

Testimony of Jeremy Gruber, Senior VP, Open Primaries

Virginia House Privileges and Elections - Election Administration Subcommittee

January 26, 2021

HB2278-OPPOSITION

My name is Jeremy Gruber and I am the Senior Vice President of Open Primaries. Open Primaries is a national, non-profit election reform organization dedicated to more inclusive election systems.

We stand in strong opposition to HB 2278 which would restrict voter choice and give legal authority to close the state's primary elections to the state's Republican and Democratic Parties.

The use of voter registration rules in the United States is not limited to combating fraud and ensuring administrative efficiencies. It is also widely used as a tool to suppress the vote. Regardless of intent, that would be its effect if HB 2278 were to pass.

Virginia is currently one of twenty states that use nonpartisan voter registration along with running Republican and Democratic primary elections. In Virginia, you are registered with the state as a voter-not a member of a private political party. That means that every voter-regardless of their personal political beliefs- is given full choice in each election cycle to choose a ballot of the party of their choice. Virginia's primary elections are publicly funded by the taxpayers after all.

If Virginia were to adopt the type of partisan voter registration envisioned by HB 2278, two things would happen. First, it would require voters, as part of the registration process, to declare a political affiliation or no political affiliation at all to the state of Virginia. Parties are private political organizations, why should the state be collecting such information as part of the process of voting? There's only one reason. To force such voters into silos that restrict their choices at the ballot box. No longer would Virginia voters be able to vote for who they think is the best candidate. Registered Republicans would only be able to vote for Republicans and Democrats for Democrats. We are at a moment in Virginia, and the country as a whole, where hyper partisanship is tearing at the very fabric of our society-why would the state of Virginia want to adopt legislation to exacerbate those divides?

Second, and even worse, is the effect HB 2278 would have on the state's large and growing base of independent voters. A record number of voters identify as independent in Virginia and across the country-they are rapidly becoming larger than either the Republican or Democratic Parties. That includes over 50% of young people-Millennials and Gen-Zers-who are now the largest group of voters by age in the country. Today, they enjoy full equality with the state's voters who identify with one or the other major political parties.

HB 2278 would dramatically change that and start a process to disenfranchise millions of independent Virginians.

That's because the US Supreme Court has ruled -in cases such as *California Democratic Party v. Jones*-that political parties as private organizations have a 1st Amendment right to choose who can and can't participate in partisan primary elections. Right now, because Virginia utilizes non-partisan voter registration, a voter is deemed to have "affiliated" with a party by choosing its ballot on election

day. Federal Courts in cases such as *Democratic Party v Nago*, have upheld that interpretation as Constitutional.

But were the state of Virginia to adopt partisan voter registration, the *Jones* decision would give either the Virginia Republican or Democratic Party the legal standing to sue the state of Virginia to close its primary to only voters registered with that party. The Republican Party of Idaho did just that in 2011 and shut out every voter who was registered as independent in the process from participating in the state's primary elections.

While HB 2278 allows for independent voters to participate in the primaries by picking a party ballot of their choice, it's a legal certainty that the process of their disenfranchisement would immediately begin.

The sponsors of HB 2278 claim, without evidence, that voters are misusing the system. We know, from substantial study of nonpartisan voter registration in the twenty states that use it, that there is no increase in voter fraud or misuse. I would be happy to provide this Committee with a sample of such research. But one need look no further than this year's primaries to see how unlikely such fraud is to happen. For weeks leading up to the pivotal South Carolina Presidential Primary last year (South Carolina uses the same nonpartisan registration system as Virginia), conservative pundits called on the electorate to vote for Bernie Sanders who they thought would be a weaker candidate in the general election. They called it "Operation Chaos," and it was the largest and most coordinated attempt to sway voters to use their vote strategically to make mischief in the history of our country. "Operation Chaos," of course, failed dramatically-with no change in voting patterns. That's because voters-regardless of their political persuasion-take their vote seriously and vote for who they think is the best candidate-period.

41 states have some form of an open primary and there are many examples to choose from. If the Virginia legislature were truly interested in reform, it wouldn't be to move in the wrong direction by adopting partisan registration. Four diverse states-Alaska, California, Nebraska and Washington-have dispensed with partisan primaries altogether, and let all voters vote in one single open, public primary where all the candidates are on the same ballot, all voters participate and the top vote getters move on to the general election. These states are seeing significant gains in voter participation and legislative productivity and a decline in partisanship. Virginia should consider such a system.

HB 2278 would move Virginia backwards and down the road of suppressing the vote of millions of voters. That's a mistake, and we strongly encourage you to vote no on HB 2278.

Thank you and I'm happy to answer the Committee's questions.

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