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Legal questions surround closed GOP primary idea

ERIC TUCKER

Associated Press Writer

PROVIDENCE, R.I. (AP) - A proposal to close the Republican primary to nonmembers appears to run afoul of state law, the secretary of state's office said Wednesday, but party leaders and election experts say they believe federal case law falls 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. Republican Party Chairman Giovanni Cicione said the closed primary, if approved, likely wouldn't 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.

But Raymond McKay, an executive committee member who is leading the push 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 fight.

"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.

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

Though the Connecticut Republicans wanted an open primary - the opposite of what the GOP is considering here - 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."

States continue to grapple with the issue.

In 2005, the nation's 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. And in Idaho, a federal judge says a lawsuit from the state Republican party seeking to close its primary can't 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 Cranston mayor who unsuccessfully sought the party's nomination for U.S. Senate in 2006, to run. John Robitalle, the communications director to Republican Gov. Don Carcieri, is considering a bid.

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

Cicione said he was personally undecided on a closed primary but was open to having the party consider it.