions held during the summer of the presidential election year.<sup>3</sup> The national conventions are comprised of delegates selected in each state, the District of Columbia, and American territories and possessions.<sup>4</sup> Throughout the nineteenth century, most states decided who to send as delegates to the national conventions by holding caucuses of small groups of the party's members in the state. In the early part of this century, however, many state legislatures began to require state parties to elect their convention delegates using a primary election.<sup>5</sup> Primaries were introduced for the purpose

---

3. The parties have used national conventions for this purpose since 1832. See Andrew Pierce, *Regulating Our Mischievous Factions: Presidential Nominations and the Law*, 78 KY. L.J. 311, 315 (1990). Previously, nominees had been chosen by a caucus of the party's members in Congress (1800-16) or by a completely decentralized process of state caucuses and conventions (1816-32). See *id.*

4. One or both of the parties allow Americans Abroad, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands to send delegates to the national conventions. See *Datebook*, *supra* note 1, at A18. For convenience, the word "states" is used throughout to refer collectively to all jurisdictions which send delegates to the national conventions.

5. The first primary law was enacted in Florida in 1901, allowing but not requiring a primary to choose the state's national convention delegates. Four years later Wisconsin passed the first law

## The Presidential Primary and Caucus Schedule

of reducing the control political bosses exercised over their parties.<sup>6</sup> By requiring that each rank-and-file member be given an equal, secret vote in electing a state party's convention delegates, primaries could not be manipulated as easily as caucuses—which were often convened by bosses without any formal notice and which required participants to make public (and therefore sanctionable) declarations as to whom they were supporting.<sup>7</sup> Where they were adopted, primaries largely succeeded in producing a state delegation that reflected the preferences of the state party membership rather than just those of the party bosses.<sup>8</sup>

After declining in popularity in the early post-war period, the number of presidential primaries exploded after 1968.<sup>9</sup> While only seventeen states, selecting just forty-seven percent of the convention delegates, held Democratic presidential primaries in 1968, by 1972 twenty-three states chose two-thirds of all Democratic delegates using primaries.<sup>10</sup> Subsequently the number of primaries has exceeded thirty in both parties in all but one election—the Democrats had only twenty-four primaries in 1984, which was also the single occasion on which fewer than two-thirds of the delegates were chosen in primaries. Both parties reached new peaks in 1996, with the Democrats electing seventy-eight percent of their delegates in thirty-six primaries and the Republicans electing eighty-seven percent in forty-two primaries.<sup>11</sup>

The dominance of primaries has meant the downfall of party bosses in determining presidential nominations. As the norm of party democracy gained widespread acceptance, party leaders generally lost control over delegate selection even in states still using caucuses or state party conventions to choose their delegates.<sup>12</sup> While winning the nomination used to be “an inside

---

requiring direct election of convention delegates in a presidential primary. In 1912, Oregon passed the first primary law requiring delegates to indicate their presidential candidate preference on the ballot so voters could effectively cast their vote for the presidential candidate of their choice. See BARBARA NORRANDER, *SUPER TUESDAY: REGIONAL POLITICS & PRESIDENTIAL PRIMARIES* 11 (1992).

6. See *id.* at 6; Pierce, *supra* note 3, at 315-16; Thomas J. Schwarz & Joseph C. Spero, *Revision of the Presidential Primary System*, 10 N.Y.U. REV. L. & SOC. CHANGE 9, 11 (1980-81).

7. See Kenneth A. Bode & Carol F. Casey, *Party Reform: Revisionism Revised*, in *POLITICAL PARTIES IN THE EIGHTIES* 6-10 (Robert A. Goldwin ed., 1980).

8. See John F. Bibby, *State Party Organizations: Coping and Adapting*, in *THE PARTIES RESPOND: CHANGES IN AMERICAN PARTIES AND CAMPAIGNS* 21, 21-22 (L. Sandy Maisel ed., 2d ed. 1994) [hereinafter *PARTIES RESPOND*].

9. The post-1968 surge in the number of primaries was inspired by the nomination reforms adopted by the Democratic Party following its destructive 1968 convention and the subsequent defeat of its nominee, Vice President Hubert Humphrey, in that year's general election. See *infra* Section IV.A.

10. These data on primaries and delegates are compiled from ROBERT D. LOEVY, *THE FLAWED PATH TO THE PRESIDENCY 1992: UNFAIRNESS AND INEQUALITY IN THE PRESIDENTIAL SELECTION PROCESS* tbls. 1, 3 (1995); NORRANDER, *supra* note 5, at 7 tbl. 1.1; Emmett H. Buell, Jr., *The Invisible Primary*, in *IN PURSUIT OF THE WHITE HOUSE: HOW WE CHOOSE OUR PRESIDENTIAL NOMINEES* 1, 8-10 (William G. Mayer ed., 1996) [hereinafter *IN PURSUIT*]; *Datebook*, *supra* note 1, at A18.

11. The 1996 data are from the tables in the Appendix and the sources cited therein.

12. Since so few states today rely exclusively on state-level conventions to choose their delegates—in 1996 three states (Alaska, Hawaii, and Wyoming) chose their Republican delegates in this manner and just one (Wyoming) its Democratic delegates—the phrase “primaries and caucuses” is

game”—in which candidates would seek the backing of leading party figures, who could then throw their delegations behind the candidate at the convention—nominations in the post-reform era are decided by rank-and-file party members during the delegate selection season.<sup>13</sup>

One of the results of the primary-dominated process is that nominations are no longer truly decided at the national party conventions. While nominations are still formally bestowed at the conventions, they are effectively determined in the series of primaries and caucuses in which convention delegates are selected. This means, of course, that nominations are typically won and lost well before the summer of the election year. Thus, for example, President Bill Clinton and Senator Robert Dole mathematically clinched their parties' nominations by mid-March 1996, when they had accumulated enough delegates to be guaranteed victory on the first ballot at the August party conventions.<sup>14</sup> Since nominations are truly decided during the delegate selection season, the schedule states follow in holding their primaries and caucuses is of obvious importance.

## II. TWO PROMINENT FEATURES OF THE UNREGULATED SCHEDULE: DISPROPORTIONATE INFLUENCE OF EARLY STATES AND FRONTLOADING

State legislatures and state parties face very few constraints in setting the date of their presidential primaries and caucuses. While the Democratic National Committee (DNC) has attempted since 1980 to require most states to choose their delegates between March and June of the presidential election year, this effort has been only marginally effective.<sup>15</sup> The Republicans have adopted no similar rule.<sup>16</sup> Nor has the federal government ever regulated the nomination schedule.<sup>17</sup>

In this unregulated environment, two states have entrenched themselves near the start of the schedule. Iowa traditionally conducts the nation's first caucuses while New Hampshire holds the first-in-the-nation primary. Both of these states tend to exert an influence on presidential nomination politics wholly

---

frequently used in this Note. This phrase should be understood to include all procedures by which states choose convention delegates.

13. See Elaine Ciulla Kamarck & Kenneth M. Goldstein, *The Rules Do Matter: Post-Reform Presidential Nominating Politics*, in PARTIES RESPOND, *supra* note 8, at 170; see also JOHN G. GEER, NOMINATING PRESIDENTS: AN EVALUATION OF VOTERS AND PRIMARIES 2 (1989).

14. See *infra* Table 5. No nomination has been truly decided at a national convention since 1952. See LOEVY, *supra* note 10, at 164; POLSBY, *supra* note 1, at 10.

15. The DNC has found it necessary to grant waivers to Iowa, New Hampshire, and various other states. See Emmett H. Buell, Jr., *First-in-the-Nation: Disputes Over the Timing of Early Democratic Presidential Primaries and Caucuses in 1984 and 1988*, 4 J.L. & POL. 311 (1987); see also *infra* Section IV.A.

16. However, the 1996 Republican National Convention did adopt an incentive system, seeking to encourage states to select their delegates later in the schedule in the 2000 election. See *infra* Section IV.A.

17. See *infra* Parts VI and VII.

## The Presidential Primary and Caucus Schedule

disproportionate to the number of delegates they select. Numerous other states, trying to capture some of this influence for themselves, have moved the dates of their primaries and caucuses closer to (or ahead of) those of Iowa and New Hampshire. This has resulted in a heavily frontloaded nomination schedule, in which the great majority of the delegates are selected within the first part of the delegate selection season.

This Part describes the disproportionate influence of Iowa and New Hampshire and the frontloading of the schedule. Then Part III discusses the largely adverse consequences of these two features of the unregulated schedule for primary and caucus voters, for presidential candidates, and for the political system.

### A. *Disproportionate Influence of Early States*

#### 1. *Iowa and New Hampshire's First-in-the-Nation Status*

The position of the Iowa caucuses at the very beginning of the nomination schedule arose almost entirely by accident. Iowa first adopted a caucus system to select its presidential delegates in 1920.<sup>18</sup> For the next fifty years, the caucuses were held at the end of March<sup>19</sup> and received very little attention from either the media or from candidates.<sup>20</sup> In 1969, the Iowa General Assembly amended its laws to require the parties to conduct their precinct caucuses no later than the second Monday in May.<sup>21</sup> At the same time, in response to national Democratic party reforms, the Iowa Democratic Party decided to add additional steps to its delegate selection process. Between precinct-level caucuses and the state convention, the Iowa Democrats added conventions at the congressional district level. To implement these increasingly complex requirements, the state party also revised its constitution to require the various stages of the process to be separated by intervals of at least thirty days. These new provisions, in combination with the limited availability of a meeting hall for the state convention and an early date for the national convention, forced the Iowa Democrats to schedule their caucuses for late January 1972. Nothing barred such an early date since the recently-amended state law contained no restriction on how early the caucuses could be held.<sup>22</sup>

---

18. See William G. Mayer, *The New Hampshire Primary: A Historical Overview*, in *MEDIA AND MOMENTUM: THE NEW HAMPSHIRE PRIMARY AND NOMINATION POLITICS* 9, 20 (Gary R. Orren & Nelson W. Polsby eds., 1987) [hereinafter *MEDIA AND MOMENTUM*].

19. See HUGH WINEBRENNER, *THE IOWA PRECINCT CAUCUSES: THE MAKING OF A MEDIA EVENT* 38 (1987).

20. See *id.* at 41.

21. See *id.* at 37-38.

22. See *id.* at 38; Peverill Squire, *Iowa and the Nomination Process*, in *THE IOWA CAUCUSES AND THE PRESIDENTIAL NOMINATING PROCESS* 1, 1-2 (Peverill Squire ed., 1989) [hereinafter *IOWA CAUCUSES*]; see also Nelson W. Polsby, *The Iowa Caucuses in a Front-Loaded System: A Few*

Iowa's important role in the 1972 Democratic nomination contest only became clear in retrospect, after George McGovern had capitalized on his surprisingly strong second-place Iowa finish and won the party's nomination.<sup>23</sup> Then, in 1976, Iowa's Republicans joined the state's Democrats in scheduling their caucuses for late January, with the explicit intention of maximizing Iowa's influence in presidential politics.<sup>24</sup> That year a little-known one-term Governor of Georgia, Jimmy Carter, based his entire campaign strategy on winning the Iowa caucuses. The strategy worked. Carter won the caucuses, instantly became a national figure, and a year later took up residence in the White House.<sup>25</sup>

Seeing what its parties had created, in 1978 the Iowa General Assembly passed a statute mandating that the state's caucuses be held no later than the second Monday in February.<sup>26</sup> In 1983, when it appeared that New Hampshire might schedule its 1984 primary for the day after Iowa's caucuses, the Iowa legislature added a new legal requirement that its caucuses always be held at least eight days prior to any other state's delegate selection, no matter how early that date might be.<sup>27</sup> This preserved Iowa's first-in-the-nation status until 1996, when Louisiana held its caucuses six days before Iowa's. Although Iowa considered rescheduling its caucuses for an even earlier date, it decided instead to attempt to persuade candidates to boycott Louisiana's caucuses. It succeeded in convincing all but three candidates to begin their campaigns in Iowa.<sup>28</sup>

New Hampshire's position as the nation's first primary also arose mostly unintentionally. The state's original primary law, passed in 1912, scheduled the primary for the third Tuesday of May.<sup>29</sup> However, before the next presidential election, the legislature realized the state could save money by holding its presidential primary on the same date as Town Meeting Day. Town Meeting Day was always in early March, before the spring thaw made the unpaved roads unpassable. Although New Hampshire's presidential primary was second in the nation in 1916 (following Indiana's by a week), it has been first in every election since 1920.<sup>30</sup>

The New Hampshire primary gained increased prominence following a

---

*Historical Lessons, in IOWA CAUCUSES, supra*, at 149, 152.

23. See Polsby, *supra* note 22, at 149.

24. See WINEBRENNER, *supra* note 19, at 35.

25. See Squire, *supra* note 22, at 3.

26. See WINEBRENNER, *supra* note 19, at 90.

27. See *id.* at 121.

28. The exceptions were Republicans Pat Buchanan, Phil Gramm, and Alan Keyes. See Ed Anderson, *GOP's Early-Bird Caucuses Can Continue, Court Rules*, NEW ORLEANS TIMES-PICAYUNE, Jan. 27, 1996, at B8. The Iowa-engineered boycott of Louisiana prevented Louisiana's caucuses from depriving Iowa's of their leading role.

29. See CHARLES BRERETON, *FIRST IN THE NATION: NEW HAMPSHIRE AND THE PREMIER PRESIDENTIAL PRIMARY 3-4* (1987).

30. See Mayer, *supra* note 18, at 10.

## The Presidential Primary and Caucus Schedule

1949 amendment to the state law putting presidential candidates' names on the primary ballot. Previously, voters cast votes for delegates, not knowing which presidential candidate a delegate candidate supported.<sup>31</sup> The new law made the primary results more relevant nationally and thereby attracted increased attention to the state's primary.<sup>32</sup> When other New England states and Florida sought to schedule their 1972 and 1976 primaries for the same date as New Hampshire's, New Hampshire responded by moving its primary forward to early March and then to late February.<sup>33</sup> To prevent future challenges, the state legislature decided in 1977 that New Hampshire's primary would thereafter be held on the earlier of the second Tuesday in March or the Tuesday preceding any state's similar election.<sup>34</sup>

### 2. *Disproportionate Influence*

Iowa is only the thirtieth most populous state in the Union. New Hampshire is even smaller, ranking forty-first by population.<sup>35</sup> Together, Iowa and New Hampshire account for about 1.5% of the national population<sup>36</sup> and choose a total of just eleven of the 540 electors in the Electoral College.<sup>37</sup> Even in the presidential nomination process their numerical weight is minuscule: the two states combined select just over two percent of the national convention delegates.<sup>38</sup> Nevertheless, because of their timing, the Iowa caucuses and the New Hampshire primary are invariably among the most crucial delegate selection events on the entire nomination schedule.

Table 1 displays some of the numerous indicators of Iowa and New Hampshire's disproportionate influence. First, the amount of attention the media devote to Iowa and New Hampshire is grossly disproportionate to the number of delegates these states select. Over the five presidential elections from 1976 to 1992, Iowa received an average of about thirteen percent of the total national news coverage devoted to the presidential nomination process.<sup>39</sup>

---

31. See LOEVY, *supra* note 10, at 19. New Hampshire Governor Sherman Adams endorsed the new law to bolster the Republican candidacy of General Dwight Eisenhower (which it did). Governor Adams foresaw that the best way to capitalize on General Eisenhower's public popularity—and tremendous name recognition—was to have his name appear on the ballot. With the new law in place, Eisenhower won the 1952 New Hampshire primary, defeating the “party establishment” candidate, Senator Robert Taft. *See id.* at 19-20.

32. See BRERETON, *supra* note 29, at xiv.

33. *See id.* at 197.

34. *See id.*

35. See U.S. DEPARTMENT OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 1994, at 28 (114th ed. 1994).

36. *See id.* at 1, 28.

37. MICHAEL BARONE & GRANT UJIFUSA, THE ALMANAC OF AMERICAN POLITICS 1996, at viii-ix (1995).

38. Calculated from *Datebook*, *supra* note 1, at A18.

39. See Henry E. Brady, *Is Iowa News?*, in IOWA CAUCUSES, *supra* note 22, at 89, 105 (discussing content analysis of 1984 press coverage); POLSBY, *supra* note 1, at 70 (showing Iowa received between 13% and 14% of national media coverage in 1980); see also *infra* Table 1. Researchers use various

New Hampshire is typically even more popular with the media, receiving an average of fifteen to twenty percent of all nomination coverage.<sup>40</sup> Together, then, approximately thirty percent of all national media coverage devoted to nomination politics concerns Iowa and New Hampshire.<sup>41</sup> This is clearly the result of the two states' placement at the head of the nomination schedule: for all other states, the amount of media coverage is strongly correlated with the number of delegates at stake.<sup>42</sup>

---

methodologies to measure the amount of media attention concerning a state's primary or caucuses. Typically, the researcher performs a content analysis of all the articles in major national newspapers, or all the stories on the national network news, from the year prior to the election through the conventions. By determining the number of articles or stories mentioning a particular state's contest, or measuring the number of column inches or seconds of airtime mentioning that contest, the researcher can then calculate the percentage figures relied on here. See, e.g., HAROLD W. STANLEY & RICHARD G. NIEMI, VITAL STATISTICS ON AMERICAN POLITICS 56 (5th ed. 1995) (describing their methodology).

40. See POLSBY, *supra* note 1, at 70 (showing that New Hampshire received between 14% and 15% of national media coverage in 1980); Charles D. Hadley & Harold W. Stanley, *The Southern Super Tuesday: Southern Democrats Seeking Relief from Rising Republicans*, in IN PURSUIT, *supra* note 10, at 174 tbl. 5.4 (showing New Hampshire receiving 19%, 17%, and 23% of coverage in 1984, 1988, and 1992, respectively); Gary R. Orren & Nelson W. Polsby, *New Hampshire: Springboard of Nomination Politics*, in MEDIA & MOMENTUM, *supra* note 18, at 3, 4-5; see also *infra* Table 1.

41. See LOEVY, *supra* note 10, at 36; Sally McCally Morehouse, *The Nominating Process is Not Representative*, in CONTROVERSIAL ISSUES IN PRESIDENTIAL SELECTION 39, 45 (Gary L. Rose ed., 1991); NORRANDER, *supra* note 5, at 18; Michael J. Robinson & S. Robert Lichter, "The More Things Change . . .": *Network News Coverage of the 1988 Presidential Nomination Races*, in NOMINATING THE PRESIDENT 196, 201 (Emmett H. Buell & Lee Sigelman eds., 1991) (finding Iowa and New Hampshire received about 32% of coverage in 1984).

42. See William C. Adams, *As New Hampshire Goes . . .*, in MEDIA AND MOMENTUM, *supra* note 18, at 43, 48; see also Robinson & Lichter, *supra* note 41, at 202 tbl. 7.1 (showing only Iowa and New Hampshire having proportionally more network news mentions than delegates at stake in 1988 contests).



## The Presidential Primary and Caucus Schedule

TABLE 1  
 MEDIA AND CANDIDATE ATTENTION DEVOTED TO IOWA, NEW HAMPSHIRE,  
 AND OTHER STATES<sup>43</sup>

Percentage of Overall Media Coverage	IA	NH	Super Tuesday (N=15)	Other States (N=34)
1980	14	15	N/A	N/A
1984	13	19	18	50
1988	23	17	10	50
1992	2	23	26	49
Number of Candidate Visits				
1988 Democrats	80	60	11	12
1988 Republicans	37	85	7	6
Average Amount of Candidate Spending (as percentage of spending limit for state(s))				
1988	79	83	12	N/A
1992	2	88	7	N/A

The intensive media coverage lavished on Iowa and New Hampshire is matched by the personal attention candidates devote to these two early states. For example, in 1988 Democratic candidates made eighty visits to Iowa and sixty visits to New Hampshire but only an average of eleven to twelve visits to any other state.<sup>44</sup> In that same year, Republican candidates visited Iowa thirty-seven times and New Hampshire eighty-five times but only made an average of between six and seven visits to any other state.<sup>45</sup> Even the creation of the southern Super Tuesday primary—in which as many as fifteen states choose their delegates on the second Tuesday in March—has not diminished the devotion of candidates to Iowa and New Hampshire. In six nomination contests beginning with 1988, only two candidates have spent more total days

43. The results presented in this table are based on data presented in the following sources: NORRANDER, *supra* note 5, at 102 tbl. 3.5 (candidate visit data); STANLEY & NIEMI, *supra* note 39, at 54-56 (media coverage); Hadley & Stanley, *supra* note 40, at 158, 174 tbl. 5.4 (media coverage); Hadley & Stanley, *supra* note 40, at 172-73 tbl. 5.3 (candidate spending data).

44. See *supra* Table 1.

45. See *id.*

campaigning in the numerous Super Tuesday states than in Iowa and New Hampshire.<sup>46</sup>

Candidates do more than just visit Iowa and New Hampshire. They also rent office space, hotel rooms, and cars, eat at local restaurants, and buy millions of dollars worth of advertising.<sup>47</sup> For example, in 1976 and 1980, candidates spent an average of between nine and fourteen dollars per vote cast in the Iowa caucuses and an average of between seven and nine dollars per vote cast in the New Hampshire primary. In no other state did candidates spend more than an average of \$2.50 per vote cast. In the California primary, held in June of those years, they spent an average of less than seventy-five cents for every vote cast.<sup>48</sup> As Table 1 shows, candidates usually spend around eighty percent of what federal campaign finance laws permit in Iowa and New Hampshire but only about seven-to-twelve percent of the federal limit in Super Tuesday states.

Another indicator of Iowa and New Hampshire's importance is how the ultimate fate of a candidate's campaign can often be predicted based on her performance in these earliest states. Candidates who win the Iowa caucuses or the New Hampshire primary are virtually assured of remaining serious contenders for the nomination as the campaign moves on to other states. One study has found that the winner of the Iowa caucuses can expect to receive a ten-percent boost in her standing in the polls.<sup>49</sup> Winners of the New Hampshire primary generally have even greater success: other than 1992, every president elected since 1952 has won the New Hampshire primary.<sup>50</sup> Those candidates who score a "moral victory" in Iowa or New Hampshire, by finishing second (or sometimes third) and greatly exceeding expectations, also usually acquire sufficient momentum thereafter to be seriously considered for the nomination.<sup>51</sup>

On the other hand, for candidates who perform poorly in both Iowa and New Hampshire, the campaign is almost invariably soon over. Even a poor

---

46. See Hadley & Stanley, *supra* note 40, at 170 (showing only Gore and Jackson in 1988 spent more time in southern and border states than in Iowa and New Hampshire).

