

Building and Rebuilding An Election System in Arizona: Where We've Been, Where We're Going

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Arizona's political history is marked by considerable discontinuity as one finds, over the years, general shifts in basic political orientations, party support, the influence of specific groups and the course of public policy. One recurring theme of political life in the state though has been a desire to get away from "politics as usual" by altering the election system. Reformers have sought to make the arrangements fairer, produce candidates less tied to special interests, and with these changes, a government more likely to pursue the general public interest.

Arizona now appears, once again, to be in the mood for changing the system. As elsewhere in the nation there is support for a new kind of politics where less emphasis is placed on partisanship and leaders are encouraged to view issues as common problems requiring cooperative action based on solid research.

One strong indicator of the dissatisfaction with party politics and of at least latent support for making modifications in the election system has been a steady increase in the ranks of independent voters in the state. Independent voters amounted to just 11 percent of the registered voters in 1992. By 2014 this stood at 37 percent and for the first time independents outnumbered both Republicans at 34 percent, and Democrats at 28 percent. Most of the 1.2 million independents identify as political moderates, according to a 2015 Morrison Institute study, [*Who is Arizona's Independent Voter?*](#)

The Original System

Arizona came into statehood in 1912 riding a wave of discontent with the political system as it operated during the territorial period and a strong desire to experiment with new progressive ideas about how an election system should look. The reformers who dominated the state's constitutional convention and the early legislative sessions built a system that became nationally noted for its emphasis on democracy. It made Arizona among the leaders in the number, type and frequency of elections.

The reformers provided for the direct election of just about everyone they could think of: the governor, the secretary of state, the auditor, the treasurer, the attorney general, as well as the superintendent of public instruction, the mining inspector, numerous judges, members of a corporation (public utilities) commission, and members of a state tax commission.

All of these officials were to be elected for two-year terms. Reformers felt that brief terms and frequent elections would help screen out or rid the system of those who catered to the special interests. They also felt more protection was needed because the major threat of special interest influence took place after elected officials took office, when the public wasn't looking and lawmakers were doing their work behind closed doors. Reformers called for added protection through the initiative, referendum and recall process – ballot options that provided ways for the people to directly make their own laws, reject bad decisions made by the Legislature, and immediately toss elected officials out of office who were not responding to the wishes of their constituents.

Along with the initiative, referendum and recall, the delegates hoped to further the cause of popular control by requiring direct primaries so that ordinary voters could nominate political party candidates. This replaced a system where political party leaders or “bosses” working behind closed doors at party conventions with representatives of various interests determined who would run for what office. The idea of a direct primary appealed to reformers in Arizona as a way of reducing the hold corporations had on office holders.

The original system gave voters a great deal to do: They were expected to become informed about candidates for a large number and wide variety of offices in primary and general elections and, potentially, a large number of complex ballot propositions every two years. Over the years several adjustments have been made. Some elective offices have been eliminated – although somehow the office of mine inspector has managed to survive as an elective post – and terms of service have been lengthened, though the number of terms individuals can serve has been limited.

Still current and, in many ways, debatable are reforms made or proposed regarding judicial elections, term limits for legislators, public funding of elections, redistricting and the primary system.

Judicial Selection

Reflecting the original emphasis placed on democracy, for several years following statehood judges in Arizona were elected. This was done on a nonpartisan ticket in the general election though, like other candidates for office, judges could enter party primaries and receive the endorsement of one of the major parties. By the 1950s, however, state leaders began to complain about elected judges playing to the grandstand or, alternatively, giving into the demands of the rich and powerful rather than pursuing justice.

Hoping to take judges “out of politics,” voters, with the encouragement of the state’s leading newspapers and several legal and civic groups, changed the system in 1974 by approving a constitutional initiative calling for a merit system for selecting judges to the Arizona Supreme Court, the state Court of Appeals, and Superior Courts (general trial courts) in the two largest counties, Maricopa and Pima. Rather than assuming that judges had to be either appointed or elected, the merit plan called for a mixed system that combined the two approaches and added a nonpartisan commission to screen candidates. The idea was that judges could be both expert and responsive to the voters.

