

## **THE PRIMARIES** **(See also Ballot Access)**

One of the founding principles of the League was support for the direct primary as the nominating procedure for all offices, including those elected statewide. New York was among those states that had adopted the direct primary in the wave of reform that swept the country in the early part of the century; however, its extension to statewide offices came only in 1968. While the League has worked since the 1920s on a number of major provisions regarding primary elections, its present action position is limited to the date of the primary election.

The LWNYS extended its position on the primary in 1957 to include support for a permanent, single, June primary date. The legislature passed a “permanent” June date in 1965, but the League found vigilance was needed annually when the political calendar was determined. Then, in 1974, over vehement League opposition, the legislature established a “permanent” September primary, with a second primary to be held in April during presidential election years. A League reevaluation of its position in 1978 reaffirmed the permanent, single June primary as being best for voters, candidates and boards of elections. On the strength of this reaffirmation, the League continues to work for a constitutional amendment to guarantee this reform.

In 1977 LWNYS lobbying achieved an extension of the right to vote in a primary to those voters who were newly registered up to 30 days before the primary and to those who moved to another county after the previous general election and re-enrolled in the same party.

In 1991 legislation, the registration deadline for which a mail registration may be received before a primary, general or special election, was reduced from 30 to 20 days; it also allowed qualified voters who moved within the county to re-register in person up to ten days before the primary in order to vote in the primary.

Public dissatisfaction with a presidential primary ballot, which did not list the names of the presidential contenders, led the LWNYS to call for a change in the law in 1976, 1980, and 1984. Legislation was passed in 1983 allowing presidential candidate names to appear on the ballot with their pledged convention delegate candidates. However, each party may or may not choose to use this option. League efforts, therefore, continue to stress the need for a primary system for both parties in which voters can cast a meaningful ballot and express a clear choice in selecting delegates to national nominating conventions.

In a related ballot access case, *Molinari v. Powers*, which challenged the witness residence requirement for designating petitions (section 6-132, NYS Election Law) in the 2000 NYS Republican Presidential Primary, the Eastern District New York Court ruled that this requirement “placed an undue burden on the right to vote under the First Amendment.” Plaintiffs in this suit were Sen. John McCain and Steve Forbes, Republican presidential candidates. The New York State League was amicus to the brief filed by the Brennan Center for Justice that was successful.

A similar case, *Lerman v. Board of Elections* (2nd Circuit, 2000), dealt with the same provision of the NYS Election Law as it applied to a petition to gain party nomination for a New York City Council

seat in the primary election of September 1999. The League was again amicus to the brief filed by the Brennan Center. The case was appealed from a judgment of the U.S. District Court for the Eastern District of New York, which upheld the requirement. The U.S. Court of Appeals for the Second Circuit reversed that decision holding that the witness residence requirement “significantly burdens interactive political speech and political association, without advancing any legitimate state interest and, therefore, violates the First Amendment.” As a result, a candidate can send a team of campaign workers into any district to collect signatures as long as the workers are registered members of the party in New York State.

In the 2007 legislative session, bi-partisan legislation was introduced to move the date of the New York State Presidential Primary to February 5, 2008. This was driven primarily by the need by both Democrats and Republicans to make New York State more relevant in the Presidential Primaries. New York State will join eight other states having Presidential Primaries on February 5<sup>th</sup>, in what is being called “super-duper Tuesday.”