47. In 1996, candidate and media spending infused \$30 million into the New Hampshire economy. See Nancy West, *Political Veterans Say It's Still Too Soon To Count Primary Out*, THE UNION LEADER (Manchester, NH), Aug. 11, 1996, at A8.

48. For these 1976 and 1980 numbers, see POLSBY, *supra* note 1, at 61.

49. See Larry M. Bartels, *After Iowa: Momentum in Presidential Primaries*, in IOWA CAUCUSES, *supra* note 22, at 121, 141 (analyzing gains of 1984 and 1988 Iowa winners); see also LARRY M. BARTELS, *PRESIDENTIAL PRIMARIES AND THE DYNAMICS OF PUBLIC CHOICE* (1988).

50. See Brady, *supra* note 39, at 104. Although Bill Clinton broke this streak in 1992, he would almost certainly not have become president without his huge success in New Hampshire: following a rocky period for Clinton's campaign, the "Comeback Kid" finished a strong second to Paul Tsongas, the former senator from the neighboring state of Massachusetts. Senator Dole finished second in the New Hampshire primary to Patrick Buchanan and lost the 1996 general election.

51. See, e.g., LOEVY, *supra* note 10, at 275 n.4.; Gerald M. Pomper, *The Nominating Contests*, in THE ELECTION OF 1980: REPORTS AND INTERPRETATIONS 1, 12 (Gerald M. Pomper ed., 1981).

## The Presidential Primary and Caucus Schedule

performance in only one of the two states is often enough to fatally wound a candidacy. Since 1972, only two of fourteen nominees have finished worse than second in Iowa.<sup>52</sup> Candidates who have sought to minimize the importance of Iowa and New Hampshire in their nomination strategies have paid a heavy cost for their misjudgment.<sup>53</sup>

While it will take researchers some time to fully analyze the data concerning the role Iowa and New Hampshire played in the 1996 nomination contests, the available evidence indicates that these two states retained their disproportionately important status, at least in terms of attention. For example, though Senator Dole and his rivals made countless visits to Iowa and New Hampshire over the three years preceding February 1996,<sup>54</sup> Dole spent less than twenty-four hours campaigning in New York before that state's much larger primary.<sup>55</sup> Nor did the candidates make many visits to the five New England states holding their primaries together just two weeks after New Hampshire.<sup>56</sup> In the two days before the New Hampshire primary, candidates Dole, Buchanan, and Steve Forbes bought airtime for more than 500 commercials in that state, but in the two days preceding the Texas primary they aired less than sixty commercials in one of that state's largest media markets.<sup>57</sup> Iowa and New Hampshire also largely fulfilled their historical role of winnowing the field to just a few serious candidates. After New Hampshire, the only candidates for whom an even remotely realistic nomination scenario

---

52. These were Bush in 1988—who was able to recover, in part, because of the advantages of being the incumbent vice-president—and Clinton in 1992, who ceded the Iowa caucuses to Iowa Senator Tom Harkin and did not campaign in the state.

53. A recent example is Al Gore's 1988 campaign. Gore, then a Senator from Tennessee, devoted little effort to organizing in Iowa and New Hampshire. He chose instead to focus his resources on the southern states participating in the Super Tuesday primaries a few weeks after New Hampshire. Though Gore did fairly well on Super Tuesday, he failed to perform sufficiently well to have any chance of receiving the nomination after sitting out Iowa and New Hampshire. See Rhodes Cook, *Rules of the Road: Earlier Voting in 1996 Forecasts Fast and Furious Campaigns*, CONG. Q., Aug. 21, 1995, at 2483; see also JACK W. GERMOND & JULES WITCOVER, *MAD AS HELL: REVOLT AT THE BALLOT BOX*, 1992, at 97 (1993) (discussing Senator Howard Baker's failed 1980 strategy based on downplaying Iowa).

54. See, e.g., *Dole Joins a Host of Other GOP Hopefuls in Iowa*, S.F. CHRON., Dec. 28, 1995, at A10; Craig Gilbert, *Iowa Gets First Shot at Next Year's Candidates*, MILWAUKEE J. SENTINEL, Apr. 27, 1995, at B2; *Republicans Already Revving White House Campaigns*, PATRIOT LEDGER (Quincy, MA), Nov. 14, 1994, at 2; Jake Thompson, *A Second Look*, KANSAS CITY STAR, Feb. 5, 1996, at A2; *'96 Hopefuls Already Stirring a Bit*, PLAIN-DEALER (Cleveland, OH), Apr. 15, 1993, at 4C.

55. See Richard L. Berke, *It's Come Quickly, Much to Dole's Relief*, ORANGE COUNTY REGISTER, Mar. 12, 1996, at A14.

56. See David Lightman & Jon Lender, *Yankee Primary A Success for Dole, and New England*, HARTFORD COURANT, Mar. 7, 1996, at A1; see also Gil Klein, *Remember Primaries? Some in GOP Favor Some Changes*, RICHMOND TIMES-DISPATCH, June 2, 1996, at A13 (quoting Nevada Republican Chairman calling his state's primary "almost an embarrassment" since no candidates visited Nevada or aired ads there); Steven Thomas, *Primary Voters Fall to Secondary Role*, PORT. OREGONIAN, June 2, 1996, at A13 (noting that no candidates advertised on radio in Ohio, despite state's acceleration of primary from June to March).

57. See Blaine Harden & Dan Balz, *Compressed Primary Schedule Leaves Some Looking for Better Way*, WASH. POST, Mar. 14, 1996, at A6.

could be constructed were Dole, Buchanan, Forbes, and Lamar Alexander. Although Dole won Iowa and finished a close second in New Hampshire, both of these results were, in context, considered relatively weak showings for the frontrunner. However, consistent with historical trends, Dole's first- and second-place finishes were adequate to allow him to remain in the race as a serious (though bruised) contender. The actual winner in New Hampshire, Buchanan, had scored a "moral victory" in Iowa and generally began to be treated as a far more serious contender following his successes in these early states.

### B. *Frontloading*

Because of the valuable advantages of an early date on the nomination schedule, states vigorously compete with one another to select their delegates earlier and earlier. The result is a schedule in which the overwhelming majority of states now choose their delegates in the earliest parts of the delegate selection period. This phenomenon is called frontloading.<sup>58</sup>

Frontloading has two elements. First, the delegate selection season begins earlier than it used to. The February 6 start in 1996, with Louisiana's Republican caucuses, was one of the earliest starting dates ever. Second, and much more strikingly, the number of primaries and caucuses concentrated in the early part of the nomination schedule is steadily increasing. In 1968, only New Hampshire held its primary before the middle of March; by 1988, twenty states had held their primaries by this date.<sup>59</sup> Through 1980, there were never more than ten primaries during the first two months of the delegate selection season, February and March.<sup>60</sup> As recently as 1984 in the Republican Party and 1980 in the Democratic Party, the month with the largest number of delegate selection events was May.<sup>61</sup> Since then, however, March has been by far the most popular month for primaries and caucuses. This trend reached new heights in March 1996. In that one month, Democrats held thirty-three delegate selection events and Republicans twenty-seven.<sup>62</sup> Thus, by the end of March 1996, fully thirty-seven states had chosen their Democratic delegates and thirty-four their Republican delegates (see Table 2).

The greater frontloading of the nomination schedule is reflected not just in the number of states which choose their delegates early but also in the percentage of convention delegates selected in the early parts of the schedule. In 1996, seventy-seven percent of the Democratic delegates and seventy-seven percent of the Republican delegates were selected by the end of

---

58. See Buell, *supra* note 10, at 1, 7.

59. See Morehouse, *supra* note 41, at 46.

60. See AMERICA VOTES 20, at 64-69 (Richard M. Scammon & Alice V. McGillivray eds., 1993).

61. See *id.* at 62, 65.

62. See *infra* Appendix.

The Presidential Primary and Caucus Schedule

TABLE 2  
STATES CHOOSING DELEGATES BEFORE END OF MARCH<sup>63</sup>

Year	Democrat	Republican
1972	3	3
1976	6	6
1980	9	9
1984	27	10
1988	34	33
1992	31	18
1996	37	34

TABLE 3  
PERCENTAGE OF DELEGATES SELECTED BY THE END OF MARCH<sup>64</sup>

Year	Democrat	Republican
1968	12%	13%
1972	21%	17%
1976	26%	25%
1980	40%	40%
1984	42%	N/A
1988	52%	61%
1992	41%	48%
1996	77%	77%

---

63. See AMERICA VOTES 20, *supra* note 60, at 67-68; *infra* Appendix.

64. Sources: POLSBY, *supra* note 1, at 251-52 n.19; Buell, *supra* note 10, at 7, 8-10; *Datebook*, *supra* note 1, at A18.

March.<sup>65</sup> By comparison, only about twelve percent of convention delegates had been selected by the end of March in 1968 and only forty percent in 1980.<sup>66</sup>

This heavily frontloaded schedule is the result of states moving their delegate selection dates to earlier points. Prior to each of the last four presidential elections, as few as two and as many as twenty states have accelerated the date of their primary, caucuses, or state convention.<sup>67</sup> Prior to the 1996 election, twelve states moved their Democratic delegate selection dates forward and fourteen did the same for their Republican dates.<sup>68</sup> While many states have also moved their dates to later points in the schedule, no more than ten states have done this before any of the recent elections; and the number of forward moves has almost always exceeded the number of backward moves.<sup>69</sup>

TABLE 4  
STATE DATE MOVES PER ELECTION CYCLE<sup>70</sup>

DEMOCRATS	Pre-1984	Pre-1988	Pre-1992	Pre-1996
Earlier	10	20	10	12
Later	6	6	10	4
Net Earlier	4	14	0	8
TOTAL	16	26	20	16
REPUBLICANS	Pre-1984	Pre-1988	Pre-1992	Pre-1996
Earlier	3	16	2	14
Later	4	2	9	7
Net Earlier	-1	14	-7	7
TOTAL	7	18	11	21

65. See *infra* Table 3.

66. See *id.*

67. See *infra* Table 4.

68. See *id.*

69. See *id.* The two recent exceptions to the frontloading trend occurred before the 1984 and 1992 Republican contests. On both occasions an incumbent Republican president was seeking reelection. Table 4 reveals another interesting trend: in the four most recent elections, the number of date moves in the non-incumbent party exceeded the number of date moves in the incumbent party. Thus, more Democratic than Republican primaries, caucuses, and state conventions moved in 1984, 1988, and 1992, while the reverse was true in 1996.

70. See AMERICA VOTES 20, *supra* note 60, at 64-68; *infra* Appendix.

## The Presidential Primary and Caucus Schedule

In one sense, frontloading is nothing new. It reflects a return to the pre-1968 era, when delegates were selected by party bosses even earlier than occurs today. For instance, approximately one-third of the delegates to the 1968 Democratic National Convention were selected before the start of 1968.<sup>71</sup> But there is an important difference: whereas in the past delegates were unofficially pledged to support whomever their party boss ultimately decided to endorse at the convention, delegates today are legally bound to support the presidential candidate to whom they are pledged in the primary or caucuses. Thus today, unlike when party bosses controlled the process, it is not just the delegates who are selected early but also the nominees.

### III. CONSEQUENCES OF EARLY STATES' DISPROPORTIONATE INFLUENCE AND FRONTLOADING

Numerous consequences appear to follow from the disproportionate influence of early states like Iowa and New Hampshire and the frontloading of the unregulated nomination schedule. In particular, the schedule adversely affects voters in later states by reducing their opportunities to cast informed and influential votes; may harm presidential candidates by requiring lengthier campaigns with earlier fundraising demands; and damages the political system by encouraging unfettered competition among states to hold primaries and caucuses earlier and earlier.

#### A. *For Voters: Less Influence and Fewer Choices*

Obviously, one major consequence of Iowa and New Hampshire's disproportionate influence on the nomination process is the relatively diminished role of states that select their delegates later in the schedule. Most later states, no matter how large they are, have no influence whatsoever on the choice of the nominees. In 1988, for example, 235,000 people participated in the Iowa caucuses and 280,000 voted in the New Hampshire primary. That same year more than five million people voted in the California primary. But the California primary did not take place until June, when it had long been clear that George Bush and Michael Dukakis would be the Republican and Democratic nominees. Therefore, the millions of California voters had no effective role in determining who the country should consider for the presidency.<sup>72</sup>

More generally, as Table 5 shows, in the seven most recent seriously

---

71. See Eli Segal, *Delegate Selection Standards: The Democratic Party's Experience*, 38 GEO. WASH. L. REV. 873, 880 n.38 (1970).

72. See Morehouse, *supra* note 41, at 47. In response to its recent history of irrelevance, California considered moving its 1992 primary forward to March. Although California ultimately decided not to move its 1992 date, it did move its 1996 primary forward to the fourth Tuesday in March. However, since the 1996 Republican contest was decided so quickly, California's earlier primary was still largely irrelevant.

contested nomination contests (not including Buchanan's challenge to Bush in 1992 because Bush's renomination was never in doubt), the nomination was effectively decided before voters in an average of nineteen states had even gone to the polls.<sup>73</sup> The clearest example of the unimportance of voters in later states is the 1996 Republican nomination. After March 5, it was evident that Senator Dole was going to be the nominee. He had swept the "junior Tuesday" primaries that day and compiled a huge lead in delegates; within days almost all of his serious opposition would exit the race.<sup>74</sup> Yet at this point only nineteen states had held their primaries or caucuses; voters in thirty-two more were still waiting to cast their ballots.

Even if one adopts a broader concept of relevance, the irrelevance of later states is still evident: in four of the last eight contested nomination races the nomination was mathematically clinched well before the end of the primary and caucus schedule. In these contests voters in later states had absolutely no power to influence who their parties' nominee would be.<sup>75</sup> Even had all of the remaining states given all of their delegates to the second-place candidate, this would not have altered the outcome of the nomination process, since the putative nominee had already collected enough delegates to win. Again, this is demonstrated in the 1996 results. Dole had mathematically clinched the Republican nomination on March 19, effectively disenfranchising voters in the twenty states which had yet to vote.

---

73. My estimates of when the nomination was "effectively" decided are intended to indicate the point at which a consensus of contemporary participants and observers believed that only one individual could possibly win the nomination. The main factor on which these estimates rely is the date at which either (i) only one serious candidate remained in the race or (ii) it became mathematically impossible for someone other than the frontrunner to win enough delegates to clinch the nomination.

74. See *infra* Table 6.

75. Voters in later states do not appear to exert even indirect influence on the outcome. This is because of the implicit assumption—among candidates, strategists, and commentators—that the views of voters in later states will not substantially differ from those of voters in the earliest states. In other words, the nomination system operates on the assumption that candidates who fare poorly in Iowa, New Hampshire, and other early states will inevitably fare similarly in later states. Contributors do not give money to early "losers," nor does the media pay attention to them. Thus, recent history provides no examples of an early-faltering candidate long sustaining a campaign on the hope that his or her candidacy will prove far more appealing to voters in later states than it did to voters in early states.



## The Presidential Primary and Caucus Schedule

TABLE 5  
DATE BY WHICH NOMINATION WAS DECIDED<sup>76</sup>

Year	Nominee	Party	Date Nomination Effectively Decided	States Which Had Not Yet Selected Delegates by this Date	Date Nomination Mathematically Clinched	States Which Had Not Yet Selected Delegates By This Date
1980	Carter	Dem.	March 20	25	June 3	0
1980	Reagan	Rep.	March 20	28	May 27	9
1984	Mondale	Dem.	June 5	0	June 5	0
1984	Reagan	Rep.	Unchallenged Incumbent	N/A	N/A	N/A
1988	Dukakis	Dem.	April 19	12	June 7	0
1988	Bush	Rep.	March 8	20	May 1	12
1992	Clinton	Dem.	April 7	16	June 2	0
1992	Bush	Rep.	Nomination Never Doubted	N/A	May 2	17
1996	Clinton	Dem.	Unchallenged Incumbent	N/A	N/A	N/A
1996	Dole	Rep.	March 5	32	March 19	20
AVERAGE				19		7

Since candidates are winnowed out at various points in the process, voters in later states invariably have fewer active candidates to choose among than voters in earlier states.<sup>77</sup> By April of the election year, almost all candidates

76. See *infra* Appendix.

77. See *infra* Table 6 (presenting data on when candidates withdraw from race).

except the presumptive nominee are out of the race, leaving voters in the remaining states with little choice and, therefore, little reason to vote. Unsurprisingly, participation rates of voters in these later states tend to be low.<sup>78</sup>

Because primaries and caucuses occur so rapidly in the heavily frontloaded schedule, it is impossible for candidates to campaign to any significant degree in most states other than the earliest ones. The time pressures of the concentrated schedule also make it extremely difficult for the media in each state to help voters decipher where the candidates stand on issues important to voters in that state. Many voters do not pay attention to nomination politics until the campaign comes to their state—but if the candidates do not come, the local media may not trouble themselves to provide coverage tailored to local voters' interests. In short, many voters in most states voting after Iowa and New Hampshire cast their votes knowing very little about the candidates other than how they fared in earlier states. Lacking information and the opportunity to obtain it, simple name recognition may be unduly influential, and voters may feel able to do little more than ratify the choices made by voters in earlier states.<sup>79</sup>

#### B. *For Candidates: Earlier Starts and Longer Campaigns*

The early start of the delegate selection process and the heavy concentration of primaries and caucuses in the early parts of the schedule force candidates to begin their presidential campaigns at quite early dates. To have any hope of surviving the rapid succession of early primaries and caucuses, aspirants for the presidency have to begin building campaign organizations in a large number of states well before the election year. Thus, all but two of the candidates for the 1996 Republican nomination had begun full-scale campaigning by the spring of 1995. The exceptions, Steve Forbes and Morry Taylor, could afford to wait until later in 1995 to enter the race because they planned to spend their own money and did not have to fundraise.<sup>80</sup> Table 6 shows how early even the formal announcements of presidential candidacies have become—and these announcements are almost always preceded by months (or even years) of heavy campaigning.<sup>81</sup> It is clear that serious presidential

---

78. See generally Harden & Balz, *supra* note 57 (noting that participation rate in primaries has declined since 1970s and continued to decline in 1996).

79. On these themes, see generally Morehouse, *supra* note 41, at 50.

80. Mike Glover, *Illinois Tire King Rolls Into Iowa In His 1st Bid for Public Office*, ORANGE COUNTY REGISTER, Aug. 19, 1995, at A15 (noting Taylor's June 1995 entry into race); Paul Taylor, *Malcolm Forbes Jr. Joins GOP Presidential Field*, WASH. POST, Sept. 23, 1995, at A12 (reporting Forbes' entry into race). A third candidate, Governor Wilson of California, did not formally announce his candidacy until August 1995, but he began actively campaigning for the nomination in the spring.

81. While "[i]t is almost impossible to measure when a campaign begins," these formal announcement dates provide a common benchmark. HOWARD L. REITER, *SELECTING THE PRESIDENT: THE NOMINATING PROCESS IN TRANSITION* 33 (1985). Although active campaigning typically begins

## The Presidential Primary and Caucus Schedule

candidates without their own personal fortunes must plan to devote at least eighteen months to campaigning. This is a quite substantial amount of time to be away from whatever other job the candidate might simultaneously hold.

TABLE 6  
LENGTH OF PRESIDENTIAL CANDIDATES' CAMPAIGNS<sup>82</sup>

Candidate/Contest	Date Announced	Date Exited Race
1980		
DEMOCRAT		
Jerry Brown	November 1979	April 1980
Jimmy Carter	December 1979	Nominee
Edward Kennedy	November 1979	Convention
REPUBLICAN		
John Anderson	June 1979	April 1980 <sup>83</sup>
Howard Baker	October 1979	March 1980
George Bush	April 1979	May 1980
John Connally	January 1979	March 1980

well before a candidate announces his or her candidacy, formal announcement dates appear to be correlated with the actual start of campaigning. *See id.*

82. The data in the table were compiled from multiple sources. The most helpful source is HAROLD W. STANLEY & RICHARD G. NIEMI, VITAL STATISTICS ON AMERICAN POLITICS 73 fig. 3-3 (3d ed. 1992), from which most of the data for 1980-88 was derived. This information was supplemented by BRERETON, *supra* note 29, at 205, 225; LOEVY, *supra* note 10, at 104; NORRANDER, *supra* note 5, at 77-81, 168; WINEBRENNER, *supra* note 19, at 152; Pomper, *supra* note 51, at 9, 13, 17, 23; William G. Mayer, *Forecasting Presidential Nominations*, in IN PURSUIT *supra* note 10, at 55, 69-70; Dan Balz, *Democrat Tsongas Begins Campaign for Presidency*, WASH. POST, May 1, 1991, at A1; Dan Balz, *Forbes Ends His Run for President*, WASH. POST, Mar. 15, 1996, at A14; Amy Bayer, *Dornan Joins GOP Presidential Race*, SAN DIEGO UNION-TRIB., Apr. 14, 1995, at A6; Richard L. Berke, *Lugar Says He Will Run for President*, N.Y. TIMES, Apr. 20, 1995, at A20; Richard L. Berke, *A New Quest By Buchanan for President*, N.Y. TIMES, Mar. 21, 1995, at A16; Richard L. Berke, *Now Officially, Dole Is Making A Run for '96*, N.Y. TIMES, Apr. 11, 1995, at A1; Karen Hosler, *Alexander, Lugar Withdraw from GOP Presidential Race*, BALT. SUN, Mar. 7, 1996, at 6A; Phoebe Wall Howard, *Dark Horse: Titan Chief Running for White House*, DES MOINES REGISTER, June 17, 1995, at 6; *No Way To Treat Lady Liberty*, ATLANTA J. & CONST., Aug. 30, 1995, at 14A; *The Road to the White House*, WASH. TIMES, Oct. 28, 1992, at G2; Robert Shogan, *Specter Launches White House Bid*, L.A. TIMES, Mar. 31, 1995, at A1; Brigid Schulte, *Why Stay In the GOP Race?*, NEWS & OBSERVER (Raleigh, NC), Apr. 9, 1996, at A4; Susan Sowa, *Taylor Bows Out*, RUBBER & PLASTICS, Mar. 18, 1996, at 2; *Specter Suspends Presidential Effort*, BOSTON GLOBE, Nov. 22, 1995, at 8; Paul Taylor, *Malcolm Forbes Jr. Joins GOP Presidential Field*, WASH. POST, Sept. 23, 1995, at A12; Steven Thomma, *Quayle Out of Race for President*, ARIZ. REPUBLIC, Feb. 10, 1995, at A1; Robin Toner, *Nebraska Senator Enters the 1992 Race*, N.Y. TIMES, Oct. 1, 1991, at A14; Sam Howe Verhovek, *Gramm Quits Presidential Race*, L.A. DAILY NEWS, Feb. 15, 1996, at N17; Curtis Wilkie, *Harkin's Cap in Ring*, BOSTON GLOBE, Sept. 16, 1991, at 1; *Wilson Drops Out of '96 GOP Field*, L.A. DAILY NEWS, Sept. 30, 1995, at N1.