Under this system, special nonpartisan judicial nominating commissions comprised of lawyers and lay people screen applicants for vacancies on the courts. They then send lists of qualified individuals to the governor. The governor must choose from the list sent to him or her for a particular vacancy. At a later date, the governor’s choice must go through a retention election if he or she wishes to remain on the court. In these elections, judges run without partisan identification and without an opponent. If a majority of those voting refuse to retain a judge, a vacancy occurs and the process starts again.

The system, variations of which are found in about half the states, has had its critics. Organizations, commentators and politicians, largely from the conservative side of the political spectrum, have contended that the merit system has not, as promised, taken politics out of the judicial selection process but only shifted it to less-visible screening panels. They see the merit system facilitating the selection of activist liberal judges. Opponents of change feel the system has worked well in producing what are widely regarded well-qualified, fair and impartial judges and doesn’t need to be fixed. The voters, by overwhelmingly turning down a proposition proposed by the Legislature in 2012 that would have increased the governor’s role in the process, appear to agree with those favoring the system. Still, the issue, may well come to life again.

Legislative Term Limits

Legislative term limits in Arizona came with a constitutional amendment approved by 74 percent of the voters in 1992. The law limits individuals to four consecutive two-year terms in either the Arizona House or Senate. Arizona’s version is a bit more liberal than the laws in several other states in that Arizona allows term limits to start over if a member moves from one house to another and also allows members to run again for their former seats after sitting out a term; there is no lifetime ban.

Those arguing for term limits saw its value in ousting deeply entrenched incumbents who had mastered the art of getting reelected but who governed poorly, as well as discouraging future professional or “career” politicians while encouraging the election of civic-minded people with fresh ideas.

Those opposed argued that voters should be free to determine if they want to keep an individual in office, that limits would automatically throw out the good as well as the bad lawmakers and that the change would have devastating effects on the legislative institution itself.

The arguments, pro and con, continue to be heard today.

Term limits have helped churn the Legislature by reducing the number of incumbents running for re-election, helping to open the door for new faces. It might also be argued, however, that term limits have led to a decline of institutional memory and experience among legislators and, with this, a diminishment of their role at the expense of lobbyists and professional staff members. Term limits also may have had a negative impact on legislative leadership because the short period in office takes away from the time needed to develop leadership skills, with short-term rank-and-file members feeling freer to act more independently. Longtime observers have pointed out that limits have undermined what was a highly functional mellowing process in the Arizona Legislature, one where members got to know each other on a personal basis over long years of service, and were able to form bipartisan coalitions.

Most legislators were not happy about term limits and for a few years following the change there was some movement in the Legislature to turn back the clock. However, legislators have been cautious about taking action. Term limits have been popular with the public and are perhaps even more popular in the current anti-politics as usual environment. Too, with the passage of time, sentiment for getting rid of limits may have somewhat diminished because there are fewer and fewer people serving in the Legislature who remember the “good ol’ days” before term limits. Some civic groups, such as the Arizona Town Hall and the O’Connor House (led by Sandra Day O’Connor, retired U.S. Supreme Court justice), have suggested that term limits be scrapped. While this does not appear likely in the short run, there may be some possibility of at least partially offsetting the impact of term limits by extending the length of terms served from two years to four.

Public Funding of Elections

Arizona was the second state in the nation, following Maine, to adopt a clean elections program. It did so in 1998 when voters approved an initiative measure by a narrow margin of 51 to 49 percent, establishing a voluntary system of public financing for legislative and statewide offices. The basic goals were to reduce the political influence of wealthy individuals and special interests through campaign contributions, make it easier for those with limited financial resources to run for office, and to level the playing field among candidates.

In the basic program, candidates who collect enough small donations to demonstrate their viability as candidates receive a set amount of public funds if they agree to limit spending and not take money from outside sources. An important provision of the measure, which was struck down by a 5-4 U.S. Supreme Court decision in 2011, provided that those who took public funds could receive up to three times the base amount to match or at least partially match the spending of their privately funded opponents or independent political groups supporting their opponents.

