



## **Legal Authority for State Parties to Open Primaries to Unaffiliated Voters**

The U.S. Supreme Court, in *Tashjian v. Republican Party of Connecticut*, has ruled that political parties have the legal right to supersede state election laws and allow unaffiliated voters to vote in their primaries.<sup>1</sup>

In *Tashjian*, a Connecticut election statute had required voters in a party's primary to be registered members of that party. The Republican Party of Connecticut adopted a party rule under which independents could vote in Republican primaries for federal and state offices and then brought suit, challenging the Connecticut statute on First Amendment freedom of association grounds. The Court sided with the Republican party, finding that "the fact that the State has the power to regulate the time, place, and manner of elections does not justify, without more, the abridgment of fundamental rights, such as the right to vote or, as here, the freedom of political association."

It is this precedent that led the United States District Court, S.D. to find a New York State statute virtually identical to the Connecticut statute unconstitutional.<sup>2</sup> In 2003, the Independence Party of New York amended its rules to permit voters who were registered as unaffiliated to vote in their primaries. Because NY state election law at the time only allowed voters enrolled in a party to vote in that party's primary, the State Board refused to make arrangements to accommodate the change in the Independence Party's rules. The Court found the law to be an unconstitutional burden on the Independence Party's right to determine what classes of otherwise eligible voters could vote in their elections. As a result of this decision, New York election law was modified.<sup>3</sup>

In *State v. Alaska Democratic Party*,<sup>4</sup> the Alaska Supreme Court made a similar ruling.

In all three states, the parties first adopted a rule opening their primaries and then petitioned their respective States' election authorities to conduct the parties' primary elections so that unaffiliated voters could participate. When election officials refused to comply, the parties went to court and won an order directing the election authorities to comply with the parties' demand.

In 2016, the Democratic Party opened their presidential primary to unaffiliated voters in Oklahoma, South Dakota, Nebraska, California and Alaska. So did the Republican Party in Alaska.

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<sup>1</sup> *Tashjian v. Republican Party*, 479 U.S. 208 (1986)

<sup>2</sup> *State Committee of Indep. Party Of NY v. Berman*, 294 F. Supp. 2d 518 (S.D.N.Y. 2003)

<sup>3</sup> Section 5 – 210 of the NY Election Law.

<sup>4</sup> 426 P.3d 901 (Alaska 2018)