83. Anderson announced his exit from the Republican race in April 1980, at which point he declared himself an independent candidate for the general election. *See Pomper, supra* note 51, at 1, 15.

Philip Crane	August 1978	April 1980
Robert Dole	May 1979	March 1980
Ronald Reagan	November 1979	Nominee
AVERAGE <sup>84</sup>	JULY 1979	APRIL 1980
1984		
DEMOCRAT		
Ruben Askew	February 1983	March 1984
Alan Cranston	February 1983	February 1984
John Glenn	April 1983	March 1984
Gary Hart	February 1983	Convention
Ernest Hollings	April 1983	March 1984
Jesse Jackson	November 1983	Convention
George McGovern	September 1983	March 1984
Walter Mondale	February 1983	Nominee
REPUBLICAN		
Ronald Reagan	December 1983	Nominee
AVERAGE	MAY 1983	APRIL 1984
1988		
DEMOCRAT		
Bruce Babbitt	March 1987	February 1988
Joseph Biden	June 1987	September 1987
Michael Dukakis	April 1987	Nominee
Jesse Jackson	October 1987	Convention
Richard Gephardt	February 1987	March 1988
Al Gore	June 1987	April 1988
Gary Hart <sup>85</sup>	April 1987	March 1988

84. Average dates were calculated by assigning a number from 1 to 12 to each month in the year before the presidential election and from 13 to 18 for the first six months of the election year. The two candidates who announced in August of the year two years before the election year (Crane 1978, DuPont 1986) were assigned a value of -4; candidates who did not drop out of the race until the convention were assigned a value of 20. To determine the average date of announcement for each contest, the values assigned to all the announced candidates were included. In determining the average date of withdrawal, the nominees were omitted from the calculation.

85. Gary Hart initially withdrew from the campaign in May 1987. He returned to active campaigning in December 1987. Hart's hiatus is ignored for purposes of this table.

The Presidential Primary and Caucus Schedule

Paul Simon	April 1987	April 1988
REPUBLICAN		
George Bush	October 1987	Nominee
Robert Dole	November 1987	March 1988
Pierre du Pont	August 1986	February 1988
Al Haig	March 1987	February 1988
Jack Kemp	April 1987	March 1988
Pat Robertson	October 1987	May 1988
AVERAGE	JUNE 1987	FEBRUARY 1988
1992		
DEMOCRAT		
Jerry Brown	October 1991	Convention
Bill Clinton	October 1991	Nominee
Tom Harkin	September 1991	March 1992
Bob Kerrey	September 1991	March 1992
Paul Tsongas	April 1991	March 1992
Douglas Wilder	September 1991	January 1992
REPUBLICAN		
Patrick Buchanan	December 1991	Convention
George Bush	Not during primaries	Nominee
AVERAGE	SEPTEMBER 1991	APRIL 1992
1996		
DEMOCRAT		
Bill Clinton	At convention	Nominee
REPUBLICAN		
Lamar Alexander	February 1995	March 1996
Patrick Buchanan	March 1995	Convention
Robert Dole	April 1995	Nominee
Robert Dornan	April 1995	April 1996
Steve Forbes	September 1995	March 1996

Phil Gramm	February 1995	February 1996
Alan Keyes	March 1995	Convention
Richard Lugar	April 1995	March 1996
Arlen Specter	March 1995	November 1995
Morry Taylor	June 1995	March 1996
Pete Wilson	August 1995	September 1995
AVERAGE	APRIL 1995	MARCH 1996

To survive the early rush of primaries and caucuses, presidential candidates need to raise enormous sums of money, and to do so by a far earlier date than ever before.<sup>86</sup> In the 1980 election cycle, no candidate raised more than 35% of his total funds before the start of the election year; only one candidate did so prior to the 1984 election.<sup>87</sup> By contrast, candidates seeking the 1996 Republican nomination were expected to need to have raised at least \$20 million by the end of 1995, which was more than half of the allowable maximum expenditures for the entire nomination season.<sup>88</sup> Raising this amount at such an early date—before any votes were cast in any state—was considered the “entry fee” for mounting a serious campaign that could survive beyond the first few dates on the nomination schedule.<sup>89</sup> The heavily frontloaded schedule has made this early fundraising necessary because, with primaries and caucuses occurring so quickly in so many different states, once the delegate selection season begins there is almost no opportunity for candidates to do any further fundraising.<sup>90</sup> Federal campaign finance laws—particularly the \$250 limit on individual contributions, and the

---

86. See Anthony Corrado, *The Changing Environment of Presidential Campaign Finance*, in MEDIA AND MOMENTUM, *supra* note 18, at 220, 237, 245:

Candidates must now build organizations and conduct expensive media campaigns in a number of states simultaneously, sometimes beginning as early as mid-January, to attract the wide support needed to win primary contests, especially the crucial first primary in New Hampshire. Candidates must therefore accrue large sums of money before the beginning of February [of the election year] if they are to be assured of having the resources needed to wage an effective campaign.

87. See CLIFFORD W. BROWN, JR. ET AL., *SERIOUS MONEY: FUNDRAISING AND CONTRIBUTING IN PRESIDENTIAL NOMINATION CAMPAIGNS* 20 (1995).

88. See, e.g., *Republicans Scrambling for Money to Run*, NEW ORLEANS TIMES-PICAYUNE, Feb. 19, 1995, at A8; Cook, *supra* note 53, at 2483; Ronald D. Elving, *Gramm Launches Campaign Stressing Familiar Themes*, CONG. Q., Feb. 25, 1995, at 630.

89. See generally BROWN ET AL., *supra* note 87, at 20-22. In the event, the Republican candidates did raise more than \$100 million in 1995, with Dole leading the way by raising \$25 million. See Paul West, *GOP Race Could Be Over Almost As Soon As It Starts*, BALTIMORE SUN, Jan. 8, 1996, at 1A.

90. See Corrado, *supra* note 86, at 220, 237, 245. This appears to have been a problem for Lamar Alexander in 1996. After finishing third in both Iowa and New Hampshire, Alexander failed to raise sufficient additional money to fund a campaign that could challenge the front-runner Dole in the 15 states choosing their delegates over the two weeks following New Hampshire. See Richard Benedetto, *Alexander to End Bid for Presidency*, USA TODAY, Mar. 6, 1996, at 5A.

## The Presidential Primary and Caucus Schedule

availability of matching funds for all funds raised after January 1 of the year prior to the election—exacerbate the need for early fundraising.<sup>91</sup>

The early start to most candidates' campaigns and the daunting early fundraising demands combine to effectively preclude candidates from entering the race after the presidential election year begins. The limits on individual contributions make it almost impossible for a late entrant to raise the funds necessary to mount a serious challenge; and the provision of matching funds to candidates who start early means late entrants have to raise twice as much to catch up to their rivals. These factors further increase the pressure on all potential candidates to decide at a very early date whether to mount a presidential campaign.<sup>92</sup> Thus, a year before voting begins—before the issues, concerns, and circumstances relevant to voters can be accurately predicted—candidates who might be very appealing come election year are forced to decide whether to seek the presidency. While we may not care so much about the effect this has on candidates—after all, if a person reacts poorly or hesitantly to the varied and intense pressures associated with pursuing the presidency, then she is unlikely to be particularly well-suited to cope with the stresses of the office itself—the practical preclusion of late entries further exacerbates the consequences of frontloading for voters: the dynamics of the unregulated schedule push most candidates out of the race quickly, but there is no countervailing force encouraging, or even permitting, credible new candidates to enter the race at later stages.

### C. *For the Political System: Interstate Date Competition*

The unregulated nomination schedule also invites states to compete with one another to hold earlier and more concentrated primaries and caucuses. Whenever one state moves itself forward in the schedule, the pressure increases on other states to do the same, if those states wish to become or remain relevant to the process. Thus, much of the pre-1996 movement (see Table 4 and Appendix) was a reaction to California's 1993 decision to move its primary forward from its traditional date of early June to the end of March.<sup>93</sup> California, the nation's most populous state—and the state choosing the most delegates to the national nominating conventions—was dissatisfied with its

---

91. See Corrado, *supra* note 86, at 220, 222-24; Clyde Wilcox, *Financing the 1988 Prenomination Campaigns*, in *NOMINATING THE PRESIDENT*, *supra* note 41, at 91, 94.

92. There is evidence that the early, extensive fundraising demands of the unregulated schedule have deterred a number of prominent potential candidates from entering the race. See, e.g., *Quayle Out of Race for President*, *ARIZ. REPUBLIC*, Feb. 10, 1995, at A1 (discussing impact of fundraising considerations on decisions of Dan Quayle, Jack Kemp, and Dick Cheney not to seek 1996 Republican nomination).

93. See Ken Chavez, *California Looming Small for GOP Hopefuls*, *SACRAMENTO BEE*, Feb. 25, 1995, at A3.

inadequate role in the nomination process.<sup>94</sup> After California decided to choose its delegation more than two months earlier than in previous elections, all other states had to reevaluate their place on the schedule. So, for example, New York moved its primary from early April, which would have been after California's new date, to early March, jumping ahead of California by three weeks.<sup>95</sup> By the time all the movement had finished, so many states had leapt ahead of California that its late-March primary was still too late to influence the nomination.<sup>96</sup>

An increasingly prominent feature of this interstate date competition is the bitter jostling among states at the very head of the line. Both Iowa and New Hampshire faced strong threats to their positions in the run-up to 1996.<sup>97</sup> Louisiana scheduled its caucuses for February 6, six days before Iowa's. Among the tactics employed to deter Louisiana was the filing of a federal lawsuit in January 1996 by the Republican presidential candidate Morry Taylor. Taylor argued that before the Louisiana Republican Party could change the date of its caucuses, it had to get the U.S. Justice Department's approval.<sup>98</sup> Taylor's suit was unsuccessful, and Louisiana conducted its caucuses on February 6 as scheduled.<sup>99</sup>

New Hampshire's position was challenged by Delaware, which scheduled its primary for only four days after New Hampshire's.<sup>100</sup> As a Delaware Republican official explained, the early date was intended to allow the "small state . . . to have some impact and be an important primary state."<sup>101</sup> Yet New Hampshire feared that any importance Delaware might accrue would come at the cost of reducing New Hampshire's own. Delaware's move also

---

94. California has not decided a nomination since 1964. The last time California even had a significant impact was in 1972, when McGovern defeated Humphrey in the Democratic primary and clinched the nomination. See LOEVY, *supra* note 10, at 140.

95. After California's move, New York Governor Mario Cuomo encouraged his state's legislature to accelerate New York's primary. Cuomo explained his reasoning: "By moving our primary to the first Tuesday in March, New York will continue to be an important state in the primary process, which may encourage Washington, D.C. to pay closer attention to our needs as a state." Hadley & Stanley, *supra* note 40, at 158, 182. For more on the motivations behind states' moves of their primaries and caucuses, see LOEVY, *supra* note 10, at 41-45 (describing South Dakota's move of its primary from June to late February in 1988 and its prominence in 1988 and 1992 nomination campaigns); *id.* at 46-52 (describing Colorado's pre-1992 abandonment of its traditional June caucuses for March primary and its increased prominence and influence in nomination process); *id.* at 72 (describing Maryland's pre-1992 move from Super Tuesday to first Tuesday in March and greater prominence from its individual and earlier status); *id.* at 73-75 (describing Georgia's leap forward from Super Tuesday to first Tuesday in March in 1992 to gain relevance and help Clinton's candidacy); NORRANDER, *supra* note 5, at 195 (discussing California's abortive pre-1992 effort to move its primary forward to March).

96. See Chavez, *supra* note 93, at A3; Bill Stall, *Early State GOP Primary May Not Be Soon Enough*, L.A. TIMES, Jan. 29, 1995, at 1.

97. See Thomas Hardy, *Primaries Pit States Over Dates*, CHI. TRIB., Aug. 14, 1995, at 1.

98. *Judges Refuse to Stop Louisiana GOP Caucuses*, ORLANDO SENTINEL, Jan. 27, 1996, at A14.

99. *Id.*

100. See Michael Rezendes, *In Rush To Be Early, States Scramble Primary Picture*, BOSTON GLOBE, Dec. 18, 1995, at 1.

101. See Hardy, *supra* note 97, at 1.



## The Presidential Primary and Caucus Schedule

appeared to violate a New Hampshire law mandating that New Hampshire's primary be held at least seven days before any "similar" election.<sup>102</sup> When Delaware refused to abandon its preferred date, the New Hampshire Governor and Secretary of State joined state Republican Party officials in demonizing their challenger. The governor said threats to his state's role constituted an "attack on the people of New Hampshire and the tradition of the political primary system in this nation."<sup>103</sup> New Hampshire persuaded all but two presidential candidates to boycott the Delaware primary, allowing the Secretary of State to declare Delaware's primary insufficiently "similar" to New Hampshire's to conflict with New Hampshire's law. The Secretary of State adhered to this conclusion even after Delaware amended its ballot access laws to place the names of all candidates receiving federal matching funds on its primary ballot.<sup>104</sup>

Such unrestrained and entirely unregulated interstate competition is unusual in our political system. In environmental law, for example, concerns about a "race to the bottom," in which states competed with one another for industrial development by ratcheting down their environmental standards, led to the passage of the first federal environmental laws in the early 1970s.<sup>105</sup> In the context of presidential nominations, the states' race to be relevant is similarly problematic. The *process* of interstate date competition is detrimental, as it divides states against one another rather than promoting the national interest (which the president, after all, is elected to promote and protect). But even worse is the *result*: an irrational and heavily frontloaded nomination schedule, in which a small number of states repeatedly exercise disproportionate influence.

#### IV. POTENTIAL SOURCES FOR REFORMING THE PRESIDENTIAL NOMINATION SCHEDULE

The disproportionate influence of early states and the frontloading of the unregulated nomination schedule are clearly interrelated. Frontloading occurs because the benefits enjoyed by states like Iowa and New Hampshire create powerful incentives for all states to select their delegates early in the nomination schedule. The more frontloaded the schedule becomes, the greater

---

102. See N.H. REV. STAT. ANN. § 653:9 (1994).

103. See Richard L. Berke, *Arizona Moves Up Its Primary To Catch Political Limelight*, N.Y. TIMES, Jan. 30, 1995, at A10.

104. See *Delaware Primary to Have Full Slate Under New Law*, ORLANDO SENTINEL, Jan. 11, 1996, at A10; see also Leonard P. Stark, *You Gotta Be On It To Be In It: State Ballot Access Laws and Presidential Primaries*, 5 GEO. MASON L. REV. (forthcoming 1997).

105. See generally ROBERT V. PERCIVAL ET AL., ENVIRONMENTAL REGULATION: LAW, SCIENCE, AND POLICY 118 (1992) ("The federalization of environmental law was a product of concern that state and local authorities lacked the resources and political capability to control problems that were becoming national in scope.").

the influence of the early states grows, as candidates and voters in later states have less opportunity to do or learn anything to shake up the contest from the results established in the earliest states. All of this increases the influence of Iowa and New Hampshire. It is unlikely that either of these two complementary features of the present nomination schedule can be altered by any action the national parties, the state legislatures and state parties, or presidential candidates could take. Only the federal government possesses the necessary authority to implement reform of the nomination schedule that could give many more voters an increased opportunity for meaningful participation in the nomination of presidential candidates.

#### A. *National Parties*

It is frequently suggested that the only proper institutions for regulating the presidential nomination process are the national political parties.<sup>106</sup> While the national parties would certainly be appropriate reformers, the reality is that they lack sufficient power to impose a rational schedule on the other players in the presidential nomination game. History has demonstrated that the national parties cannot compel state parties and legislators or presidential candidates to comply with their notion of the proper schedule.

Until the last thirty years, the national parties largely refrained from instructing state parties and legislatures on any aspect of selecting delegates to the national conventions. For many years the national party rules covered only one subject relevant to presidential nominations: the allocation of delegates to each of the states. The Republican nomination process began to become more "nationalized" first, when, in 1916, the Republican National Committee amended its delegate allocation formula to give "bonus" delegates to states that had supported the Republican candidate at the previous presidential election.<sup>107</sup> More recently the Democrats have been the party most concerned with imposing national rules. In 1956, the Democratic National Convention decided that delegates to future conventions would be required to pledge to

---

106. See, e.g., AMERICAN BAR ASSOCIATION, PRESIDENTIAL SELECTION at xi, 147, 150 (Franklin J. Havelick ed., 1982) (encouraging national parties to shorten delegate selection period and limit number of days on which primaries can be held); see also TERRY SANFORD, A DANGER OF DEMOCRACY: THE PRESIDENTIAL NOMINATING PROCESS 116 (1981) ("There is no force other than party determination that can bring some sense to the jumble of state primaries, except Congress, and congressional regulation is certainly not desirable."). Naturally, the parties view themselves as the only proper regulators. For example, the 1976 Democratic National Convention passed the following resolution:

Resolved further that this Convention, recognizing the Responsibility of our National Party to provide for our Presidential nominating process, urges the U.S. Congress to refrain from intervening in these Party affairs unless and until the National Party requests legislative assistance, and in no case should Congress legislate in any manner which is in derogation of the right of a National Party to mandate its own affairs.

SANFORD, *supra*, at 128-29.

107. See REITER, *supra* note 81, at 33; see also Segal, *supra* note 71, at 875-76.

## The Presidential Primary and Caucus Schedule

support the Democratic presidential nominee in the general election.<sup>108</sup>

The Democratic Party's nationalizing efforts assumed a substantially greater intensity following the 1968 national convention. The convention that year nominated Vice President Hubert Humphrey, who had not participated in any presidential primaries but had instead amassed the necessary delegates solely in caucus states—where party bosses still controlled delegate selection.<sup>109</sup> After Humphrey narrowly lost to Richard Nixon, the party turned its attention to reforming its presidential nomination process. In order to make the process more responsive to the preferences of the wider party membership, the national party implemented guidelines abolishing practices that had allowed party bosses to control the selection of their states' delegations. Among other reforms, the national party adopted public notice and quorum requirements for all meetings relevant to delegate selection, prohibited proxy voting at such meetings, and ordered state parties to ensure that minority views were adequately represented at all stages of the delegate selection process.<sup>110</sup>

Since 1980 the DNC has tried, and largely failed, to regulate the nomination schedule. Prior to the 1980 delegate selection season, the DNC adopted Rule 10A, which required all states to select their delegates within a window running from mid-March to mid-June. Beginning in 1980, however, and continuing in each subsequent election, Iowa, New Hampshire, and Maine have been exempted from the Rule 10A window.<sup>111</sup> These exemptions have been retained despite the DNC's best efforts to eliminate them. For example, prior to the 1984 election the DNC threatened not to seat Iowa and New

---

108. This was a response to the defection of many Democrats to the 1948 Dixiecrat candidacy of Senator Strom Thurmond. See Segal, *supra* note 71, at 876.

109. Primaries did have an impact on the 1968 race: President Johnson's surprisingly narrow victory in the New Hampshire primary, against anti-war candidate Senator Eugene McCarthy, prompted the president to decide not to seek re-election. See POLSBY, *supra* note 1, at 20-21.

110. See *The Official Guidelines of the Commission on Party Structure and Delegate Selection* printed in POLSBY, *supra* note 1, at 40-52; see also Ronald D. Eastman, Remarks, *National Political Party Selection of Presidential Nominees: Constitutional and Policy Questions*, 10 N.Y.U. REV. L. & SOC. CHANGE 37, 38 (1980-81); G. Joseph Vining, *Delegate Selection Reform and the Extension of Law into Politics*, 60 VA. L. REV. 1389, 1395-401 (1974). The McGovern-Fraser Commission, which formulated the initial post-1968 guidelines, had no independent authority; its report called on state parties to pass rules implementing its recommended guidelines. See Segal, *supra* note 71, at 883-84. However, the expectation that the National Convention's Credentials Committee would refuse to seat state delegations not chosen in accordance with the guidelines caused most state parties to comply. See *id.*

The Democrats further refined their national guidelines for delegate selection following every presidential election between 1972 and 1984. The Democratic reform commissions, in chronological order, were: Commission on Party Structure and Delegate Selection (1969-72), chaired by Senator George McGovern and Representative Donald Fraser; Commission on Delegate Selection and Party Structure (1972-73), chaired by Baltimore City Councilwoman Barbara Mikulski; Commission on Presidential Nomination and Party Structure (1975-78), chaired by Michigan Democratic Party Chair Morley Winograd; Commission on Presidential Nomination (1981-82), chaired by North Carolina Governor James Hunt; Fairness Commission (1985-86), chaired by former South Carolina party chairman Donald Fowler. See Kamarck & Goldstein, *supra* note 13, at 194 n.1.