Up to the time the matching requirement was negated, public financing was popular with candidates of both parties. The growth of the program, however, brought complaints that public financing was putting “low quality” extremist candidates in the Legislature in place of business-friendly legislators. The system was especially useful to far-right

candidates in the Republican Party. In the primaries they used the matching grant portion of the system to keep up with or to threaten to keep up with contributions given by business people to more moderate candidates who opposed them. Democrats as well as business-minded Republicans were unhappy about this development.

The high court's decision has made the system considerably less valuable to candidates and has encouraged them to turn to businesses, unions and other special interests for campaign funds.

Overall, the system has given a greater opportunity for people to run for office who might not have done so before because of financial considerations. To some extent it also has given voters more choice among candidates and reduced the advantages normally enjoyed by incumbents, though incumbents continue to have an overall advantage in securing reelection.

Beyond funding, the Clean Elections Commission provides voter information about candidates and their positions on issues through publications and by sponsoring debates. The commission also has expanded its voter education role, including underwriting the Morrison Institute report and presentation/panel discussion regarding Arizona's independent voter.

The commission also has moved to play a broader role in the enforcement of campaign finance laws. Almost since its inception, however, the commission has regularly been attacked in the Legislature – mostly by Republicans who want the voters to abolish the agency, cut off its revenue sources or, at least, severely limit its powers.

Redistricting Reform

In 2000 Arizonans expressed their dissatisfaction with way legislators had handled the task they long performed of carving up new district lines for state legislative and congressional elections every 10 years following the decennial census. In approving a constitutional initiative that year, voters took away the job from legislators and gave it to a five-member commission known as the Independent Redistricting Commission (IRC).

The core issue was perceived “gerrymandering” – legislators drawing district lines to take care of their own personal interests and the welfare of their political party at the expense of giving voters much of a choice among competing candidates in the general election. Allowing legislators to define the district lines from which they are elected was seen as creating a situation where candidates for office could pick their voters, rather than the other way around. One group calling for reform likened it to “asking baseball players to be their own umpires.”

The IRC consists of five members – two Democrats, two Republicans and an independent who is chosen by the major-party commissioners and acts as chair. The commission has produced redistricting plans following the 2000 census and the 2010 census and provoked the anger of both major political parties. The first time around Democrats viewed the

plans adopted as victories for the Republicans. Ten years later Republicans viewed the redistricting plans adopted as victories for Democrats.

Generally, the four commissioners representing the major parties have engaged in winner-take-all struggles. Compromise between them has been elusive so the single independent on the commission, acting as the chairperson, winds up playing the pivotal role. As a result, just about any decision he or she makes is likely to be condemned by two of the commissioners from one or the other political party. Last time around the proceedings were about as rancorous as possible, culminating in an unsuccessful attempt by Republican Governor Jan Brewer to fire the IRC chair, with the state Supreme Court siding with the IRC chair.

Anger over the commission's most recent performance led to talk about asking voters to abolish the IRC and return the function to the Legislature. While such talk has died down a bit, various other reforms having to do with the structure and operation of the IRC continue to be discussed. One of the more popular of these would increase the size of the commission to nine members – three Democrats, three Republicans, and three independents with one of the independents chosen as chair by all the others. This would reduce the pressure on the chair and, with the addition of independents, encourage greater willingness to compromise among the commissioners. It also would give more equitable representation to independents, who constitute more than a third of the registered voters but have only a fifth of the IRC members.

Primary Reform

For several years following statehood, Arizona had a party primary system that limited participation to those who registered with a particular party. This is known as a closed primary. In 1998, Arizona voters adopted what was called an open primary system, but in reality it is better defined as a semi-closed one. Under this system, party members are still restricted to voting in their own party primary but those who registered without indicating a party affiliation – or, independents – are allowed to vote in the party primary of their choice (with the exception of presidential primaries). Officials with both major parties saw the semi-closed system preferable to a wide-open primary where all voters had the opportunity to vote in the primary of their choice.

