



Sore Loser Laws

Sore Loser Laws prohibit a candidate who runs in a primary and loses from running in the general election either as an independent or as a nominee of another party. These laws were created and are used by the two political parties to maximize their control. They significantly contribute to the polarization of U.S. politics.

While many have never heard of Sore Loser Laws, 47 of the 50 states have some form of these laws. Mickey Edwards, a former Republican Congressman from Oklahoma, Vice President of the Aspen Institute, and the author of “The Parties Versus the People: How to Turn Republicans and Democrats Into Americans,” wrote in an op-ed in the New York Times, Sore Loser Laws “are arguably even more insidious than partisan redistricting.”

Sore Loser Laws Polarize Elections

In an abstract entitled, “Nominations and the Supply of Candidates: The Connection Between Sore Loser laws and Congressional Polarization,” Barry Burden and Bradley Jones from the University of Wisconsin, and Michael Kang from Emory University School of Law argue that Sore Loser Laws create more polarization than any other form of voting or electoral restriction.

According to Burden, Jones, & Kang (BJ&K), “By preventing candidates who lose partisan primaries from subsequently running in the general election as independents or as nominees of other parties, these laws require insurgents to channel their activities inside the party system, thus producing more extreme major party nominees.”

BJ&K’s argument is quite simple. With few competitive districts, nominations are run by parties who want to control uncertainties, ward off competitors, and select ideologically appealing nominees. With Sore Loser laws, candidates tend to shift towards the base of their parties, because they know if they lose the primary, their political career can be over. If they do get elected, they will vote in ways that appease the bases of their parties, because they are scared of being “primaried” by a candidate that appeals more strongly to that base.

As BJ&K stated, “Democratic candidates running in states with such laws are nearly six points more liberal. Republicans are roughly 9.5 points more conservative in those same states.... an effect of this magnitude is substantial.”

Examples of Sore Loser Laws

In the 2010 Senate election in Delaware to fill the seat once been held by Joe Biden, Mike Castle, a former Governor and Congressman, was expected to win, but was defeated in the Republican Primary

by Christine O'Donnell, a Tea Party candidate. The Democrats nominated Chris Coons. Polls showed that Castle would have easily beaten Coons. Polls also showed that Castle would have won a three-way race. However, because of the Sore Loser laws, he was forbidden from running as an independent. In the final election, Coons defeated O'Donnell

In the 2012 Texas Republican Senate primary, David Dewhurst, the moderate Lieutenant Governor, won 45% percent of the vote, while Ted Cruz won 34%. Because no candidate received 50%, there was a run-off. Only 8% of Republicans voted in the run-off, and Cruz was victorious. If Dewhurst had run as an independent, he would have had an excellent chance of winning the final election. However, because of the Sore Loser laws, he was blocked from the ballot.

In 2010, Utah held a convention with 3,500 party activists. In the second round of voting for a Senate nominee, the incumbent, Robert Bennett, finished third, by 320 votes, and was eliminated. Had Bennett been able to run in a primary, he probably would have won. Had he been able to run as an independent, he might also have won. However, the party convention coupled with the Sore Loser law, ended Bennett's political career. In Edward's words, "the state's sore-loser law meant that 320 party activists effectively made a decision on behalf of the three million people of Utah."

In 2011, Gary Johnson, a former Governor of New Mexico, decided to seek the Republican nomination for President. In December 2011, he changed his mind and informed the Secretary of State of Michigan that he was no longer a candidate. Unfortunately, Johnson submitted his withdrawal papers 3 minutes after the deadline, so he remained on the ballot even though he was not a candidate. In May 2012, Johnson received the Libertarian Party nomination for President. Because he had "technically" run in the Republican primary, the State of Michigan, under its Sore Loser Laws, barred him from running as a Libertarian.

Connecticut is one of the three states without some form of Sore Loser Law. In 2006, Ned Lamont opposed Joe Lieberman in the Democratic Senate Primary over Lieberman's support for the Iraq war. Lamont narrowly won the primary. Because Connecticut is one of three states that have no Sore Loser law (Iowa and New York are the others), Lieberman was able to run in the final election as an independent. He won this election by more than 113,000 votes, enabling Connecticut to have a moderate Senator.

With the Sore Loser Laws, the only alternative for a defeated candidate is to run as a write-in. In the history of the U.S. Senate, only two candidates have been elected by write-ins, Strom Thurmond of South Carolina in 1954 and Lisa Murkowski of Alaska in 2010.

Enacting of Sore Loser Laws Directly Correlates with Increased Polarization.

The implementation of Sore Loser Laws correlates with the increasing polarization of U.S. politics. 36 states have enacted Sore Loser Laws since 1950 and 26 of these have enacted them since 1970.

State - Type - Year Enacted*

Alabama CF 1977	Alaska CF 1980	Arizona PCF 1970	Arkansas SL 1955
California CF 1917	Colorado SL 1963	Connecticut None	Delaware PCF 1978
Florida PCF 1970	Georgia CF 1983	Hawaii CF 1967	Idaho SL 1976
Illinois CF 1989	Indiana SL 1967	Iowa None	Kansas CF 1989
Kentucky SL 1920	Louisiana NP 1978	Maine CF 1973	Maryland SL 1957
Massachusetts CF 1976	Michigan CF 1988	Minnesota CF 1981	Mississippi CF 1906
Missouri CF 1977	Montana PCF 1991	Nebraska SL 1994	Nevada CF 1963
New Hampshire CF 1981	New Jersey SL 1915	New Mexico SL 1939	New York None
North Carolina CF 1967	North Dakota SL 1975	Ohio CF 1929	Oklahoma CF 1987
Oregon SL 1939	Pennsylvania CF 1937	Rhode Island CF 1981	South Carolina SL 1950
South Dakota SL 1977	Tennessee CF 1975	Texas SL 1985	Utah CF 1994
Vermont PCF 2010	Virginia SL 1932	Washington NP 2004	West Virginia CF 1919
Wisconsin CF 1977	Wyoming CF 1973		

* Information taken from Kang (2011). "SL" denotes an express prohibition on sore loser candidacies. "CF" denotes a cross-filing prohibition or other legal requirement that effectively prohibits a candidate from losing a party primary and thereafter filing to run as an independent candidate for the same office or to run in another party primary at the same time for the same office. "PCF" denotes a partial cross-filing prohibition or other legal requirement under which a candidate (i) may run in a party primary and as an independent candidate at the same time for the same office, or (ii) may not run in a party primary and as an independent candidate at the same time for the same office, but may run in more than one primary at the same time for the same office, provided in either case that the candidate files all his or her candidacies in advance of the primary election. "NP" denotes a nonpartisan primary.

Conclusion

Most people focusing on reforming elections look at open primaries, ranked choice voting, ending gerrymandering, and increasing voter access. However, they tend to ignore the Sore Loser laws. Evidence suggests that the Sore Loser laws have a critical impact on increasing the polarization of American politics.

Reform Elections Now calls for the repeal of all Sore Loser Laws.

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