111. See Buell, *supra* note 15, at 312.

Hampshire's delegations at the convention if they were selected before mid-March.<sup>112</sup> Eventually, however, the national party relented, and the two states chose their delegates at their traditionally early dates.<sup>113</sup> Four years later the Winograd Commission set the rules for the 1988 contest. "The Winograd Commission was the most serious attempt by either political party to end New Hampshire's special status," but this attempt failed as well.<sup>114</sup> That year, in fact, two more states (Minnesota and South Dakota) thwarted the DNC and scheduled their primaries outside the 10A window. The national party found it had no effective means to enforce its wishes.<sup>115</sup> More recently, Delaware held its 1996 primary outside of the March to June window, disregarding the DNC's request that it not do so and accepting the sanction of a reduction in the size of its delegation.<sup>116</sup>

Recognizing the lack of coercive power possessed by national parties, the 1996 Republican National Convention decided to adopt a new approach toward schedule reform. Rather than mandate that states hold their primaries and caucuses within a certain time frame or in a particular order, the Republicans are offering states which choose their delegates late in the schedule in 2000 the opportunity to increase the size of their convention delegation. If a state holds its primary or caucuses after mid-March, its delegation will be increased by 5%; if it waits until after mid-April, the increase is 7.5%; and if the state delays until at least May 15, it can send an extra 10% delegates to the convention.<sup>117</sup> Unlike the Democrats' Rule 10A, the Republicans' incentive approach wisely recognizes the substantial limitations on what national parties

---

112. See *id.* at 317, 320, 338-39.

113. See Miriam Davidson, *Why States Push and Shove To Host First '96 Primary*, CHRISTIAN SCI. MONITOR, Feb. 2, 1995, at 3.

114. BRERETON, *supra* note 29, at 197.

115. See NORRANDER, *supra* note 5, at 34. The DNC required these states to ratify their early primary results in a caucus held within the window or to refrain from releasing the primary results until the window period opened. See also Mayer, *supra* note 18, at 35; Buell, *supra* note 15, at 339-42 (concluding parties lack sufficient power to force states to comply with scheduling rules); AMERICAN BAR ASSOCIATION, *supra* note 106, at 75 (containing statement of Ronald H. Brown, Deputy Chairman, Democratic National Committee). Brown speculated that if the DNC had not given New Hampshire an exemption from the Rule 10A window, the state could have held a non-binding primary on its traditional early date, and then the media and candidates would likely treat this primary as being as important as the delegate-selection primary.

116. See Nancy Kesler, *All's Quiet on the Democratic Front*, WILMINGTON NEWS J., Feb. 25, 1996, at A8; see also Andrew E. Busch & James W. Caesar, *Does Party Reform Have a Future?*, in MEDIA AND MOMENTUM, *supra* note 18, at 330, 339:

[T]he [national] Democratic Party could ban delegates from the national convention who were not selected in accord with national party rules. But the Democratic Party could not force states to change their laws; and when states threatened to resist the national Democratic Party—as some of them now [post-1980] began to do—the national party faced the risk of securing compliance only at the politically self-defeating cost of alienating a large part of those states' voters.

117. See Finlay Lewis, *GOP Panel Oks Rewarding States That Hold Later Primaries*, SAN DIEGO UNION-TRIB., Aug. 10, 1996, at A10.

## The Presidential Primary and Caucus Schedule

can mandate. However, the new Republican rule is unlikely to succeed in counteracting the strong incentives for states to hold early primaries and caucuses. The last two seriously contested Republican nominations were effectively decided before March 15.<sup>118</sup> A state wanting to have any influence on the process will not be dissuaded by the prospect of sending 5% more delegates to the convention. It is inconceivable that a state like California—which already selects more than four times as many delegates as Iowa and New Hampshire combined—will be enticed to delay its primary in exchange for the opportunity to hold an even bigger yet still unimportant primary.

### B. *State Legislatures and Parties*

As has already been seen, in the current unregulated environment, most states find it in their interests to seek influence in the nomination contests by choosing their delegates earlier and earlier.<sup>119</sup> The perceived benefits of pursuing their individual desires to be important to the presidential nomination process supersede any countervailing interest states might have in cooperating to improve that process. “No single state planned this new schedule, but neither is any state in a position to stop it. Each state acting rationally on its own has produced an overall arrangement that many states might have preferred to avoid.”<sup>120</sup> Any state-initiated reform lacking the unanimous support of all states is unlikely to reduce the disproportionate influence of early states or frontloading—and unanimous support is practically impossible when the rewards for noncompliance appear so attractive. Moreover, given the tenacity with which Iowa and New Hampshire have always defended their first-in-the-nation status, neither state can be expected to voluntarily relinquish its position.<sup>121</sup>

### C. *Presidential Candidates*

Presidential candidates, unlike parties and states, are not usually repeat players in presidential politics. Candidates are also competitors. Both of these realities make candidates extremely improbable agents of nomination schedule reform. In fact, candidates can safely be relied upon to oppose any major reform. Precisely because of the disproportionate influence and importance of the early states, presidential candidates are generally loathe to do anything that

---

118. See Table 5.

119. See *supra* Section II.B.

120. Busch & Caesar, *supra* note 116, at 345; see also Eugene Gressman, *Observation: Uniform Timing of Presidential Primaries*, 65 N.C. L. REV. 351, 357 (1987).

121. Casting the New Hampshire delegation's votes at the 1996 Republican National Convention, Governor Steve Merrill offered, “Greetings from New Hampshire, the first-in-the-nation primary state, now and forever.” See Transcript, Republican National Convention, Aug. 15, 1996, available in WESTLAW, Convention96 library, 1996 WL 461074 (F.D.C.H.).

might offend party officials and voters in these states. Thus, when the DNC attempted in 1984 to force Iowa and New Hampshire into its Rule 10A window, all of the Democratic candidates sided with the two states in resisting the national party.<sup>122</sup> Similarly, in 1996, only two candidates campaigned in Louisiana and Delaware, the states threatening Iowa and New Hampshire's first-in-the-nation roles.<sup>123</sup> In response to not-so-subtle pressures from Iowa and New Hampshire, all of the other candidates boycotted Louisiana and Delaware.<sup>124</sup>

#### D. Federal Government

If the consequences of the unregulated presidential nomination schedule need to be ameliorated, it is the institutions of the federal government that are most likely to be capable of accomplishing the necessary reforms.<sup>125</sup> This conclusion arises both by default—all of the other potential sources of reform lack the incentives and/or the authority to institute effective reform—and as a matter of political theory. The president is our one national officer, elected by and representing the entire nation. It is most legitimate that the federal government be the body to correct any flaws in the selection process for the nation's chief executive.

Federal government reforms could arise from either of two sources. First, and less likely, the federal courts could be asked to intervene. This might be done in the form of a lawsuit filed by voters in states electing their delegates late in the nomination schedule on the grounds that the unregulated schedule infringes their right to vote and to equal protection of the laws. More probable,

122. See Buell, *supra* note 15, at 327-28. Given the dismal track record of efforts by states and national parties to reduce Iowa and New Hampshire's role, and given the abundant evidence that the nomination is unattainable if one fares poorly in both Iowa and New Hampshire, a rational candidate will be instinctively reluctant to associate his or her campaign with efforts to reform the schedule. The downside of supporting reform—angering large numbers of party members in Iowa and New Hampshire—is certain, while the potential payoff—in increased support from party members and officials in other states—is highly contingent.

123. Only Senator Phil Gramm and Pat Buchanan contested the Louisiana caucuses. Gramm's role in creating the early Louisiana caucuses, and his willingness to campaign there, appeared to have contributed to his poor showing in Iowa and his subsequent early exit from the race. See, e.g., Jack W. Germond & Jules Witcover, *Fiasco in Louisiana: Gramm Struggles to Survive*, BALTIMORE SUN, Feb. 9, 1996, at 19A. The winner of the Delaware primary, Steve Forbes, was one of only two candidates (the other was Alan Keyes) to campaign in that state. See, e.g., R.W. Apple, Jr., *Steve Forbes: Delaware Backs Him Because He Was There*, N.Y. TIMES, Feb. 26, 1996, at B7.

124. See Derrick Z. Jackson, *In Politics, Who Goes First?*, BOSTON GLOBE, Jan. 5, 1996, at 19; see also Charles T. Manatt, *A New Primary System*, in BEFORE NOMINATION: OUR PRIMARY PROBLEMS 119 (George Grassmuck ed., 1985) [hereinafter BEFORE NOMINATION] ("Imagine the plight of candidates who had to campaign in the New Hampshire primary after trying to abolish it. . . . The issue . . . would be why they tried to deprive the state of its place in the news . . .").

125. See, e.g., Gressman, *supra* note 120, at 353 n.120 (stating Congress is "the one body capable of assuring any degree of uniformity among the states in the timing of federal elections"); Manatt, *supra* note 124, at 118 ("Congressional action not only is the best way to deal with the length of the process but may be the only way.").

## The Presidential Primary and Caucus Schedule

and even more legitimately, Congress might exercise its constitutional authority over the federal electoral system to regulate the timing of delegate selection. The next three Parts analyze the bases for judicial and Congressional power to reform the nomination schedule and how such power might be exercised.

### V. A POSSIBLE CONSTITUTIONAL CHALLENGE TO THE UNREGULATED PRESIDENTIAL NOMINATION SCHEDULE

The Supreme Court has stated, “The concept of ‘we the people’ under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications.”<sup>126</sup> The unregulated presidential nomination schedule arguably violates this principle. By consistently granting disproportionate influence to voters in Iowa, New Hampshire, and other early states, the heavily frontloaded schedule appears to create a preferred class of voters.

As the level of frustration increases in states doomed to irrelevancy under the current schedule, voters or state party and officials in these states may decide to seek relief in the federal courts.<sup>127</sup> Indeed, they may find in some of the Court’s voting rights jurisprudence an invitation to do just that. In thirty years of cases beginning with *Reynolds v. Sims*, the Court has explained that “[f]ull and effective participation by all citizens” in government requires “that each citizen have an equally effective voice in . . . election[s].”<sup>128</sup> In both primaries and general elections, the Court has recognized and protected “the right to cast a meaningful vote for the candidate of one’s choice.”<sup>129</sup> Because

---

126. *Gray v. Sanders*, 372 U.S. 368, 379-80 (1963).

127. Officials in many of the states that moved their primaries forward for 1996 but remained unimportant in the nomination contests appear to have grown ever more frustrated. *See, e.g.*, Harden & Balz, *supra* note 57, at A6 (reporting complaint of California Democratic Party chairman that state’s primary was not early enough for state to benefit); Thomas, *supra* note 56, at A13 (reporting complaint of Ohio’s Secretary of State about lack of influence of state’s primary, despite move from June to March); Craig Gilbert, *Republican Nominee Virtually Decided*, MILWAUKEE J. SENTINEL, Mar. 14, 1996, at 2 (stating that Wisconsin primary could be “most inconsequential since 1964” even though it was three weeks earlier than in previous elections).

128. *Reynolds v. Sims*, 377 U.S. 533, 565 (1964); *see also id.* at 555 (“[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.”). *But see Gray*, 372 U.S. at 386 (Harlan, J., dissenting) (“[I]t is hard to take seriously the argument that ‘dilution’ of a vote . . . can, without more, be analogized to an impairment of the political franchise by ballot box stuffing or other criminal activity . . . or to the disenfranchisement of qualified voters on purely racial grounds.”).

129. *Burdick v. Takushi*, 504 U.S. 428, 445 (1992) (Kennedy, J., dissenting); *see also Reynolds*, 377 U.S. at 555 (1964) (“The right to vote freely for the candidate of one’s choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.”). Most recently, in *U.S. Term Limits, Inc. v. Thornton*, 115 S. Ct. 1842 (1995), the Court held that a state constitutional amendment limiting the number of terms the state’s U.S. Senators and Representatives could serve impermissibly limited both the right of a candidate to seek office and the right of voters to vote for the candidate of their choice. The *Term Limits* Court emphasized the “egalitarian concept that the opportunity to be elected [i]s open to all” as a “fundamental idea” embodied in the Constitution. *Id.* at 1850. It also reiterated earlier decisions holding that voters have a right to “choose whom they please to govern them.” *Id.* at 1845 (discussing *Powell v. McCormack*,

of the integral role the nomination process plays in determining who will be president, one's right to vote for president may not be considered meaningful unless that right includes the opportunity to fully participate in the nomination stage of the election. The Court has recognized this reality. "As a practical matter," it has said, "the ultimate choice of the mass of voters is predetermined when the nominations have been made."<sup>130</sup> And a lower court has added, "The presidential nominating process can and should be one of the most readily available and most effective means of accomplishing significant political change in this country."<sup>131</sup>

Voters or officials in states holding their primaries or caucuses late in the schedule might claim that their constitutional rights to cast equal and meaningful votes, and to vote for the candidate of their choice, are being infringed because the nomination is effectively decided before these voters go to the polls and since most candidates have, therefore, exited the race by that point.<sup>132</sup> To prevail, the late-state plaintiffs would need to convince a court that: (1) the process of choosing the Democratic or Republican Party presidential nominee must comply with the Constitution; (2) there are no other jurisdictional or procedural bars to federal court adjudication of their claim; and (3) on the merits, the effects of the unregulated schedule violate equal protection and the right to vote for the candidate of one's choice. Even if the plaintiffs might be found to fail on one or more of these points, it is nonetheless useful to analyze the arguments that could be made in challenging the constitutionality of the current schedule.

---

395 U.S. 486, 547 (1969)).

130. *Newberry v. United States*, 256 U.S. 232, 285 (1921) (Pitney, J., concurring).

131. *Maxey v. Washington State Democratic Comm.*, 319 F. Supp. 673, 678 (W.D. Wash. 1970); see also *id.* at 680 (calling presidential nominating process "a critical stage of the state-created presidential-election process"); Victor Williams & Alison M. MacDonald, *Rethinking Article II, Section I and Its Twelfth Amendment Restatement: Challenging Our Nation's Malapportioned, Undemocratic Presidential Election Systems*, 77 MARQ. L. REV. 201, 246-47 (1994) ("[C]onsidering the expansive language of the Court's apportionment decisions, the fundamental right of franchise equality must be applied to the presidential selection systems of the national government."); Note, *Judicial Intervention in the Presidential Candidate Selection Process: One Step Backwards*, 47 N.Y.U. L. REV. 1184, 1188 (1972) (stating that "full effectuation of voting rights carries over quite naturally into the area of political party regulation") [hereinafter Note, *Judicial Intervention*]; Note, *Constitutional Safeguards in the Selection of Delegates to Presidential Nominating Conventions*, 78 YALE L.J. 1228, 1251 (1969) (stating that Equal Protection includes right to "effective political participation" in presidential nomination contests). *But see* *Williams v. Rhodes*, 393 U.S. 23, 43 (1968) (Harlan, J., concurring) (arguing that Equal Protection clause does not apply to method of selecting presidential electors, so presumably also would not apply to presidential nomination process); *infra* Section V.A (discussing objections to treating nomination activities as state action).

132. Admittedly, these are subtle forms of alleged discrimination. Yet, the Court has cautioned that "the Constitution forbids 'sophisticated as well as simple-minded modes of discrimination.'" *Reynolds*, 377 U.S. at 563 (citations omitted).



## The Presidential Primary and Caucus Schedule

### A. *The Applicability of the Constitution to the Presidential Nomination Process*

Only state action is subject to the commands of the Constitution.<sup>133</sup> In order to reach the merits of the late-state plaintiffs' constitutional claim, a court would first have to find that the presidential nomination process constitutes state action.

It is well-established that nominating a candidate for Congressional or statewide office by means of a primary election, caucuses, or state convention is state action.<sup>134</sup> This is as true for presidential delegates as it is for senatorial candidates.<sup>135</sup> Where, as in most states, state law dictates the manner of choosing the state's delegates to the national nominating conventions, state action is clearly present.<sup>136</sup> Even when the manner of choosing presidential delegates is determined by the party and not the state, state action is likely to be found in the statewide nominating process because of state entanglement with the process (for example, in the form of preferential general election

---

133. See *Ripon Society Inc. v. National Republican Party*, 525 F.2d 567, 574 (D.C. Cir. 1975) (en banc); Carol Skornicka, *State Action in Presidential Candidate Selection*, 1976 WIS. L. REV. 1269, 1269; Arthur M. Weisburd, *Candidate-Making and the Constitution: Constitutional Restraints On and Protections of Party Nominating Methods*, 57 S. CAL. L. REV. 213, 251 (1984) (“[A]bsent state regulation, party nominating activities cannot be classified as state action. . . . [They] are entirely free from the restrictions the fourteenth and fifteenth amendments impose upon governments.”).

134. See *United States v. Classic*, 313 U.S. 299 (1941); *Stassen for President Citizens Comm. v. Jordan*, 377 U.S. 914, 927 (1964) (Douglas, J., dissenting); *Redfeare v. Delaware Republican State Comm.*, 502 F.2d 1123, 1127 (3d Cir. 1974). On this point, also see the series of decisions known as the White Primary cases, in which the Court firmly established the unconstitutionality of racial discrimination in primary elections. See *Nixon v. Herndon*, 273 U.S. 536, 540 (1927) (striking down Texas statute barring black party members from voting in congressional primaries); *Nixon v. Condon*, 286 U.S. 73, 88 (1932) (invalidating, on Equal Protection grounds, state statute permitting state party executive committee to exclude blacks from voting in primary); *Grovey v. Townsend*, 295 U.S. 45, 49 (1935) (upholding state party's right, acting through convention, to prohibit participation in primary on basis of race; no state action and, therefore, no constitutional violation); *Smith v. Allwright*, 321 U.S. 649, 663 (1943) (overruling *Grovey* and holding that state convention decision to prohibit blacks from participating in party primary violates Fifteenth Amendment); *Terry v. Adams*, 345 U.S. 461, 469 (1953) (striking down, as violation of Fifteenth Amendment right to vote, private group's exclusion of blacks from pre-primary straw poll, whose winner almost always became party nominee and general election winner).

135. *Buckley v. Valeo*, 424 U.S. 1, 14 n.16 (1976); *O'Brien v. Brown*, 409 U.S. 1, 13, 15 (1972) (Marshall, J., dissenting).

136. See *Bullock v. Carter*, 405 U.S. 134, 140 (1972) (stating that when primaries are “the creature of state legislative choice” they constitute state action); *Gray v. Sanders*, 372 U.S. 368, 374-75 (1963) (stating that when state “adopts the primary as a part of the public election machinery” . . . that state regulation of this preliminary phase of the election process makes it state action”) (citation omitted); *Rockefeller v. Powers*, 74 F.3d 1367, 1374 (2d Cir. 1996) (finding state action in ballot access requirements for presidential primary where those requirements were established by state law). By the same reasoning, state action would also be present if the federal government were to require states to hold primaries or caucuses or if it instituted a national primary or regional primaries. See *Pierce*, *supra* note 3, at 358. In that case, however, the equal protection claim would be brought under the Fifth and not the Fourteenth Amendment, as the Fourteenth Amendment only applies to states.

ballot access for party nominees),<sup>137</sup> public financing of nomination campaigns,<sup>138</sup> and the fact that the nominating process is “an integral part of the entire [presidential] election process.”<sup>139</sup>

Just because the selection of delegates constitutes state action does not necessarily mean that the overall presidential nomination process also constitutes state action. Obviously, state delegate selection is merely one step in the process that results in the formal nomination of a party's presidential candidate.<sup>140</sup> While it seems clear that within each state the process of selecting convention delegates must be conducted in a manner complying with the Constitution, it is an entirely separate matter whether the Constitution governs what those delegates subsequently do. It is crucial to the late-state plaintiffs' case to persuade the Court that the Constitution applies beyond the delegate selection stage, because otherwise there is no basis for finding that a voter has any rights that might be infringed by actions taken in other states. The claim would then have to be dismissed.

Courts have come closest to addressing this question in cases considering whether the Constitution governs actions taken by national nominating conventions. All three of the cases that have reached the Supreme Court have

---

137. See *Morse v. Republican Party of Virginia*, 116 S. Ct 1186, 1195 (1996); LAURENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* § 13-23, at 790 (endorsing this “political benefit” argument for finding state action in nomination activities); Note, *One Man, One Vote and Selection of Delegates to National Nominating Conventions*, 37 U. CHI. L. REV. 535, 544 (1970) (“[T]he presidential nomination system does effectively narrow the electoral choice to two. The state acquiesces in and gives legal effect to this narrowing process by placing the candidate's name on the ballot.”). But see *Pierce*, *supra* note 3, at 364 (rejecting argument that preferential ballot access of nominees makes nomination process state action); Weisburd, *supra* note 133, at 251 (same). Professor Tribe suggests that parties could nominate free from the constraints imposed on state action if they refused the preferential ballot access. See TRIBE, *supra*, § 13-25, at 796 n.8.

138. See *Ripon Society Inc. v. National Republican Party*, 525 F.2d 567, 576 (D.C. Cir. 1975) (en banc) (plurality opinion) (suggesting that federal financing of presidential nomination campaigns may make them state action). More recent decisions on the general relationship between public funding and state action may undermine this argument. See *Blum v. Yaretsky*, 457 U.S. 991 (1982) (holding that privately owned, heavily regulated, and almost entirely state-financed nursing home is not always state actor); *Rendell-Baker v. Kohn*, 457 U.S. 830, 839-43 (1982) (holding same for school in same circumstances); see also *Pierce*, *supra* note 3, at 368; Weisburd, *supra* note 133, at 235.

139. *Storer v. Brown*, 415 U.S. 724, 735 (1974) (explaining that primary required by California law was “not merely an exercise or warm-up for the general election but an integral part of the entire election process, the initial stage in a two-stage process by which the people choose their public officers”) (footnote omitted); see also Ronald D. Rotunda, *Constitutional and Statutory Restriction on Political Parties in the Wake of Cousins v. Wigoda*, 53 TEX. L. REV. 935, 962-63 (1975) (“Integral parts of the electoral process are by that fact state action, and their review is a justiciable issue.”); Note, *Judicial Intervention*, *supra* note 131, at 1207. Nomination processes can be state action even if the major party nominees do not always win the general election. Although some of the early cases concerning nominations seemed to place importance on the inevitability of a particular party's nominee winning office, later cases clarified that nominations are no less state action in competitive states than they are in one-party states. See, e.g., Note, *supra* note 137, at 539. Thus, even if the possibility arises of a third-party or independent candidate being elected president—perhaps without participating in any formal nomination process—that would not diminish the argument that nomination activities, when they do occur, are state action.