The revision made in 1998 through a constitutional amendment submitted by the Legislature to the voters illustrated an awareness of the growing importance of the independent voter. Independents, though, have not often taken advantage of the opportunity offered. Many, according to the Morrison Institute study, are unaware that they can vote in the Democratic or Republican primaries. Others appear to have no desire to participate or feel that they have no right to participate in the voting decisions of a partisan group with which they do not affiliate and choose to wait until the general election.

In recent years there has been a movement to both scrap the party primary system and replace it with one friendlier to independents. The principle argument against the status

quo is that party primaries have been low turnout affairs and the relatively few who do show up tend to be from the opposite ends of the ideological scale – far to the right in Republican primaries and far to the left in Democratic primaries. Because of this, critics contend, nominees tend to be far more ideological than those who generally identify with either of the major parties or the voters in the general electorate. The end result as far as the state Legislature is concerned is to encourage both gridlock and extremism and to contribute to the failure of lawmakers to produce to the satisfaction of the majority of Arizonans.

To address these problems some have proposed a top-two primary system. In this arrangement there is just one primary in which all registered voters are given the opportunity to choose among all the candidates for a particular office, regardless of the voter's party affiliation or the candidates' political affiliation. In the general election the two candidates receiving the most votes compete against each other even if both candidates belong to the same political party. Theoretically, the system would lead to the selection of the more moderate or less extreme candidates in any given contest because it encourages candidates to appeal to a broader constituency, not simply to members of their own party who are most likely to vote. Taking the partisanship out of the primary system could also do much to encourage the participation of more moderate independent voters.

Arizona voters turned down a top-two proposal in 2012 by a two-to-one margin. Its sponsors were gathering signatures for what they consider an improved version for the November 2016 ballot, but have since ended their efforts. The proposal also would have done away with existing laws that require candidates who run as independents to gather far more signatures to get on the ballot than candidates who run as a member of a political party. By equalizing the signature requirements for all candidates, independent candidates would be encouraged to run.

Meanwhile, as was the case in the just-completed 2016 Presidential Preference Election primary in Arizona, independents are shut out altogether because the primaries are strictly a political party function even though all taxpayers underwrite the expense. Independents, however, can vote in one of the party primaries if they change their registration to a political party and do so 29 days before the actual primary election date. Otherwise, as many independent voters found out the hard way, they cannot vote for a party's presidential candidate in the primary even if they wait in lines for hours at a polling place; their provisional ballot won't officially count.

Change and the Political Muddle

Arizonans have a long tradition of being disgusted with public officials and of setting out to do something about it by changing the rules by which they are elected. They often have been way ahead of the curve when it comes to experimenting with basic election reforms. Reformers have not always gotten it completely right, but they keep on trying to cure what they see as basic flaws in the system.

Building and rebuilding the election system has been a highly partisan affair. Proposals to alter just about any part have provoked intense partisan debate and, more recently, have often involved non-partisan or anti-partisan independents, as well. Republicans and conservatives are riding high in the state but are not altogether pleased with the judicial selection system, term limits, clean elections, the top-two primary or the redistricting commission (largely due to the IRC plans adopted the second time around).

Democrats and progressives have bitter memories of the way “right-wing wackos” took advantage of clean elections when matching funds were available and what the redistricting commission did the first time it developed a plan. Still, they have reason to see benefits in public funding and the activities of both the Clean Elections Commission and the Independent Redistricting Commission. Having had limited success with the voters in recent years, they also have reason to defend the merit system for judges which gives members of the court a measure of independence from the dominant political forces.

Legislators from both parties would just as soon get rid of term limits, though their passion for doing so has diminished in recent years. Independents have contempt for both parties and see themselves as moderates who have, thus far, been unable to muscle much influence in the political system despite their numbers. At the same time, neither Republicans nor Democrats know what to do about them.

As in the past, the current disputes involving the election system are likely to lead to several highly controversial ballot measures some time down the road in search of more and improved reform.

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