

## **GOP's closed-primary plan may violate R.I, not US law**

 AP Associated Press

By Eric Tucker, Associated Press | December 31, 2009

PROVIDENCE - A proposal to close the Republican primary to nonmembers appears to run afoul of state law, the Rhode Island secretary of state's office said yesterday, but party leaders and election specialists say federal case law is on the GOP's side.

The Republican and Democratic parties currently allow unaffiliated voters to opt into either party on primary day to cast a ballot.

Republican officials are considering whether to close their primary to unaffiliated voters so that only registered party members can vote.

The plan is expected to be taken up at an executive committee meeting next Tuesday and, if approved, could be forwarded to the state's party members for a vote. Giovanni Cicione, the Republican Party chairman, said the closed primary, if approved, probably would not be put into place until 2012.

The secretary of state's office interprets Rhode Island law as allowing unaffiliated voters to participate in primaries even if a political party changes its internal rules to bar them, said the office's spokesman, Chris Barnett.

Raymond McKay, president of the conservative Rhode Island Republican Assembly and a strong advocate for a closed primary, said the change would be a natural extension of existing law, which already prohibits registered Democrats and Republicans from voting in each other's primaries.

He said he was confident that any change in party bylaws could survive a court challenge. "As we see it, the mechanism, the tools, and the language of the law are already in place to allow this to move forward," McKay said.

Parties, though regulated by state law, are within their constitutional rights to close or open primaries according to their wishes, said James Gardner, a University of Buffalo professor who specializes in elections law.

In 1986, the US Supreme Court sided with the Connecticut Republican Party, which wanted to allow independents to vote in its primary, even though state law restricted participation to registered members.

Though the Connecticut Republicans wanted an open primary, the court ruling made clear that political parties have a basic autonomy and a freedom of association in holding primary elections, Gardner said.

"The principle that settles this is that it's up to the party to choose. The party can open up its primary to non-Republicans or the party can do the opposite and prohibit non-Republicans," he said. "The operative constitutional principle is that it's the choice of the party whom to associate with."

In 2005, the high court affirmed Oklahoma's election law, which said a political party could invite only its own members and registered independents to participate in its primary.

States continue to grapple with the issue. In Idaho, for instance, a federal judge says a lawsuit from the state Republican Party seeking to close its primary cannot be decided until a trial, or at least a hearing, is held.

In Rhode Island, the Republicans only declared candidate for governor, Rory Smith, dropped out of the race this month.

Many Republicans have urged Stephen Laffey, a former mayor of Cranston who unsuccessfully sought the party's nomination for US Senate in 2006, to run. John Robitalle, the communications director for Republican Governor Donald Carcieri, is considering a bid.

The state's primary rules became an issue in 2006 when the conservative Laffey lost the primary to Lincoln Chafee, a moderate, who urged Democratic supporters to drop their party affiliation to vote for him in the Republican primary. ■

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