140. Among the other steps are the allocation of delegates to each of the states and the delegates' formal vote at the national convention.

## The Presidential Primary and Caucus Schedule

been decided without reaching the merits of the issue of the applicability of the Constitution. In *O'Brien v. Brown*, the Court granted a stay of a D.C. Circuit Court of Appeals order that would have required the 1972 Democratic National Convention to seat a particular slate of disputed delegates.<sup>141</sup> Although the Court expressed “grave doubts” about the propriety of the circuit court’s interference with the national convention’s deliberations, it explicitly refrained from resolving whether the Constitution applies to convention actions.<sup>142</sup> The Court appeared to be motivated to grant the stay largely by its discomfort with the fact that the entire litigation was occurring over the course of two hectic days while the convention itself was in session—and before the convention had even decided whether to seat the delegates at issue or not.<sup>143</sup> Barely a month after *O'Brien*, in *Republican State Central Committee of Arizona v. Ripon Society Inc.*, Justice Rehnquist stayed a district court injunction which would have prohibited the 1972 Republican National Convention from adopting a particular delegate allocation formula for the 1976 convention.<sup>144</sup> Although Justice Douglas had earlier denied the same request for a stay, Justice Rehnquist thought the matter could only be preserved for judicial review by granting the stay and allowing the convention to choose its preferred formula.<sup>145</sup> Like *O'Brien*, *Ripon Society* was a purely procedural decision reached under severe time constraints. Finally, in resolving another credentials challenge in *Cousins v. Wigoda*, the Court expressly reserved the question of “whether the decisions of a national political party in the area of delegate selection constitute state or government action.”<sup>146</sup>

The few relevant lower court precedents mostly involve challenges to the formulas used by the national parties to determine how many delegates each

---

141. 409 U.S. 1, 5 (1972). The case arose out of a dispute over delegates elected in California’s presidential primary. California had held a winner-take-all primary, which the convention’s Credentials Committee had preliminarily decided violated the party rule favoring proportional representation primaries. When the Credentials Committee recommended that the Convention refuse to seat California’s delegation, Senator George McGovern—the winner of the state’s winner-take-all primary—asked the district court to enjoin the Convention from accepting the Credentials Committee’s recommendation. The district court dismissed the claim and denied relief, but the circuit court reversed. The party then sought and received a stay of the circuit court order from the Supreme Court. *See id.* at 2-3.

142. *Id.* at 4-5 (not deciding whether action of Credentials Committee is state action).

143. *See id.* (“[T]he Court is unwilling to undertake final resolution of the important constitutional questions presented without full briefing and argument and adequate opportunity for deliberation . . .”).

144. 409 U.S. 1222, 1227 (1972).

145. *See id.* at 1225-27.

146. 419 U.S. 477, 483 n.4 (1975). *Cousins* presented the Court with two competing slates of delegates, each contending it should represent the city of Chicago at the 1976 Democratic National Convention. The Wigoda slate had been chosen first, in a primary conducted in accordance with state law but in conflict with the requirements of the national party rules. Later the Cousins slate was chosen via a process acceptable to the national party. The Supreme Court refused to require the convention to seat the Wigoda delegates and instead upheld the national party’s endorsement of the Cousins slate. The associational rights of the national party were held to be superior to Illinois’s interest in dictating how the state’s delegates would be chosen.

state is permitted to send to the national nominating convention. In the earlier of these cases, the courts found that allocating delegates is state action, so the allocation formulas had to comply with the Equal Protection Clause.<sup>147</sup> However, in cases since the Supreme Court's decisions in *O'Brien* and *Ripon Society*, the lower courts have refused to address whether delegate allocation must comply with the Constitution,<sup>148</sup> usually assuming for purposes of the opinion that it must.<sup>149</sup>

It is difficult to predict whether the late-state plaintiffs would be able to persuade a court that the Constitution applies to the overall process of nominating a presidential candidate. Perhaps the most likely result is that, like the recent lower court decisions just described, a court would prefer to decide the case on the merits and simply assume the applicability of the Constitution.<sup>150</sup>

## B. *Other Jurisdictional or Procedural Bars*

### 1. *Political Question*

The political question doctrine bars a federal court from resolving an issue the resolution of which either is clearly committed to another branch of government or would involve the court in making policy determinations clearly

147. See *Bode v. National Democratic Party*, 452 F.2d 1302, 1304-05 (D.C. Cir. 1971) (holding that allocation formula based on each state's Electoral College votes and party's strength in each state complies with Equal Protection clause); *Georgia v. National Democratic Party*, 447 F.2d 1271, 1276 (D.C. Cir. 1971) (holding that delegate allocation formula based on number of party adherents in each state, and not simply based on state population, complies with Equal Protection Clause); see also *Irish v. Democratic-Farmer-Labor Party*, 399 F.2d 119 (8th Cir. 1968) (not addressing state action question in finding that Equal Protection clause only applies to precinct-level caucuses and not to later process of translating those first-level results into actual convention delegation); *Maxey v. Washington State Democratic Committee*, 319 F. Supp. 673, 678 (W.D. Wash. 1970) (finding selection of delegates to state and national convention is state action). But see *Lynch v. Torquato*, 343 F.2d 370, 372 (3d Cir. 1965) (finding no state action in purely internal party activity of selecting party chairman); *Smith v. State Executive Comm.*, 288 F. Supp. 371, 374 (N.D. Ga. 1968) (finding no state action in political party's method of selecting convention delegates).

148. See *Bachur v. Democratic Nat'l Party*, 836 F.2d 837, 841-42 (4th Cir. 1987); *Wymbs v. Republican State Executive Comm. of Florida*, 719 F.2d 1072, 1080-81 (11th Cir. 1983); *Ripon Society, Inc. v. National Republican Party*, 525 F.2d 567, 578, 586 (D.C. Cir. 1975) (en banc).

149. See *Bachur*, 836 F.2d at 841-42; *Ripon Society*, 525 F.2d at 578.

150. The near-unanimous conclusion among commentators who have considered other possible constitutional challenges to the presidential nomination process—not involving the nomination schedule—is that state action is present. See *TRIBE*, *supra* note 137, § 13-25, at 790; Comment, *Constitutional Reform of State Delegate Selection to National Political Party Conventions*, 64 *Nw. U. L. REV.* 915 (1970); Joseph L. Rauh, Jr. et al., *National Convention Apportionment: The Politics and the Law*, 23 *AM. U. L. REV.* 1, 3-10 (1973); Skornicka, *supra* note 133, at 1281; Note, *Delegate Apportionment to National Political Party Conventions*, 23 *SYRACUSE L. REV.* 919 (1972) [hereinafter Note, *Delegate Apportionment*]; Note, *supra* note 137, at 541; Note, *One Man-One Vote in the Selection of Presidential Nominating Delegates by State Party Convention*, 5 *U. RICH. L. REV.* 349, 356 (1971) [hereinafter Note, *Selection by State Party Convention*]. But see *Pierce*, *supra* note 3, at 364; *Weisburd*, *supra* note 133, at 251.

## The Presidential Primary and Caucus Schedule

requiring exercise of non-judicial policy discretion.<sup>151</sup> However, questions concerning the political process are not per se political questions. In particular, claims involving apportionment and voting rights are clearly not political questions. As early as 1892, the Supreme Court rejected the contention that “all questions connected with the election of a presidential elector are political in their nature” and, thereby, nonjusticiable.<sup>152</sup> Thirty years later, when Texas cited the political question doctrine in defending its statute excluding blacks from voting in primaries, Justice Holmes dismissed the defense as “little more than a play upon words.”<sup>153</sup> Cases decided more recently have reiterated that suits seeking vindication of “political rights” are not necessarily “political questions.” Subsequently, the federal courts have uniformly refused to rely on the political question doctrine to dismiss claims alleging dilution of voting rights.<sup>154</sup> There is no reason to expect a political question defense to be any more successful in countering the late-state plaintiffs’ constitutional challenges to the presidential nomination schedule.<sup>155</sup>

### 2. *Ripeness and Mootness*

A seemingly more intractable procedural problem concerns the timing of any constitutional challenge to the nomination schedule. A claim filed by a late-state voter would probably be unripe at any point before the nomination was effectively decided and a number of formerly viable candidates ceased campaigning. Prior to that point, the alleged injury to the late-state voter would be merely speculative, since it is theoretically possible that any given contest will be competitive through the end of the nomination schedule. But if the late-state voter has to wait to bring her claim until after it is clear who her party’s presidential nominee will be, her case might then be dismissed for mootness.

The probable way the plaintiffs and the court would deal with this dilemma would be to recognize that the suit could not yield adequate relief in the election year in which it is brought. Rather, the plaintiffs could seek—and the court could award—a declaratory judgment that the unregulated schedule unconstitutionally infringes the rights of late-state voters and order the parties,

---

151. See *Baker v. Carr*, 369 U.S. 186, 217 (1962).

152. *McPherson v. Blacker*, 146 U.S. 1, 23 (1892) (finding Michigan’s method of electing presidential electors by Congressional District, and not on statewide basis, to be constitutional).

153. *Nixon v. Herndon*, 273 U.S. 536, 540 (1927).

154. See, e.g., *Williams v. Rhodes*, 393 U.S. 23, 28 (1968) (dismissing political question defense—in response to equal protection challenge to presidential ballot access laws—with “very little discussion”); *Bachur v. Democratic National Party*, 836 F.2d 837 (4th Cir. 1987). The D.C. Circuit has twice found challenges to decisions of national nominating conventions not to be nonjusticiable political questions, see *Bode v. National Democratic Party*, 452 F.2d 1302 (D.C. Cir. 1971); *Georgia v. National Democratic Party*, 447 F.2d 1271 (D.C. Cir. 1971), but in a later case it chose to avoid the political question issue, see *Ripon Society*, 525 F.2d at 567.

155. See generally *Pierce*, *supra* note 3, at 370 (criticizing judicial intervention in presidential nomination process but admitting that political question doctrine is “clearly inapplicable”).

states, and/or Congress to reform the process in time for the next presidential election. Because the plaintiffs' claim is one which is "capable of repetition, yet evading review,"<sup>156</sup> it is the kind of challenge to the electoral process that courts regularly find not to be moot even if it cannot be resolved until after the election is over.<sup>157</sup>

### C. *Merits of the Claim*

Assuming the presidential nomination process must comply with the commands of the Constitution, and that there are no other jurisdictional or procedural bars to the late-state voters' claim, the plaintiffs would then confront the heavy burden of persuading the court that the effects of the unregulated schedule constitute a constitutional violation. To do this, the plaintiffs would have to present empirical evidence of the kind suggested in Parts II and III of this Note to show that voters in early states almost invariably exert substantially greater influence on the presidential nomination process than voters in later states. Iowa and New Hampshire, in particular, receive an amount of press and candidate attention, and enjoy a degree of influence on the outcome of the contest, which are grossly disproportionate to those states' population and the number of delegates they send to the national nominating conventions. The privileged position of Iowa and New Hampshire is firmly entrenched under the current system. Indeed, as other states move their delegate selection dates further forward in the schedule, they magnify the influence of voters in Iowa and New Hampshire.<sup>158</sup>

Further evidence in support of finding a violation is the severely restricted candidate choice available to voters in later states. An attentive voter in New Jersey may begin to pay careful attention to the nomination campaign in January of the election year. She may read about what the candidates are doing in Iowa and New Hampshire and watch them in televised debates and other appearances. In doing all this, the voter may well decide who she would like to support for her party's nomination. However, unless this candidate turns out to be the nominee, the New Jersey voter is unlikely to ever have an opportunity to cast a vote for the candidate of her choice.<sup>159</sup> The nomination will almost certainly have been decided—at least in effect, and probably also as a mathematical certainty—well before the New Jersey primary is held, so that

---

156. *Norman v. Reed*, 502 U.S. 279, 287-88 (1992).

157. *See, e.g., Anderson v. Celebrezze*, 460 U.S. 780, 784 n.3 (1983) (finding challenge to presidential ballot access laws not to be moot even two years after election); *Storer v. Brown*, 415 U.S. 724, 737 n.7 (1974) (same).

158. *See supra* Parts II, III; *see also* AUSTIN RANNEY, *THE FEDERALIZATION OF PRESIDENTIAL PRIMARIES* 31 (1978) ("By the familiar criterion of one man/one vote, it is hard to justify the special weight the earlier primaries enjoy under the present system.").

159. On this point, see Table 6, showing that most candidates exit the race by March or April of the presidential election year.

## The Presidential Primary and Caucus Schedule

almost all of the candidates will have dropped out of the race. By the time it is her turn to vote, the New Jersey voter is likely to have no one to choose from other than the presumptive nominee.<sup>160</sup> Since different candidates, even those within the same party, espouse different views, a reduced choice of candidates reduces the opportunity of voters in later states to express their political beliefs.

When a state uses a primary to nominate candidates for statewide office, the Equal Protection Clause requires that all party members throughout the state be given equal votes.<sup>161</sup> A state violates the Equal Protection Clause if it allocates or counts primary votes in such a way as to dilute some voters' votes relative to those of other voters in the state.<sup>162</sup> As the Court explained in *Gray v. Sanders*, "Once the geographical unit . . . is designated, all who participate in the election are to have an equal vote . . . wherever their home may be in that geographical unit."<sup>163</sup> To prevail on their claim, the late-state plaintiffs challenging the constitutionality of the presidential nomination schedule would have to persuade the court to extend the logic of *Gray* from the *intrastate* context to the *interstate* context. They would have to show that party members in states like California or New Jersey have rights to participate in the selection of the party's nominee that can be violated by what occurs in early states like Iowa and New Hampshire. They would argue that, in a presidential contest, the relevant geographical unit is the entire nation, not an individual state. Individual states do not choose their own presidential nominee any more than they choose their own president. Rather, a presidential candidate is nominated, just as a president elected, by the national electorate, even though votes are formally cast on a state-by-state basis.

A federal court might very well accept this extension of *Gray*. In *Anderson v. Celebrezze*, the Supreme Court invalidated an Ohio statutory scheme requiring independent presidential candidates to file nominating petitions by March in order to have their name appear on the general election ballot in November.<sup>164</sup> The Court found that this early filing deadline—which fell months before the date by which the two major parties had to formally

---

160. As was discussed in Part III, the disproportionate influence of early states and the frontloading of the unregulated schedule, combined with the effects of the federal campaign finance laws, appear to have made it impossible for a serious candidate to enter the race after the delegate selection period has begun. Therefore, voters in late states like New Jersey do not have new candidates to choose from that voters in earlier states lacked the opportunity to vote for.

161. See *Gray v. Sanders*, 372 U.S. 368, 380 (1963).

162. See *id.* (finding constitutional violation in state's use of county unit rule because it diluted primary votes of voters in more populous counties); see also *Wesberry v. Sanders*, 376 U.S. 1, 4 (1964) (holding that Congressional Districts of unequal size impermissibly "debas[e] the weight" of votes of voters in larger districts); *Reynolds v. Sims*, 377 U.S. 533, 568 (1963) (holding that both houses of state legislatures must be elected in manner consistent with principle of one-person one-vote).

163. *Gray*, 372 U.S. at 379-80; see also *id.* at 382 (Stewart, J., concurring); *Moore v. Ogilvie*, 394 U.S. 814, 817 (1969).

164. 460 U.S. 780, 794-95 (1983).

designate their nominees—impermissibly burdened the voting and associational rights of supporters of independent presidential candidates. Crucially, the Court explained that the rights burdened were those of independent voters in the state of Ohio *and* those of independent voters in all other states. Because voters from every state vote for the president, enforcement of stringent ballot access laws by one state “has an impact beyond its own borders.”<sup>165</sup> In much the same way, the Iowa and New Hampshire laws requiring these two states to choose their delegates ahead of all other states have an impact on the rights of voters in states voting much later in the presidential nomination schedule.

The plaintiffs would also have to explain why their mathematically equal votes are not sufficient to satisfy equal protection. After all, voters in every state get to vote once, and no more than once, in the presidential nomination process.<sup>166</sup> However, the Supreme Court has found that the right to a meaningful and effective vote can require more than providing every voter with a mathematically equal vote. What is most important, the Court suggested in *Gray*, is the “true weight” of the vote.<sup>167</sup> The clearest example of this principle is *Terry v. Adams*.<sup>168</sup> *Terry* involved a pre-primary, unofficial straw poll conducted by the Jaybird Association, a group affiliated with the Texas Democratic Party. The Jaybirds excluded blacks from their association. The Court held that the straw poll conducted by the Jaybirds violated black party members’ Fifteenth Amendment right to vote even though these individuals were permitted to vote in the actual primary. There was no claim that black voters’ primary votes had any less mathematical weight than those of white voters. Still, by being excluded from the pre-primary straw poll, blacks were denied the right to effective participation in the nomination process and, therefore, to the effective exercise of their right to vote.<sup>169</sup> As Justice Clark wrote in his concurrence, while the primary and general election were “nominally open” to black voters, theirs were “empty vote[s]” since they were

---

165. *Id.* at 795.

166. Actually, the plaintiffs would not necessarily have to concede that their votes are even mathematically equal to those of voters in other states. Because neither of the parties have ever allocated delegates to states based solely on either population or party support in each state, neither the Democratic nor Republican allocation formulas are consistent with the principles of either one-person one-vote or one-party-member one-vote. To simplify the analysis, it is assumed here that the parties’ allocation formulas nonetheless satisfy equal protection. See *Ripon Society, Inc. v. National Republican Party*, 525 F.2d 567, 619-20 (D.C. Cir. 1975) (en banc) (upholding allocation formulas); *Bode v. National Democratic Party*, 452 F.2d 1302, 1307-10 (D.C. Cir. 1971) (same); *Georgia v. National Democratic Party*, 447 F.2d 1271, 1278 (D.C. Cir. 1971) (same).

167. *Gray*, 372 U.S. at 379-80.

168. 345 U.S. 461 (1953).

169. See *id.* at 469-70. The concurring opinions, like that of the majority, spoke in terms of the right to an effective vote. For instance, Justice Frankfurter wrote that the result of the Jaybird pre-primary poll was “effectively to exclude” blacks from voting. *Id.* at 476; see also *id.* at 480 (Clark, J., concurring) (explaining that Jaybird poll denied blacks “any effective voice” in government).



## The Presidential Primary and Caucus Schedule

“cast after the real decisions are made.”<sup>170</sup> Given these precedents, the fact that voters in later states might cast votes mathematically equal to those cast by voters in early states would not necessarily preclude plaintiffs from prevailing on the merits.

The defendants could also be expected to refer to the Electoral College in attempting to defend the “unequal” votes involved in the presidential nomination process. In the Electoral College, each state is given a number of electors equal to its total number of Representatives and Senators. Like the Senate, this formula overrepresents voters in less populous states. Mathematically, then, the vote of a voter in a small state like Delaware is worth more than that of a voter in a large state like California. The Supreme Court has stated that this constitutionally-mandated deviation from equal votes does not make other deviations acceptable. “The fact that the Constitution itself sanctions inequalities in some phases of our political system does not justify us in allowing a state to create additional ones.”<sup>171</sup> It is therefore unlikely that a court would find the defendants’ Electoral College argument persuasive.

A final “common sense” argument against finding the presidential nomination schedule to violate equal protection is the uncertainty such a ruling might create as to whether other features of our political system are also unconstitutional. For example, a court might worry that embracing the theory described here would require it to order that elections for the House of Representatives use a proportional representation electoral system, on the theory that the current first-past-the-post system denies voters’ who vote for a losing candidate any effective influence on the outcome of the election.<sup>172</sup> Or the court might fear that the next plaintiff to come before it will be a voter from a state that was ignored by all the presidential candidates in the general election, because it was obvious from the start of the campaign which candidate

---

170. *Id.* at 484; see also James F. Blumstein, *Party Reform, The Winner-Take-All Primary, and the California Delegate Challenge: The Gold Rush Revisited*, 25 VAND. L. REV. 975, 986 (1972) (“Gray establishes that equal protection in the nomination process embraces a notion of fair and effective political representation at the locus of decision-making. Per capita equality is not made the exclusive test of ‘fair and effective’; rather, it becomes the starting point.”); *id.* (discussing “Gray’s focus on nonarithmetical factors”); TRIBE, *supra* note 137, § 13-21, at 750.

171. *MacDougall v. Green*, 335 U.S. 281, 289 (1948) (Douglas, J., dissenting); see also *Gray*, 372 U.S. at 378. The Court adopted Justice Douglas’ position in *Moore v. Ogilvie*, 394 U.S. 814 (1969), which reversed *MacDougall*. But see *Williams v. Rhodes*, 393 U.S. 23, 43 n.2 (1968) (Harlan, J., concurring) (arguing, based on Electoral College, that one-person one-vote does not apply to any stage of presidential election process).

172. On proportional representation, see Mary A. Inman, Comment, *C.P.R. (Change Through Proportional Representation): Resuscitating a Federal Election System*, 141 U. PA. L. REV. 1991, 2003-04 (1993) (“People lucky enough to reside in an area where people with similar political inclinations constitute a plurality get representation; people who are geographically isolated from those with similar values do not.”); Note, *The Constitutional Imperative of Proportional Representation*, 94 YALE L.J. 163, 172-73, 175-76 (1984).

would win that state's Electoral College votes.<sup>173</sup> These and other possible claims which might be trotted out in a "parade of horrors" are easily distinguished from the presidential nomination claim. In no other election do voters know when they go to the polls that the election in which they are casting their vote has already been decided. No matter how big a landslide is predicted, voters in congressional elections and presidential general elections cast votes which are far more meaningful than those cast by presidential primary and caucus voters in states that choose their delegates after the nomination has been clinched.

Brief mention should be made of the possible remedy a court might provide if it finds the presidential nomination schedule to be unconstitutional. A declaratory judgment would probably be most appropriate. This would allow Congress or the states, working with or without the parties as they saw fit, to restructure the nomination schedule. The legislatures and the parties are likely to be more capable than the courts of devising the kind of detailed reform which would probably be necessary to bring the presidential nomination schedule more clearly into compliance with the commands of the Constitution.<sup>174</sup>

All in all, it is more probable than not that the late-state plaintiffs would fail to satisfy a court on all three of the points necessary to prevail in their constitutional challenge. Still, the claim has sufficient arguable merit to make the federal courts appear to present a potential refuge for those frustrated with their meaningless role in the presidential nomination process. Moreover, the possible constitutional vulnerability of the unregulated schedule could provide a partial motivation to help propel Congress to reform the presidential nomination schedule.

---

173. See generally LOEVY, *supra* note 10, at 249 (complaining about near irrelevance of voters in 29 states in 1992 where neither Bush nor Clinton campaigned significantly because one or the other had early realized he could not win these states).

174. See *infra* Part VII for analysis of some specific reforms which might be more consistent with equal protection than the current unregulated schedule. For informative discussions of how the principle of one-person one-vote could be applied to formulas for allocating national convention delegates to states, if the parties' present formulas were found to be unconstitutional, see TRIBE, *supra* note 137, § 13-25, at 796-97 n.10 (advocating apportionment based on number of "party-affiliates" in each state, which could be defined as, *inter alia*, long-term party adherents, party voters at last primary or general election, party activists, individuals who share party's fundamental aspirations, or individuals intending to support party at upcoming election); Calvin Bellamy, *Applicability of the Fourteenth Amendment to the Allocation of Delegates to the Democratic National Convention*, 38 GEO. W. L. REV. 892, 903-04 (1970) (advocating allocation of delegates on basis of party vote at previous election in each state); Rauh et al., *supra* note 150, at 19-46 (advocating apportionment based on voting for party's presidential candidate in recent elections); Note, *Delegate Apportionment*, *supra* note 150, at 925-30 (describing four options for allocating delegates: one-person one-vote, one-party-member one-vote, electoral college apportionment, and party strength); Note, *Selection by State Party Convention*, *supra* note 150 (endorsing current party registration, not number of party voters at previous election, as basis for allocating delegates).

## The Presidential Primary and Caucus Schedule

### VI. CONGRESSIONAL POWER TO REGULATE THE PRESIDENTIAL NOMINATION SCHEDULE

Assuming the unregulated schedule and its adverse consequences are constitutional, the only remaining institution which could reform the schedule is Congress. Although numerous bills to regulate the presidential nomination schedule have been introduced in Congress during this century, none has ever come close to being enacted.<sup>175</sup> In part this lack of success may be due to doubts about the constitutionality of congressional regulation of the nomination process.<sup>176</sup> In particular, any congressional reform might be thought to infringe on the constitutional powers of states and/or the constitutional rights of political parties and their members.

This Part discusses the Supreme Court's interpretation of constitutional provisions related to the operation of the federal election system. After explaining how the Federal Elections Clauses grant Congress authority to regulate the presidential nomination process, the two potential constitutional objections noted above are addressed. The conclusion reached is that Congress has constitutional authority to regulate the presidential nomination schedule and that such authority can be exercised in a manner not violative of either states' powers or parties' rights.

#### A. *Constitutional Authority for Congressional Regulation of Presidential Primaries and Caucuses*

As on many other matters, the Constitution is succinct in its treatment of federal elections.<sup>177</sup> Two clauses refer specifically to the congressional role

---

175. See, e.g., NORRANDER, *supra* note 5, at 21 (listing legislation introduced between 1972 and 1989 to create regional primary system); Schwarz & Spero, *supra* note 6, at 9 nn.5-9 (citing representative bills introduced).

176. Pierce, *supra* note 3, at 312 (“[T]here is still a great deal of uncertainty about the legal and constitutional status of the presidential nomination process . . .”).

177. I am aware of only two articles by legal scholars considering whether Congress has constitutional authority to regulate the presidential nomination schedule. Both articles concluded that Congress does have this power—and that it should exercise it. See Gressman, *supra* note 120, at 355 (“[T]here is no doubt in my mind that Congress has constitutional power to enact a law . . . to establish a nationally uniform period of time in which to hold primaries, caucuses, and conventions . . .”); Committee on Federal Legislation, Bar Ass’n of N.Y. City, *The Revision of the Presidential Primary System*, 33 RECORD A.B. CITY N.Y. 306, 307 (1978) (“Congress can and should regulate the timing of presidential primaries in the states that choose to hold them.”). Others who have touched on this issue have likewise agreed that Congress has the power to regulate presidential nominations, see Julia E. Guttman, Note, *Primary Elections and the Collective Right of Freedom of Association*, 94 YALE L.J. 117, 117 n.1 (1984) (arguing that federal law to require open primaries would violate party associational rights but implicitly agreeing that Congress can regulate nomination processes in other ways), although they may object to Congressional action as bad policy, see, e.g., RANNEY, *supra* note 158, at 10, 39 (stating that Congress has full power to federalize nomination process but that costs of doing so would exceed benefits); Note, *Regulation of Political Parties: Vote Dilution in the Presidential Nomination Procedure*, 54 IOWA L. REV. 471, 493 (1968) (contending that Congress could require national primary or other uniform delegate selection process but opposing such regulation on policy grounds). Although

in regulating federal elections. Article II, § 1, clause 4—the Presidential Election Clause—gives Congress power to determine the time and day of choosing presidential electors.<sup>178</sup> Article I, § 4, clause 1—the Congressional Election Clause—gives Congress power to regulate the time, place, and manner of elections for Senators and Representatives in Congress.<sup>179</sup> Neither of the Elections Clauses explicitly deal with nominations, which were not mentioned in the Constitution until the ratification of the Twenty-Fourth Amendment (forbidding the use of poll taxes) in 1964.<sup>180</sup>

The Constitution also gives states a role in federal elections. States appoint electors to the Electoral College which formally chooses the President.<sup>181</sup> States may also regulate the time, place, and manner of elections for Senators and Representatives,<sup>182</sup> subject, however, to the overriding will of Congress. Together, the two Federal Elections Clauses were understood at the time of the founding to give Congress ultimate power to regulate federal elections.<sup>183</sup> Subsequent amendments have done nothing to reduce Congress's power in this regard.<sup>184</sup> Thus, the state role in the federal election process is clearly subordinate to that of Congress.<sup>185</sup>

---

at least one analyst thinks Congress lacks the power to act in this area, his conclusion is based on the mistaken assumption that the Supreme Court would treat federal regulation of the nomination process in precisely the same manner it has treated state regulatory efforts. *See* Pierce, *supra* note 3, at 313, 370 (contending that parties are "virtually immune" from state regulation and that most federal regulation would also be unconstitutional). A final category of commentators has reserved judgment on the question. *See, e.g.*, Note, *supra* note 137, at 545 n.60 ("there may be no constitutional bar" to federal regulation of delegate selection procedures); Richard P. Claude, *Nationalization of the Electoral Process*, 6 HARV. J. LEGIS. 139, 139 (1969).

178. Article II, § 1, cl. 4 states: "The Congress may determine the Time of choosing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States."

179. Article I, § 4, cl. 1 states: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators."

180. It has been suggested that the Founders intended the Electoral College to function, effectively, as a presidential nominating body. *See* Note, *supra* note 137, at 542-43 n.39 (citing M. JENSEN, *THE MAKING OF THE AMERICAN CONSTITUTION* 111-14 (1964)); Theodore J. Lowi, *Constitution, Government, and Politics*, in *BEFORE NOMINATION*, *supra* note 124, at 9, 12 (arguing that founders expected Electoral College rarely to give majority to single candidate but instead to deadlock and "nominate" five candidates, among whom House of Representatives would then choose).

181. *See* U.S. CONST. art. II, § 1, cl. 2.

182. *See id.* art. I, § 4, cl. 1.

183. Ratifying conventions in several states considered an amendment to the Constitution which would have curtailed the federal government's broad power over federal elections that is established in the Federal Elections clauses. *See Oregon v. Mitchell*, 400 U.S. 112, 119 n.2 (1970) (citing 2 J. STORY, *COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES* 280-92 (1st ed. 1833)).

184. The Seventeenth Amendment, providing for the direct election of Senators, did not on its face alter the power of Congress under the Congressional Election clause. One proposed version of the amendment, unlike the one ultimately ratified, would have removed from Congress the power to regulate the time, place, and manner of senatorial elections. That such a provision would be proposed, and that it was rejected, indicates that the Congressional Election Clause was, and still should be, understood as giving Congress power to regulate congressional elections. *See Newberry v. United States*, 256 U.S. 232, 252-53 (1921); *see also id.* at 263-65 (White, C.J., concurring in part and dissenting in part).

185. *See, e.g.*, U.S. CONST. art. I, § 4, cl. 1.

## The Presidential Primary and Caucus Schedule

In interpreting the Presidential and Congressional Elections Clauses, the Supreme Court has recognized broad congressional power to regulate federal elections and primaries. For example, in the 1934 case of *Burroughs and Cannon v. United States*, the Court upheld the Federal Corrupt Practices Act, by which Congress imposed various bookkeeping requirements on political committees seeking to influence presidential elections.<sup>186</sup> The petitioners, who had failed to comply with these provisions and were indicted under the Act, contended that Congress lacked authority to regulate presidential elections. This argument was rejected by the Court. The Court found the Act to be constitutional because it was necessary to “preserve the purity” of the presidential election process; the Act did not, in purpose or effect, interfere with states’ power to appoint electors.<sup>187</sup> Moreover, the Act dealt with a situation which states were unable to deal with adequately on their own.<sup>188</sup> Justice Sutherland’s opinion dismissed the petitioners’ contention that Congress’s power under the Presidential Election Clause is limited merely to regulating the timing of presidential elections. “So narrow a view of the powers of Congress in respect of the matter is without warrant.”<sup>189</sup>

In *United States v. Classic*, a case decided in 1941, the Court declared that the Congressional Election Clause includes control over primaries whenever primaries are integral to the election process.<sup>190</sup> The Louisiana congressional primary at issue in *Classic* was conducted by the state at public expense; the names of the candidates rejected in the primaries could not be placed on the general election ballot; and victory in the primary almost inevitably guaranteed election.<sup>191</sup> According to the Court: “Where the state law has made the primary an integral part of the procedure of choice, or where in fact the primary effectively controls the choice, the right of the elector to have his ballot counted at the primary is . . . included in the right [to choose Representatives in Congress].”<sup>192</sup> The primary was also the stage of the election when the “effective choice of the voters” was of greatest significance.<sup>193</sup> Thus, the Court held that Congress could regulate the Louisiana congressional primary to prevent voting fraud.

Just as Congress’s power under the Congressional Election Clause includes the power to regulate congressional primaries, so, too, does the power granted under the Presidential Election Clause include the power to regulate presiden-

---

186. 290 U.S. 534 (1934).

187. *Id.* at 544.

188. *See id.* at 544-45.

189. *Id.* at 544.

190. 313 U.S. 299 (1941); *see also* *Smith v. Allwright*, 321 U.S. 649, 659 (1944) (explaining that *Classic* “authorized Congress to regulate primary as well as general elections”).

191. *See Classic*, 313 U.S. at 311-13.

192. *Id.* at 318.

193. *Id.* at 314.

tial primaries.<sup>194</sup> The Court made this clear in 1970 in *Oregon v. Mitchell*, which upheld a federal statute lowering the voting age in presidential elections to eighteen. As the Court explained: "It cannot be seriously contended that Congress has less power over the conduct of presidential elections than it has over congressional elections."<sup>195</sup> Five years later, in *Buckley v. Valeo*, the Court stated plainly that "Congress has power to regulate Presidential elections and primaries."<sup>196</sup>

In the same way that Congress can protect presidential elections from corruption, it may also protect the electoral process from the adverse consequences arising from the unregulated nomination schedule. Like the corruption involved in *Burroughs*, the problems associated with the disproportionate influence of early states and with frontloading are of a nature that states are incapable of responding to without federal coordination and coercion. Congress's broad authority to regulate presidential primaries and caucuses, which the *Buckley* Court found sufficient to uphold intrusive restrictions on the financing of presidential nomination campaigns, would almost certainly be found to include the lesser power to regulate the timing of delegate selection.<sup>197</sup>

#### B. *Possible Constitutional Objections to Congressional Regulation of the Presidential Nomination Schedule*

It might be contended that federal regulation would impermissibly infringe

194. Congress was slow to exercise its power to regulate Congressional elections under Art. I, § 4. See *Ex Parte Yarborough*, 110 U.S. 651, 660-61 (1884) (describing how Congress waited until 1842 to require House elections to be conducted by districts and waited another thirty years before establishing a uniform polling date). Even so, the Court had no difficulty upholding Congress's power on the first occasion it was exercised. See *id.* at 662. Similarly, just because Congress has not exercised its power under the Presidential Election clause to regulate the presidential nomination schedule, this in no way means that Congress is forbidden from doing so.

A recent exercise of Congress's authority to regulate federal elections is the National Voter Registration Act (the "motor-voter" bill), 42 U.S.C. §§ 1973gg to 1973gg-10 (Supp. 1993), under which Congress required states to ease registration laws for voting in presidential and congressional elections. Two federal appeals courts heard challenges to the motor-voter bill and both unanimously concluded that the Federal Elections Clauses grant Congress power to regulate state voter registration requirements as they apply to federal elections. See *Voting Rights Coalition v. Wilson*, 60 F.3d 1411 (9th Cir. 1995); *Association of Community Orgs. for Reform Now v. Edgar*, 56 F.3d 791 (7th Cir. 1995).

195. 400 U.S. 112, 124 (1970) (footnotes omitted). *But see id.* at 211-12 (Harlan, J., dissenting in part and concurring in part) (contending that because Constitution deals separately with congressional elections and presidential elections, meaning of Art. I, § 4 is immaterial to determination of Congress's authority to regulate presidential elections).

196. 424 U.S. 1, 143 (1976) (*per curiam*) (sustaining Federal Election Campaign Act's individual contribution limits, reporting provisions, and public financing scheme, but invalidating limitations on campaign expenditures, independent expenditures, and candidate expenditures).

197. The Court has also recognized that the Necessary and Proper Clause augments congressional power to regulate federal elections. See *Newberry v. United States*, 256 U.S. 232, 290 (1921) (Pitney, J., concurring); *Ex Parte Yarborough*, 110 U.S. at 657-58. This provides an additional basis for upholding congressional regulation of the presidential nomination schedule.

## The Presidential Primary and Caucus Schedule

on the regulatory powers of the states or on the First Amendment right of political association of political parties and their members. Neither of these contentions turns out to be persuasive.

### 1. *State Authority Over State Electoral Processes*

In *Cousins v. Wigoda*, the Supreme Court reversed a decision of the Illinois Supreme Court enjoining the Democratic National Committee from seating a slate of Illinois delegates at the national convention.<sup>198</sup> The Illinois court had ordered the DNC to seat an alternate slate of Illinois delegates who had been chosen in accordance with Illinois law, but in a manner that conflicted with DNC rules. The U.S. Supreme Court held that, in the absence of any showing by Illinois of a compelling interest in its law, the national party rules trumped the state law. The Court explained that the national nominating conventions “serve[] the pervasive national interest in the selection of candidates for national office, and this national interest is greater than any interest of an individual State.”<sup>199</sup> As the majority pointed out, early presidential nominations were made by caucuses of the national parties’ Members of Congress, a system which gave states qua states no role whatsoever.<sup>200</sup> But that system suffered no constitutional infirmity. Thus, the *Cousins* Court concluded: “The States themselves have no constitutionally mandated role in the great task of the selection of Presidential and Vice-Presidential candidates.”<sup>201</sup>

In voting for federal officers—be they presidents, senators, or representatives—an individual exercises a federal, not a state, right.<sup>202</sup> As the Court

---

198. 419 U.S. 477 (1975).

199. *Id.* at 490. *But see id.* at 495 (Rehnquist, J., concurring) (criticizing this as “unnecessarily broad and vague statement”).

200. *See id.* at 490 n.9.

201. *Id.* at 489-90. *But see id.* at 496 (Rehnquist, J., concurring). Five years later, in *Democratic Party of United States v. Wisconsin ex rel. LaFollette*, 450 U.S. 107 (1981), the Court dealt with a challenge to Wisconsin’s open primary law, requiring parties to allow any eligible voter to vote in their presidential primaries—even if the person was a member of another party. A slate of Democratic delegates was chosen in an open primary, with the support of the Wisconsin Democratic party. The national party rules, however, prohibited open primaries. The Wisconsin Supreme Court concluded that the state open primary law was constitutional and therefore ordered the Democratic National Convention to seat Wisconsin’s delegates. The U.S. Supreme Court did not question the Wisconsin court’s ruling on the constitutionality of the state law, but it did reverse the order requiring the convention to seat the delegates. Relying on *Cousins*, the Court explained that a state cannot compel a national party to accept delegates chosen in a manner inconsistent with national party rules. *See id.* at 120-21.

202. *See U.S. Term Limits, Inc. v. Thornton*, 115 S. Ct. 1842, 1873 (1995) (Kennedy, J., concurring) (citing *Ex Parte Yarborough*, 110 U.S. 651 (1884)); *see also* *Burroughs and Cannon v. United States*, 290 U.S. 534, 545 (1934) (“While presidential electors are not officers or agents of the federal government . . . they exercise federal functions under, and discharge duties in virtue of authority conferred by, the Constitution of the United States.”) (citation omitted); *Ray v. Blair*, 343 U.S. 214, 224 (1952) (“presidential electors exercise a federal function in balloting for President”). *But see Oregon v. Mitchell*, 400 U.S. 112, 211 n.89 (1970) (Harlan, J., concurring in part and dissenting in part); *id.* at 291 (Stewart, J., concurring in part and dissenting in part); *McPherson v. Blacker*, 146 U.S. 1 (1892) (upholding state’s authority to decide to choose presidential electors in congressional districts, rather than on statewide basis); *Lowi, supra* note 180, at 12 (explaining that Alexander Hamilton praised

reiterated in the 1995 decision *U.S. Term Limits, Inc. v. Thornton*, as a matter of constitutional history, “electing representatives to the National Legislature was a new right, arising from the Constitution itself.”<sup>203</sup> Since the institutions of the national government are creations of the Constitution, states possessed no original, pre-Constitutional power over those institutions or the processes for electing the members of those institutions. Because states had no pre-constitutional power over federal elections, the Tenth Amendment does not reserve any such power to them.<sup>204</sup>

Like Congress, the presidency is a federal office, created by the U.S. Constitution.<sup>205</sup> At the Founding, states had no power over the presidency or presidential elections to reserve to themselves, since these had no existence prior to the creation of the Union. The Constitution does not require that states be given any role in presidential nominations.

In sum, then, congressional regulation of the presidential nomination schedule would not violate any rights or powers of the states.

## 2. *Parties’ Protected Right of Association*

In *NAACP v. Alabama*, the Supreme Court recognized that the First Amendment guarantees a right of political association.<sup>206</sup> This associational right resides both in the political parties themselves and in their members individually.<sup>207</sup> “Election laws will invariably impose some burden upon individual voters.”<sup>208</sup> Therefore, when the Court is asked to decide whether particular legislation impermissibly infringes on this right of political association, the level of scrutiny it applies depends on the extent of the burden on the right. Only if the Court finds the burden imposed by the statute to be “severe” must the statute be narrowly tailored to achieve a substantial government interest. If, on the other hand, the Court finds the burden on associational rights to be reasonable and nondiscriminatory, the statute is

Constitution for making presidential electors state officials); *cf. Williams v. Rhodes*, 393 U.S. 23, 38 (1968) (Douglas, J., concurring) (explaining Court would not decide whether presidential electors are state or federal officials).

203. 115 S. Ct. at 1856.

204. Two recent decisions that might be read as marking a revival in states’ rights in constitutional jurisprudence in no way undermine this conclusion. *United States v. Lopez*, 115 S. Ct. 1624 (1995), and *Seminole Tribe v. Florida*, 116 S. Ct. 1114 (1996), found limits to congressional power under the Commerce Clause and the Indian Commerce Clause, neither of which is the source of Congress’s power to regulate presidential elections.

205. *See U.S. Term Limits*, 115 S. Ct. at 1855 (“Representatives and Senators are as much officers of the entire union as is the President.”).

206. 357 U.S. 449 (1958); *see also Cousins v. Wigoda*, 419 U.S. 477, 487-89 (1975) (explaining that party and its adherents have First and Fourteenth Amendment associational rights protected from infringement unless state can show compelling governmental interests).

207. *See Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 (1986); *see also Daniel H. Lowenstein, Associational Rights of Major Political Parties: A Skeptical Inquiry*, 71 TEX. L. REV. 1741 (1993); Pierce, *supra* note 3, at 330-31; Weisburd, *supra* note 133, at 265-66.

208. *Burdick v. Takushi*, 504 U.S. 428, 432 (1992).



## The Presidential Primary and Caucus Schedule

upheld as long as it is rationally related to a legitimate governmental interest.<sup>209</sup>

Applying the Court's political association analysis to a congressional regulation of the presidential nomination schedule would likely lead the Court to uphold such a statute. Compared to the burdens found to be severe—for example, prohibiting parties from allowing independent voters to participate in their primaries<sup>210</sup> or making it extremely difficult for new parties to place their candidates on the ballot<sup>211</sup>—the burden on associational rights from regulating the timing of presidential primaries and caucuses would be minimal.<sup>212</sup> Parties would not in any way be told with whom they may or may not associate; they would remain entirely free to define their own boundaries. Even if the burden of the congressional regulation was found to be severe, it could easily be narrowly tailored to achieve the compelling governmental interests of protecting the opportunity of voters in all states to participate in the election of the national leader, preserving the opportunity of candidates to compete for the presidency, and preserving the legitimacy of the office, the electoral process, and the political system.<sup>213</sup> Thus, it is quite likely that the Court would find that some congressional regulation of the presidential nomination schedule is permissible.

### VII. POSSIBLE REFORMS TO THE PRESIDENTIAL NOMINATION SCHEDULE

#### A. Reforms Introduced in Congress

Three different types of reforms of the presidential nomination schedule have been introduced in Congress: a three-month “window” during which states would be required to choose their delegates, a one-day national primary, and a series of regional primaries. Although none of the bills proposing these reforms has ever been passed by either the House or the Senate, Congress will likely again look at each of these proposals if it ever decides to regulate the

---

209. See *Burdick*, 504 U.S. at 432-34 (holding that rigorousness of inquiry into constitutionality of state election law depends on extent to which challenged regulation burdens First Amendment rights); Daniel A. Klein, *Supreme Court's Views Regarding Federal Constitution's First Amendment Right of Association As Applied to Elections and Other Political Activities*, 116 L.ED.2D 997, § 3 (discussing numerous Supreme Court cases dealing with First Amendment challenges to state regulations of political activities); Rotunda, *supra* note 139, at 951 (“Federal regulation of national parties, conventions, campaign contributions, and so on must only meet the general test of freedom of association . . .”); Barry M. Portnoy, *Freedom of Association and the Selection of Delegates to National Political Conventions*, 56 CORNELL L. REV. 148, 158 (1970).

210. See *Tashjian*, 479 U.S. at 208.

211. See *Norman v. Reed*, 502 U.S. 279 (1992).

212. Cf. *Burdick*, 504 U.S. at 428 (finding burden imposed by state's ban on write-in voting to be minimal and constitutional).

213. See *infra* Part VII for further discussion of the constitutionality of specific proposals to regulate the presidential nomination schedule.

nomination schedule. The discussion below describes these three reforms and analyzes their likely impact. Particular attention is devoted to how each proposal might affect the disproportionate influence and frontloading problems associated with the current unregulated schedule.

### 1. *Window During Which States Must Choose Delegates*

Following his unsuccessful bid for the 1976 Democratic presidential nomination, Representative Morris Udall of Arizona introduced a bill that would have established a mid-March to mid-June window for presidential delegate selection.<sup>214</sup> All states would be required to hold their primary, caucuses, or state convention on one of four congressionally-set dates within this three-month period. The four dates would be separated by one-month intervals.

One of the purported advantages of the window approach is that it would preserve a great deal of autonomy for states and parties in scheduling their delegate selection events. While there would be only four dates to choose from, Congress would not in any way restrict the freedom of states to choose among the four. Since it is probable that a large number of states would choose the first available date, no single state would be likely to exert disproportionate influence on the outcome of the nomination process. Certainly the prominent roles of Iowa and New Hampshire would be eliminated, since other states would not leave the first (March) date to these two states alone. However, precisely because of the freedom states would retain, the window approach would do nothing to counteract the incentives that have led to the heavy frontloading of the current schedule. Representative Udall had assumed that history and tradition would provide a natural check on frontloading; he expected that states would remain sufficiently attached to their traditional delegate selection dates to be deterred from rushing to the first or second date available.<sup>215</sup> Subsequent experience has shown this assumption to be wrong. Given the interstate date competition observed in recent years, it is likely that, had the Udall window been in effect in 1996, as many as thirty or forty states would have opted to choose their delegates on the March or April dates.

If Congress is going to regulate the presidential nomination schedule, it ought to adopt a reform that would be more likely to alleviate the adverse consequences of the unregulated schedule than a window would be.

---

214. See Morris K. Udall, *A Proposal for Presidential Primary Reform*, 10 N.Y.U. REV. L. & SOC. CHANGE 19 (1980-81); see also Godfrey Sperling Jr., *Those Pesky Primaries Did Get the Job Done*, CHRISTIAN SCI. MONITOR, June 30, 1980, at 23.

215. See Udall, *supra* note 214, at 24 n.11; see also Thomas E. Mann, *Should the Presidential Nominating System Be Changed (Again)?*, in BEFORE NOMINATION, *supra* note 124, at 41-42.

## The Presidential Primary and Caucus Schedule

### 2. *National Primary*

The proposal most frequently introduced in Congress is the national primary.<sup>216</sup> Under this reform, Congress would establish a single date on which voters in all states would go to the polls and cast their votes for their party's presidential nominee. Proponents of a national primary believe it would increase participation in the nomination process and significantly reduce the length of presidential campaigns.<sup>217</sup> A national primary would also be the most effective solution to the problem of disproportionate influence of early states: with all states voting on the same date, there would no longer be early or late states. On the other hand, the national primary's response to front-loading is mere capitulation, since a one-day fifty-state primary is the most heavily frontloaded schedule possible.

A national primary would have other drawbacks, most of which can be subsumed under the general heading of decreasing competitiveness. By destroying the sequential character of the process and constraining all voter input to a single date, the national primary would eliminate the ability of relatively unknown candidates to "break through" in one state, build momentum, and grow to become true contenders for the nomination.<sup>218</sup> In this way, a national primary would restrict the presidency to "celebrities and established national figures."<sup>219</sup> The media's preliminary assessments about which candidates are "serious" and worthy of attention would loom even larger under a national primary system than they do under the current schedule. Candidates who do not make the media's unofficial cut would have no opportunity to demonstrate that they were being underestimated. Defying expectations in a one-day primary would have no pay-off, since the competition would be over that same day.

It would also be tricky to set the amount of support a candidate should need to win the nomination under a national primary system. Presently, both parties require their nominees to win an overall majority of delegates. If this majority requirement were retained under a national primary, nominees would only rarely be chosen on the first ballot. A second, run-off ballot would usually be necessary, adding time, expense, and uncertainty to the nomination pro-

---

216. The Progressive Party platform for the 1912 presidential election—in which the Progressive candidate was former Republican President Theodore Roosevelt—called for a national primary. After the Democratic candidate, Woodrow Wilson, won that year's election, he encouraged Congress to adopt a national primary. See GEER, *supra* note 13, at 138; NORRANDER, *supra* note 5, at 20. Since then more than 250 national primary bills have been introduced. See GEER, *supra* note 13, at 138.

217. See, e.g., Mann, *supra* note 215, at 43; Schwarz & Spero, *supra* note 6, at 16 (discussing, but rejecting, arguments in favor of national primary).

218. See BRERETON, *supra* note 29, at xvi-xvii (criticizing national primary recommendations for weakening opportunities of long shots and poorly-financed candidates); GEER, *supra* note 13, at 133.

219. Udall, *supra* note 214, at 26.

cess.<sup>220</sup> However, if a candidate can be nominated with less than an overall majority of the national primary vote, his or her legitimacy might be questioned. The role of the nominating conventions in a national primary system is also unclear, since the nominee would be formally chosen—not just effectively chosen, as under the current system—before the convention opens.<sup>221</sup>

Finally, the national primary might be unconstitutional. By eliminating caucuses and state conventions (and perhaps also national conventions), a national primary would constitute an extensive and intrusive exercise of congressional authority to regulate the nomination process. Though the national primary would relieve any equal protection and candidate choice vulnerabilities of the unregulated schedule,<sup>222</sup> this would come at the cost of imposing a severe burden on the associational rights of parties and their members.

### 3. *Regional Primaries*

Rather than a single national primary, other bills introduced in Congress have proposed a series of regional primaries.<sup>223</sup> Under these plans, the nation would be divided into five or six regions, with each region being assigned one of five or six sequential dates. Every state within a given region would be required to hold a primary on that region's assigned date. Compared with both the current schedule and with the national primary, regional primaries would ease the travel burden on candidates, since all the states voting on a particular date would be contiguous with one another.<sup>224</sup> Regional primaries also preserve the benefits of a sequential process: the opportunity for voters to absorb the results of earlier primaries and learn more about candidates as well as the opportunity for "dark-horse" candidates to emerge from the pack by building on early successes.

A series of regional primaries would halt the trend toward greater frontloading, since Congress would limit the number of states that could choose their delegates on any of the five or six specified dates. However, the first region to vote would probably exercise a collective disproportionate influence of a magnitude equal to or greater than that enjoyed by Iowa and New Hampshire under the current schedule. Altering the order of regions with each

---

220. On the other hand, a run-off ballot would give voters time to factor in information about the first ballot and learn more about the candidates before the nomination was decided, alleviating much of the concern discussed in the previous paragraph.

221. Concern about the negative consequences a national primary would have on national parties and conventions led the Democratic Party to officially express its opposition to national primary proposals. See SANFORD, *supra* note 106, at 129; Hadley & Stanley, *supra* note 40, at 158, 159.

222. See *supra* Part V.

223. See NORRANDER, *supra* note 5, at 20.

224. See *id.* at 22; Martin P. Wattenberg, *Participants in the Nominating Process: The Role of the Parties*, in BEFORE NOMINATION, *supra* note 124, at 56.

## The Presidential Primary and Caucus Schedule

election would at least give every state its chance to enjoy part of this disproportionate influence, so the unfairness would be less than currently occurs.

While all of this means there is much to recommend regional primaries, there are problems as well. First, those concerned about states' rights will be disturbed at how regional primaries would effectively eliminate states as relevant units in presidential nominations, since any individual state's concerns would probably be dwarfed by concerns common to the entire region.<sup>225</sup> More importantly, because of the disproportionate influence of the first region, a regional primary system could be expected to boost the candidacies of regional figures. For instance, in an election in which the southern primary is first, candidates unpopular in the south are likely to be deterred from entering the race. With regional primaries, candidates will almost inevitably focus their campaigns on regional problems. It would be preferable if, in our one truly national election, we did not institute a nomination system promoting regionalism over the national interest.<sup>226</sup>

### B. *Additional Reforms Proposed By Commentators*

In addition to the proposals introduced in Congress, commentators have also proposed a number of different ways to reform the presidential nomination schedule. Many of these proposals are variations on the window approach, the national primary, or regional primaries. For example, many commentators propose a series of "time-zone" primaries, in which all states sharing a time zone would be required to choose their delegates on a common date.<sup>227</sup> Others propose a series of dates for non-regional primaries, under which no more than one or two states in the same region would be allowed to select their delegates on the same date.<sup>228</sup> An entirely different approach would be to reward states with high voter turnout in the previous presidential election with the opportunity to be early in the subsequent presidential nomination

---

225. See Mayer, *supra* note 18, at 33, 39 (rejecting regional primaries in favor of system requiring candidates to campaign in states "with different problems and constituencies").

226. See NORRANDER, *supra* note 5, at 24.

227. See, e.g., Manatt, *supra* note 124, at 118-19. Manatt advocates four time zone primaries, with the order of the time zones being randomly determined in December of the year prior to the presidential election. He would enforce this schedule by sanctioning candidates: those participating in delegate-selection contests not complying with the time zone schedule would lose their federal campaign matching funds. See *id.*; see also GEER, *supra* note 13, at 129-38 (proposing five dates, separated by three-week intervals, on each of which one of five regions—drawn for their roughly equal population and ideological balance—would choose its delegates).

228. See, e.g., Schwarz & Spero, *supra* note 6, at 17 (proposing party action—not federal regulation—to divide nation into six regions and allow no more than two states in each region to choose delegates on same date); Mayer, *supra* note 18, at 33 (proposing that first delegate selection date be shared by handful of states from different regions, followed by other primaries after successive three- or four-week intervals).

schedule.<sup>229</sup>

Perhaps the most thorough additional proposal is the Model Calendar of State Presidential Primaries and Caucuses devised by political scientist Robert Loevy.<sup>230</sup> Arguing that the most important goal of schedule reform should be to ensure that "voters of each state participate in the most meaningful and effective way possible in the presidential nominating process," Loevy proposes an eight-week schedule with five delegate-selection dates, each separated by two weeks.<sup>231</sup> Loevy would preserve Iowa and New Hampshire's prominence, allowing just these two states to choose their delegates on the first date.<sup>232</sup> He would then assign the remaining states to the four subsequent dates in reverse order of their size, so that the smallest states would go first and the largest states last. This "backloaded" schedule would reserve all the delegate-rich states for the final date, potentially encouraging candidates to stay in the race to the end and maybe even attracting new candidates if the results in the smaller states were inconclusive.<sup>233</sup>

Loevy's proposal would obviously counteract frontloading but it would probably do little to reduce the disproportionate influence of Iowa and New Hampshire.<sup>234</sup> It is surprising that a scholar so concerned with "unfairness" in the presidential election system would not seek to do more to eliminate the entrenched and unfair power exercised by these first two states. It would be more fair, and more successfully promote Loevy's stated goal of making all states relevant in the nomination process, to spread the benefit of going first more widely among different states. Loevy seems to have a purely pragmatic reason for not threatening Iowa and New Hampshire: he wants to rely on state legislatures to implement his Model Calendar. Loevy believes that all states, acting through the National Conference of State Legislatures, could and would agree to coordinate their primaries and caucuses in the manner he recommends. Preserving Iowa and New Hampshire's prominence, of course, would make it more likely that these two states would agree to his reform. But there is little reason to expect other states to acquiesce in this. As has been seen, in presidential nomination politics the incentives for states to compete with one another greatly exceed any incentives to cooperate.<sup>235</sup> Loevy fails to discuss this incentive structure. Nor does he appear to have even considered the possibility of federal regulation of the schedule, even though congressional reform could produce a fairer nomination schedule than the one he proposes.

---

229. See Jackson, *supra* note 124, at 19.

230. See LOEVY, *supra* note 10, at 146-55.

231. *Id.* at 151.

232. See *id.* at 154-55.

233. See *id.* at 153, 157.

234. Loevy apparently believes this should not be a goal of schedule reform. See *id.* at 152.

235. See *supra* Sections II.B., III.C., and IV.B.

## The Presidential Primary and Caucus Schedule

### C. *A New Proposal: A Random, Non-Regional Nomination Schedule*

#### 1. *The Proposal*

Of course, no single reform can be expected to satisfy every demand we might wish to make of our presidential nomination system. However, it does seem that a new proposal—borrowing many of its elements from proposals previously introduced in Congress or by other commentators—could more effectively alleviate the schedule-related problems discussed in this Note, and thereby improve the likelihood that more voters in more states could meaningfully participate in nominating the people who seek to be our president.

What is proposed here is congressional legislation implementing a random, non-regional presidential nomination schedule. Congress could establish a three-month window during which each state (and other jurisdictions entitled to select delegates) would be randomly-assigned to one of five dates on which the state would be required to select its delegates to the national nominating conventions. The five dates would occur at three-week intervals beginning with the second Tuesday in March and ending with the first Tuesday in June.<sup>236</sup> Ten states would be assigned, on a random basis, to each of the first four dates; the remaining states would choose their delegates on the last of the five dates.<sup>237</sup> Because of random assignment, it is unlikely that any regional clustering would occur.<sup>238</sup>

---

236. If this reform had been in place during the 1996 nomination season, the first set of primaries and caucuses would have been held on March 11. The subsequent delegate selection dates would have been April 2, April 23, May 14, and June 4. The nominating conventions could occur, as usual, in July or August.

The second Tuesday in March has long been considered an appropriate starting date for the delegate selection process. Until the recent acceleration of interstate date competition, New Hampshire's first-in-the-nation primary was always held on the second Tuesday in March. See Buell, *supra* note 15, at 322. By state law, this remains the default date for New Hampshire's primary. See N.H. REV. STAT. ANN. § 653:9 (1996).

237. Fifty-six jurisdictions currently send delegates to the conventions: the 50 states, Americans Abroad, American Samoa, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. If all of these jurisdictions were permitted to send delegates under the random, non-regional proposal, a total of 16 jurisdictions would choose their delegates on the final date.

238. Under any of the proposals discussed here, a number of subsidiary issues would have to be resolved. Among them: Should delegates be bound at the national convention to vote for the candidate to whom they are pledged? Should citizens be able to cast their votes for uncommitted delegates? Should states be allowed to use a winner-take-all system or must they be required to award delegates proportionally? Should elected officials be given *ex officio* delegate status? How should the vice-presidential nominee be chosen? Resolving these and other details is beyond the scope of this Note. However, it should be noted that an indispensable feature of any federal legislation would be to pre-empt all state statutes specifying the date of presidential delegate selection. Most egregious are the statutes of Iowa and New Hampshire, committing those states to selecting their delegates prior to every other state except each other. See IOWA CODE § 43.4 (1995) (requiring Iowa delegate selection to start at least eight days prior to any other state's delegate selection); N.H. REV. STAT. ANN. § 653-9 (1994) (mandating that New Hampshire primary occur no later than the Tuesday at least seven days preceding any other state's primary).

## 2. Policy Analysis

The random, non-regional proposal combines features of the other proposals already described. The three-month window is derived from the proposal introduced by Representative Udall. However, by assigning a limited number of states to each of the five dates, the proposed reform would not be vulnerable to continued frontloading like Udall's plan. The random, non-regional proposal borrows from national primary plans the ambition of giving every state an equal opportunity to be important in the nomination process. The reform most closely resembles proposals to introduce a series of regional primaries, but with the important advantages of not promoting regionalism and of preserving for states the freedom to decide whether to use primaries, caucuses, or state conventions.<sup>239</sup>

Under the random, non-regional schedule, interstate date competition would be eliminated. States would no longer be able to choose the date of their delegate selection events. Instead, they would be randomly assigned to one of five dates set by federal law. The trend toward earlier starts to the delegate selection season, and the resulting trend of earlier starts to full-scale campaigning, would be halted. The reform would also eradicate frontloading, since only ten states would be permitted to choose their delegates on each of the earliest dates in the schedule.

The proposal would terminate Iowa and New Hampshire's entrenched status as the home of the nation's first important caucuses and primary. Of course, *some* states would still go first. This privilege, however, would be shared among ten states, thereby reducing the prominence of any one state's contest. Additionally, the ten states, being randomly-chosen, would almost certainly be different in each electoral cycle.<sup>240</sup> Prior to the random selection of the dates for a given presidential election year, every voter would have a statistically equal opportunity to eventually be in a position to cast a meaningful vote.

With ten states going to the polls on the first date, the likelihood of an inconclusive result is probably greater than under the current schedule. Under the current schedule, the first round of delegate selection—Iowa and New Hampshire—typically winnows the field to two or three serious candidates after just a single caucus and a single primary. If, on the other hand, ten states were required to vote all on the same first date, the result would be unlikely to be

---

239. A non-regional schedule like the one endorsed here would require "candidates to campaign in different parts of the country at the same time, fashioning a national campaign that addresses a broader series of questions and problems" than a system of regional primaries would require. Udall, *supra* note 214, at 23; *see also* Schwarz & Spero, *supra* note 6, at 17.

240. A wide range of commentators has recognized how regulated dates, and the requirement that multiple states share the first date, would significantly reduce the importance and impact of early states. *See, e.g.*, RANNEY, *supra* note 158, at 31; Schwarz & Spero, *supra* note 6, at 17; Squire, *supra* note 22, at 13.



## The Presidential Primary and Caucus Schedule

so clear-cut. Unless there were a strong pre-existing consensus as to who the nominee should be, the odds are that more than two or three candidates would fare well in at least one of the ten states. With more candidates surviving to later stages of the schedule, voters in later states should have a significantly wider choice than they presently enjoy. In general, the hope would be to slow down the winnowing process and expand the choices available to voters in later states.<sup>241</sup> However, even if this did not occur, at least voters in ten states, rather than just two, would have gone to the polls having the opportunity to choose from the full range of candidates.

The sequential process, with intervals between delegate-selection dates, would preserve the opportunity for lesser-known candidates to make themselves better known and to build support for their candidacies. Unlike reforms that would limit delegate selection to a single date, the random, non-regional schedule would still allow candidates to target one or two early states and try to achieve a breakthrough in the first round of the competition. They could attempt to build on any early success during the three-week interval before the next round of primaries and caucuses. Thus, the presidency would not be closed to all but those few individuals who already have national reputations prior to the election year.

By requiring a three-week interval between delegate selection dates, the random, non-regional schedule would give voters a greater opportunity to reflect on their choice. "The advantage of stringing the decision over several months is that the competition among candidates gives voters an opportunity to unmask unrealistic and demagogic positions and personal failings."<sup>242</sup> It would allow voters in later states a chance to learn more about the candidates who had done well in the earlier stages of the competition. In particular, it would provide the chance to observe how candidates respond to successes and failures on the campaign trail, how effectively they are able to adjust their campaign strategy to changing circumstances, and how well they organize and oversee a campaign team.<sup>243</sup> Thus, it would reduce the risk of "an ill-

---

241. While it is true that "the function of the election process is to 'winnow out and finally reject all but the chosen candidates,'" *Burdick v. Takushi*, 504 U.S. 428, 438 (1992) (quoting *Storer v. Brown*, 415 U.S. at 735), the assumption here is that Congress has a legitimate interest in attempting to calibrate the speed and manner in which this winnowing occurs. If states were to select their delegates two years before the presidential election—and require those delegates to pledge their support for a presidential candidate, and to vote in support of that candidate at the convention—Congress could surely conclude that winnowing was occurring too early. The issues that will be relevant in a presidential election are not usually predictable two years in advance, nor is it easy to foresee which potential candidates will be most appealing under future circumstances. Equally importantly, few voters will be interested in presidential politics at such an early date; therefore, even if primaries and caucuses are held, the turnout rate is likely to be terribly small.

242. Mann, *supra* note 215, at 43.

243. Some political scientists have suggested that the political job most similar to being president is being a presidential candidate. Both the campaign trail and the White House confront individuals with complex challenges of a national scope that must be resolved under the constant scrutiny of the national

advised, headlong bandwagon for a candidate about whom too little was known."<sup>244</sup>

As currently occurs, under the proposed reform candidates would undoubtedly begin their campaigning prior to the beginning of the delegate-selection season. However, the date at which candidates start this campaigning, and the amount and intensity of it, are partially functions of the date by which the order of events on the nomination schedule is made known. Therefore, it would be advisable to conduct the random assignment of delegate-selection dates at nearly the latest date feasible, ideally around Thanksgiving of the year before the presidential election year.<sup>245</sup> The later the date, the longer candidates would have to wait before they could target their campaigns at particular, early states. Even if candidates did not begin full-scale campaigning until December of the year before the election, this would still allow three full months for candidates to focus their campaigns and for voters to observe candidates' apparent ability to perform competently under stresses like those presented in the presidency.

Naturally, the proposed random, non-regional schedule is not without its drawbacks. Most obviously, states would lose their freedom to choose their delegate selection dates, leaving states with very little power in the presidential nomination process. However, since the presidency is a national office, this reduction in state power may not strike many people as particularly worrisome,

---

media. See, e.g., GEER, *supra* note 13, at 132 (stating that lengthy campaigns "can provide a useful test of a candidate's ability to withstand pressure"); Michael Nelson, *The Case for the Current Presidential Nominating Process*, in *BEFORE NOMINATION*, *supra* note 124, at 30-31 (discussing parallels between running for president and serving as president); Leonard P. Stark, *Predicting Presidential Performance from Campaign Conduct: A Character Analysis of the 1988 Election*, 22 *PRESIDENTIAL STUD.* Q. 295 (1992) (same). To the extent this view is accurate, an important benefit of a sequential nominating process is that it provides clues as to how candidates would handle similar pressures if they were to be elected president. By observing campaign conduct over a substantial period of time, voters, journalists, and others can formulate and revise predictions about a candidate's ability to perform competently in the Oval Office. The random, non-regional schedule, by retaining a sequential and relatively lengthy schedule, would preserve this benefit. Delegate selection systems involving less arduous campaigns, significantly shorter ones, or campaigns with delegate selection dates so concentrated as to make voter reflection impracticable, destroy this valuable opportunity to learn information relevant to predicting how candidates might perform as president.

244. Mayer, *supra* note 18, at 36 (suggesting that more time following Iowa caucuses would have deflated Carter and Hart bandwagons in 1976 and 1984, respectively).

245. As late as December 1995, officials in Iowa and New Hampshire were contemplating moving their caucuses and primary forward to January as a possible response to the challenges from Louisiana and Delaware to their first-in-the-nation positions. See Rezendes, *supra* note 100, at 1. This suggests that relatively late random assignment of dates is feasible. See also Buell, *supra* note 15, at 332-34 (noting that actual date of 1984 Iowa caucuses and New Hampshire primary had not been set by October 1983); Schwarz & Spero, *supra* note 6, at 16-17 (proposing that Federal Election Commission could assign dates just prior to start of primary season); Udall, *supra* note 214, at 20 (discussing bills which would have implemented random selection of primary dates).

Televising the random assignment of dates could heighten interest in the electoral process and, thereby, increase voter participation. See generally RANNEY, *supra* note 158, at 28-29 (arguing that simpler and more uniform rules would increase understanding of, and participation in, presidential nomination process).

## The Presidential Primary and Caucus Schedule

especially since the recent experience of intense interstate date competition has shown that states often exercise their power in a manner tending to undermine the rationality of the overall process.

The proposed reform will displease those who wish to maintain Iowa and New Hampshire's traditional, prominent, and influential roles in presidential politics. Yet it has been seen that these traditional roles are unfair to voters in other states and might even be vulnerable to constitutional attack. Tradition should be no excuse for continuing to deprive voters outside Iowa and New Hampshire of their fair share of input into determining who should be president.

A more substantial criticism is that the random, non-regional schedule might eliminate the "retail politics" which currently occurs in Iowa and New Hampshire. The overwhelming majority of our politics today is conducted via the media; very little of it involves direct interactions between candidates and voters. Conventional wisdom holds that the Iowa caucuses and the New Hampshire primary are significant exceptions to this rule. As nearly the last bastions of retail politics, they supposedly deserve to be cherished and preserved.<sup>246</sup> However, the amount of retail politics occurring in Iowa and New Hampshire is easily exaggerated. Even in these relatively unpopulous states, any candidate hoping to be successful must still run television commercials. In addition, some minimal retail politics would survive under the proposed reform, since it is statistically likely that at least one of the ten states assigned to the first delegate selection date would have a population as small as or smaller than Iowa or New Hampshire.

### 3. *Constitutional Analysis*

The proposal for congressionally-enacted reform to establish a random, non-regional presidential nomination schedule is almost certainly constitutional. As Part VI demonstrated, Congress has authority to undertake some regulation of the timing of presidential nominations. Stripping states of their current ability to set the date of their delegate selection events would not raise constitutional concerns because states do not have any constitutionally-mandated role in presidential nominations.<sup>247</sup>

The more serious constitutional question raised by the proposed reform is whether it would impermissibly infringe on the associational rights of parties

---

246. See Alan I. Abramowitz et al., *Up Close and Personal: The 1988 Iowa Caucuses and Presidential Politics*, in *NOMINATING THE PRESIDENT*, *supra* note 41, at 42, 69; Mark Shields, *Foreword to BRERETON*, *supra* note 29, at xi (applauding retail politicking in New Hampshire). This conventional wisdom was challenged by events in the 1996 Republican race, particularly by candidate Steve Forbes's fairly successful media-based strategy in Iowa and New Hampshire. See Elizabeth Kolbert, *In Iowa, It's Organizing vs. Advertising*, N.Y. TIMES, Jan. 17, 1996, at A1.

247. See *supra* Subsection VI.B.1.

and their members. It is probable that a court would find the burden on associational rights from the proposed reform to be minimal, since the random, non-regional primary schedule would only restrict parties' freedom over the timing of their delegation selection. However, even if the court found the burden to be severe, the regulation would most likely be upheld under the strict scrutiny analysis that would then be applied.<sup>248</sup> The governmental interests which would be furthered by the proposed reform are compelling: reducing the disproportionate influence of voters in early states and protecting the right of voters in later states to meaningful votes, reversing the trend to a heavily-frontloaded schedule and thereby making nomination contests more competitive, eliminating destructive interstate date competition, and providing all voters with a greater opportunity to learn about candidates before casting their votes.<sup>249</sup> Just as clearly, the proposed reform is narrowly tailored to achieve these compelling interests. All that is regulated is the timing of delegate selection; parties remain free to determine how to choose their delegates, whether to allow non-party members to participate, and other features of the nomination process.<sup>250</sup>

Moreover, the random, non-regional schedule would actually promote the associational rights of many party members. Under the current unregulated schedule, most voters in later-states have little or no opportunity to associate for the purpose of effectively promoting the candidacy of the candidate of their choice. If the reformed schedule succeeded in making nomination contests more competitive for a longer part of the delegate selection season, it would strengthen the rights of later-state voters.

By displacing Iowa and New Hampshire from their privileged positions, and randomizing and therefore spreading the disproportionate influence of early states among all states, the proposed reform would reduce the constitutional vulnerabilities of the unregulated schedule. It is true that later-state voters might still find themselves with a smaller field to choose from than early state voters, and it will still be possible for the nomination to be clinched before

---

248. *But see* Pierce, *supra* note 3, at 334, 345 (arguing that cases invalidating state regulations for infringing associational rights of state political parties are "the best possible analogy" for federal laws infringing rights of national parties and concluding "it seems likely" federal statutes would also be struck down).

249. "There can be no question about the legitimacy of the State's interest in fostering informed and educated expressions of the popular will in a general election." *Anderson v. Celebreeze*, 460 U.S. 780, 796 (1983). There is no reason to believe that Congress's interest in promoting the same in nominating contests is any less substantial.

250. The proposal endorsed here would be more likely to withstand a constitutional challenge than either national primary or regional primary legislation. Both of these other plans would impose a significantly greater burden on parties' First Amendment rights because they would require federal mandates that parties elect their delegates using a primary. *See* Guttman, *supra* note 177, at 126; Weisburd, *supra* note 133, at 281; *see also* Udall, *supra* note 214, at 27 (opposing national primary). By contrast, the random, non-regional schedule proposed here would preserve states' and parties' freedom to decide whether to hold primaries, caucuses, or state conventions.

## The Presidential Primary and Caucus Schedule

some voters go to the polls.<sup>251</sup> Therefore, if the current schedule is unconstitutional, the random non-regional schedule might also be unconstitutional, even though it would be a substantial improvement. Assuming that the current schedule is constitutional, however, this proposal would be as well.

### 4. *Reality Check*

It is all fine and good to say that the random, non-regional presidential primary schedule proposed here would be constitutional and would have beneficent policy consequences. But is there any chance it could ever be adopted?

Federal regulation of anything is not politically popular at the moment. Yet, despite the general political tides, there is increasing recognition of the problems arising from the current unregulated presidential nomination schedule. As already described, following the early conclusion to the 1996 Republican nomination contest, the Republicans established a task force to propose reforms to their nomination schedule for the year 2000.<sup>252</sup> The Republican Party Chairman, who insisted on the formation of this task force, has said he believes that “[t]he voters of most states did not have meaningful participation” in the 1996 nomination contest.<sup>253</sup> Speaker of the House Newt Gingrich has called interstate date competition, which reached new heights in the recently completed electoral cycle, a “stupid game.”<sup>254</sup>

At some point, the presidential nomination schedule will either have to be reformed or, as a nation, we will have to abandon the belief that presidential nominees are (and should be) the choice of the broad party membership in all the states. If it is correct that only Congress possesses the power to effectively reform the nomination schedule, then greater recognition of the problems associated with the unregulated schedule should eventually lead to a consensus that Congressional reform is required. If and when such a consensus develops, Iowa and New Hampshire are unlikely to pose a substantial obstacle to Congressional action. Despite the extreme intensity of these two states’ interest in the status quo, their Congressional delegations are simply too small to stop a Congress determined to promote meaningful participation for voters in all states. The proposal outlined here is directed as much to the day when such a consensus develops as it is to today.

---

251. See generally Wattenberg, *supra* note 224, at 57 (“[T]he fact that such influence occurs by chance hardly makes it more palatable.”).

252. See *supra* Section IV.A.

253. Thomas, *supra* note 56 (quoting Haley Barbour); see also West, *supra* note 47, at 1A.

254. *States Battle over Right to Hold First Presidential Primary*, OMAHA WORLD-HERALD, Feb. 6, 1995, at 5.

## VIII. CONCLUSION

For a few fleeting days, it appeared that the 1996 Republican nomination contest would defy expectations. Rather than the quick march to victory expected of frontrunner Bob Dole, the earliest results appeared to create such confusion that there was serious talk of a brokered convention.<sup>255</sup> Such speculation was short-lived. In the end, the heavily frontloaded schedule had precisely the effect that had been widely predicted: the Republican nomination was effectively decided after only four weeks, with Dole needing just one additional week to mathematically clinch the nomination.<sup>256</sup> As usual, Iowa and New Hampshire were disproportionately important:<sup>257</sup> candidates and the media gave them inordinate attention and, after the two states' relatively few voters had gone to the polls, a race that had once included eleven candidates was effectively winnowed down to just four. Though Dole was widely considered to have started with a stumble, his win in Iowa and second-place finish in New Hampshire were by all historical standards more than sufficient to allow him to remain a highly credible candidate. As the frontrunner, Dole then benefited from the rush of primaries and caucuses, which left his challengers with little time to cut into Dole's lead and even less time to raise money. Ironically, California's March primary, which had inspired the interstate date competition that preceded the 1996 contest, arrived too late to give the nation's most-populous state's voters any influence on the nomination.

The disproportionate influence of early states in deciding the 1996 Republican nomination will only increase the incentives for greater frontloading in 2000. Rather than allowing this to occur, it is time for Congress to exercise its constitutional authority and regulate the presidential nomination schedule.

---

255. See, e.g., Chuck Raasch, *Lack of a Clear Leader Could Lead to Brokered Convention*, GANNETT NEWS SERV., Mar. 2, 1996, available in LEXIS, News Library, Curnws File.

256. See *supra* Table 5.

257. This occurred despite the fact that Iowa's caucuses were preceded by Louisiana's and that New Hampshire's primary was followed within four days by Delaware's.

## The Presidential Primary and Caucus Schedule

### APPENDIX

The following tables display the Democratic and Republican nomination schedules for elections between 1980 and 1996, listed in the order the states selected their delegates in 1996. The tables show a clear trend toward greater frontloading of the schedule in both parties, as described in Part II.B. of this Note.

Entries in the tables which are *in small caps* indicate a primary, caucus, or state convention that was held *earlier* than in the previous electoral cycle. *Italicized* entries indicate that the contest was held *later* than in the previous electoral cycle. Plain type indicates that the primary or caucus was held at the same point on the electoral calendar as in the previous election. This does not, however, mean that the contest occurred on precisely the same date in consecutive election years. For example, the second Monday in February, 1996 was February 12; the second Monday in February, 1992 was February 10. For purposes of these tables, these two dates are equivalent, since they occurred at the same point in the electoral cycle. Thus, the 1996 entries for the Democratic and Republican Iowa caucuses appear in plain type.

An asterisk (\*) indicates that the state's delegates were selected in either caucuses or a state convention. All other entries are presidential primaries.

The information in these tables is compiled from the following sources: 1980: AMERICA VOTES 20, at 64-65 (Richard M. Scammon & Alice V. McGillivray, eds. 1993); 1984: WILLIAM CROTTY & JOHN S. JACKSON, III, PRESIDENTIAL PRIMARIES AND NOMINATIONS 238 (1985); AMERICA VOTES 20, at 62; 1988: BARBARA NORRANDER, SUPER TUESDAY: REGIONAL POLITICS & PRESIDENTIAL PRIMARIES 36-39 (1992); 1992: ROBERT D. LOEVY, THE FLAWED PATH TO THE PRESIDENCY 1992 (Tables 1-3) (1995); 1996: *A Datebook for the Selection of Presidential Nominees*, SAN DIEGO UNION-TRIB., Feb. 10, 1996.

## DATES OF DEMOCRATIC DELEGATE SELECTION: 1980-96

JURISDICTION	1980	1984	1988	1992	1996
Iowa	Jan. 21*	Feb. 20*	FEB. 8*	Feb. 10*	Feb. 12*
New Hampshire	Feb. 26	Feb. 28	FEB. 16	Feb. 18	Feb. 20
Delaware		Mar. 14*	Apr. 18*	MAR. 10*	FEB. 24
North Dakota		Mar. 18*	Mar. 13-27*	MAR. 5-19*	FEB. 27
Colorado		May 7*	Apr. 4*	MAR. 3	Mar. 5
Connecticut	Mar. 25	Mar. 27	Mar. 29	Mar. 24	MAR. 5
Georgia	Mar. 11	Mar. 13	Mar. 8	MAR. 3	Mar. 5
Idaho	May 27	May 24*	MAR. 8*	Mar. 3*	Mar. 5*
Maine		Mar. 4*	FEB. 28*	Feb. 23*	MAR. 5
Maryland	May 13	May 8	MAR. 8	Mar. 3	Mar. 5
Massachusetts	Mar. 4	Mar. 13	Mar. 8	Mar. 10	MAR. 5*
Minnesota		Mar. 20*	FEB. 23*	Mar. 3*	Mar. 5*
Rhode Island	June 3	MAR. 13	Mar. 8	Mar. 10	MAR. 5
South Carolina	Mar. 8	Mar. 15*	Mar. 12*	MAR. 7	Mar. 5*
Vermont	Mar. 4	Apr. 24*	MAR. 1	Mar. 31*	MAR. 5
Washington		Mar. 13*	Mar. 8*	MAR. 3*	Mar. 5*
Missouri		Apr. 18*	MAR. 8	Mar. 10*	Mar. 7*
New York	Mar. 25	Apr. 3	Apr. 19	APR. 7	MAR. 7
Alaska		Mar. 15*	Mar. 10*	Apr. 2*	MAR. 9*
Arizona		Apr. 14*	Apr. 16*	MAR. 7*	Mar. 9
South Dakota	June 3	June 5	FEB. 23	Feb. 25	Mar. 9*
Nevada	May 27	MAR. 13*	Mar. 8*	Mar. 8*	Mar. 10*
Florida	Mar. 11	Mar. 13	Mar. 8	Mar. 10	Mar. 12
Hawaii		Mar. 13*	Mar. 8*	Mar. 10*	Mar. 12*
Louisiana	Apr. 5	May 5	MAR. 8	Mar. 10	Mar. 12
Mississippi	June 3	MAR. 17*	MAR. 8	Mar. 10	Mar. 12
Oklahoma		Mar. 13*	Mar. 8	Mar. 10	Mar. 12
Oregon	May 20	May 15	May 17	May 19	MAR. 12



## The Presidential Primary and Caucus Schedule

Tennessee	May 6	May 1	MAR. 8	Mar. 10	Mar. 12
Texas	May 3	May 5*	MAR. 8	Mar. 10	Mar. 12
Michigan	May 20	MAR. 17*	Mar. 26*	MAR. 17	Mar. 16*
Illinois	Mar. 18	Mar. 20	Mar. 15	Mar. 17	Mar. 19
Ohio	June 3	MAY 8	MAY 3	June 2	MAR. 19
Wisconsin	Apr. 1	Apr. 7*	Apr. 5	Apr. 7	Mar. 19
Wyoming		Mar. 10*	Mar. 5*	Mar. 7*	Mar. 23*
Utah		Apr. 16*	Apr. 25*	MAR. 3*	Mar. 25*
California	June 3	June 5	June 7	June 2	MAR. 26
Kansas	Apr. 1	MAR. 24*	Mar. 19*	Apr. 7	Apr. 2
Virginia		Mar. 24	MAR. 8	Apr. 11	Apr. 13-15*
Pennsylvania	Apr. 22	APR. 10	Apr. 26	Apr. 28	Apr. 23
DC	May 6	May 1	May 3	May 5	May 7
Indiana	May 6	May 8	May 3	May 5	May 7
North Carolina	May 6	May 8	MAR. 8	May 5	May 7
Nebraska	May 13	May 15	May 10	May 12	May 14
W. Virginia	June 3	June 5	MAY 10	May 12	May 14
Arkansas	May 27	MAR. 17*	MAR. 8	May 26	May 21
Kentucky	May 27	MAR. 31*	MAR. 8	May 26	May 28
Alabama	Mar. 11	Mar. 13	Mar. 8	June 2	June 4
Montana	June 3	MAR. 25*	June 7	June 2	June 4
New Jersey	June 3	June 5	June 7	June 2	June 4
New Mexico	June 3	June 5	June 7	June 2	June 11

## DATES OF REPUBLICAN DELEGATE SELECTION: 1980-96

JURISDICTION	1980	1984	1988	1992	1996
Louisiana	Apr. 5	<i>May 5</i>	MAR. 8	Mar. 10	FEB. 6*
Iowa	Jan. 21*	<i>Feb. 20*</i>	FEB. 8*	Feb. 10*	Feb. 12*
New Hampshire	Feb. 26	Feb. 28	FEB. 16	Feb. 18	Feb. 20
Delaware			Apr. 1-30*		FEB. 24
Arizona			Jan.-May*		FEB. 27
North Dakota		June 5	June 14	June 9	FEB. 27
South Dakota	June 3	June 5	FEB. 23	Feb. 25	Feb. 27
South Carolina	Mar. 8		Mar. 5	Mar. 7	Mar. 2
Wyoming			Feb. 9-24*		<i>Mar. 2*</i>
Colorado			Apr. 4*	MAR. 3	Mar. 5
Connecticut	Mar. 25	Mar. 27	Mar. 29	Mar. 24	MAR. 5
Georgia	Mar. 11	Mar. 13	Mar. 8	MAR. 3	Mar. 5
Maine			Feb. 26-28*		<i>Mar. 5</i>
Maryland	May 13	May 8	MAR. 8	Mar. 3	Mar. 5
Massachusetts	Mar. 4	<i>Mar. 13</i>	Mar. 8	Mar. 10	MAR. 5
Minnesota			Feb. 23*	<i>Apr. 7</i>	MAR. 5*
Rhode Island	June 3	MAR. 13	Mar. 8	Mar. 10	MAR. 5
Washington			Mar. 8*	<i>May 19</i>	MAR. 5*
Vermont	Mar. 4	Mar. 6	Mar. 1		Mar. 5
New York	Mar. 25	<i>Apr. 3</i>	<i>Apr. 19</i>		MAR. 7
Missouri			Mar. 8		Mar. 9*
Florida	Mar. 11	Mar. 13	Mar. 8	Mar. 10	Mar. 12
Mississippi	June 3		MAR. 8	Mar. 10	Mar. 12
Oklahoma			Mar. 8	Mar. 10	Mar. 12
Oregon	May 20	May 15	May 17	May 19	MAR. 12
Tennessee	May 6	May 1	MAR. 8	Mar. 10	Mar. 12
Texas	May 3	May 5	MAR. 8	Mar. 10	Mar. 12
Illinois	Mar. 18	Mar. 20	Mar. 15	Mar. 17	Mar. 19
Michigan	May 20		JAN. 14*	<i>Mar. 17</i>	Mar. 19
Ohio	June 3	<i>May 8</i>	<i>May 3</i>	<i>June 2</i>	MAR. 19

The Presidential Primary and Caucus Schedule

Wisconsin	Apr. 1	Apr. 3	Apr. 5	Apr. 7	MAR. 19
Utah			Apr. 25*		MAR. 25*
California	June 3	June 5	June 7	June 2	MAR. 26
Nevada	May 27		FEB. 18*		Mar. 26
Kansas	Apr. 1		FEB. 1-7*	Apr. 7	Apr. 2
Pennsylvania	Apr. 22	APR. 10	Apr. 26	Apr. 28	Apr. 23
Alaska			Feb. 27- Mar. 1*		Apr. 27*
DC	May 6	May 1	May 3	May 5	May 7
Indiana	May 6	May 8	May 3	May 5	May 7
North Carolina	May 6	May 8	May 8	MAY 5	May 7
Nebraska	May 13	May 15	May 10	May 12	May 14
W. Virginia	June 3	June 5	MAY 10	May 12	May 14
Arkansas	May 27		MAR. 8	May 26	May 21
Hawaii			Feb. 4*		May 28*
Idaho	May 27	May 22	May 24	May 26	May 28
Kentucky	May 27		MAR. 8	May 26	May 28
Alabama	Mar. 11	Mar. 13	Mar. 8	June 2	June 4
Montana	June 3	June 5	June 7	June 2	June 4
New Jersey	June 3	June 5	June 7	June 2	June 4
New Mexico	June 3	June 5	June 7	June 2	June 4
Virginia			Jan.-May*		June 11

