SUPREME COURT OF THE UNITED STATES

No. 99–401

CALIFORNIA DEMOCRATIC PARTY, ET AL., PETITIONERS *v.* BILL JONES, SECRETARY OF STATE OF CALIFORNIA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 26, 2000]

JUSTICE SCALIA delivered the opinion of the Court.

This case presents the question whether the State of California may, consistent with the First Amendment to the United States Constitution, use a so-called "blanket" primary to determine a political party's nominee for the general election.

I

Under California law, a candidate for public office has two routes to gain access to the general ballot for most state and federal elective offices. He may receive the nomination of a qualified political party by winning its primary,[1] see Cal. Elec. Code Ann. §§15451, 13105(a)

[1]A party is qualified if it meets one of three conditions: (1) in the last gubernatorial election, one of its statewide candidates polled at least two percent of the statewide vote; (2) the party's membership is at least one percent of the statewide vote at the last preceding gubernatorial election; or (3) voters numbering at least 10 percent of the statewide vote at the last gubernatorial election sign a petition stating that they intend to form a new party. See Cal. Elec. Code Ann. §5100 (West 1996

(West 1996); or he may file as an independent by obtaining (for a statewide race) the signatures of one percent of the State's electorate or (for other races) the signatures of three percent of the voting population of the area represented by the office in contest, see §8400.

Until 1996, to determine the nominees of qualified parties California held what is known as a "closed" partisan primary, in which only persons who are members of the political party– *i.e.*, who have declared affiliation with that party when they register to vote, see Cal. Elec. Code Ann. §§2150, 2151 (West 1996 and Supp. 2000)– can vote on its nominee, see Cal. Elec. Code Ann. §2151 (West 1996). In 1996 the citizens of California adopted by initiative Proposition 198. Promoted largely as a measure that would "weaken" party "hard-liners" and ease the way for "moderate problem-solvers," App. 89–90 (reproducing ballot pamphlet distributed to voters), Proposition 198 changed California's partisan primary from a closed primary to a blanket primary. Under the new system, "[a]ll persons entitled to vote, including those not affiliated with any political party, shall have the right to vote . . . for any candidate regardless of the candidate's political affiliation." Cal. Elec. Code Ann. §2001 (West Supp. 2000); see also §2151. Whereas under the closed primary each voter received a ballot limited to candidates of his own party, as a result of Proposition 198 each voter's primary ballot now lists every candidate regardless of party affiliation and allows the voter to choose freely among them. It remains the case, however, that the candidate of each party who wins the greatest number of votes "is the nominee of that party at the ensuing general election." Cal. Elec. Code Ann. §15451 (West 1996).[2]

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and Supp. 2000).

[2]California's new blanket primary system does not apply directly to

Petitioners in this case are four political parties– the California Democratic Party, the California Republican Party, the Libertarian Party of California, and the Peace and Freedom Party– each of which has a rule prohibiting persons not members of the party from voting in the party's primary.[3] Petitioners brought suit in the United States District Court for the Eastern District of California against respondent California Secretary of State, alleging, *inter alia*, that California's blanket primary violated their First Amendment rights of association, and seeking declaratory and injunctive relief. The group Californians for an Open Primary, also respondent, intervened as a party defendant. The District Court recognized that the new law would inject into each party's primary substantial numbers of voters unaffiliated with the party. 984 F. Supp. 1288, 1298–1299 (1997). It further recognized that this might result in selection of a nominee different from the one party members would select, or at the least cause the same nominee to commit himself to different positions. *Id.*, at 1299. Nevertheless, the District Court held that the burden on petitioners' rights of association was not a severe one, and was justified by state interests ultimately reducing to this: "enhanc[ing] the democratic

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the apportionment of presidential delegates. See Cal. Elec. Code Ann. §§15151, 15375, 15500 (West Supp. 2000). Instead, the State tabulates the presidential primary in two ways: according to the number of votes each candidate received from the entire voter pool and according to the amount each received from members of his own party. The national parties may then use the latter figure to apportion delegates. Nor does it apply to the election of political party central or district committee members; only party members may vote in these elections. See Cal. Elec. Code Ann. §2151 (West 1996 and Supp. 2000).

[3] Each of the four parties was qualified under California law when they filed this suit. Since that time, the Peace and Freedom Party has apparently lost its qualified status. See Brief for Petitioners 16 (citing Child of the '60s Slips, Los Angeles Times, Feb. 17, 1999, p. B–6).

nature of the election process and the representativeness of elected officials." *Id.*, at 1301. The Ninth Circuit, adopting the District Court's opinion as its own, affirmed. 169 F. 3d 646 (1999). We granted certiorari. 528 U. S. 1133 (2000).

II

Respondents rest their defense of the blanket primary upon the proposition that primaries play an integral role in citizens' selection of public officials. As a consequence, they contend, primaries are public rather than private proceedings, and the States may and must play a role in ensuring that they serve the public interest. Proposition 198, respondents conclude, is simply a rather pedestrian example of a State's regulating its system of elections.

We have recognized, of course, that States have a major role to play in structuring and monitoring the election process, including primaries. See *Burdick* v. *Takushi*, 504 U. S. 428, 433 (1992); *Tashjian* v. *Republican Party of Conn.*, 479 U. S. 208, 217 (1986). We have considered it "too plain for argument," for example, that a State may require parties to use the primary format for selecting their nominees, in order to assure that intraparty competition is resolved in a democratic fashion. *American Party of Tex.* v. *White*, 415 U. S. 767, 781 (1974); see also *Tashjian*, *supra*, at 237 (SCALIA, J., dissenting). Similarly, in order to avoid burdening the general election ballot with frivolous candidacies, a State may require parties to demonstrate "a significant modicum of support" before allowing their candidates a place on that ballot. See *Jenness* v. *Fortson*, 403 U. S. 431, 442 (1971). Finally, in order to prevent "party raiding"– a process in which dedicated members of one party formally switch to another party to alter the outcome of that party's primary– a State may require party registration a reasonable period of time before a primary election. See *Rosario* v. *Rockefeller*, 410

U. S. 752 (1973). Cf. *Kusper* v. *Pontikes*, 414 U. S. 51 (1973) (23-month waiting period unreasonable).

What we have not held, however, is that the processes by which political parties select their nominees are, as respondents would have it, wholly public affairs that States may regulate freely.[4] To the contrary, we have continually stressed that when States regulate parties' internal processes they must act within limits imposed by the Constitution. See, *e.g.*, *Eu* v. *San Francisco County Democratic Central Comm.*, 489 U. S. 214 (1989); *Democratic Party of United States* v. *Wisconsin ex rel. La Follette*, 450 U. S. 107 (1981). In this regard, respondents' reliance on *Smith* v. *Allwright*, 321 U. S. 649 (1944), and *Terry* v. *Adams*, 345 U. S. 461 (1953), is misplaced. In *Allwright*, we invalidated the Texas Democratic Party's rule limiting participation in its primary to whites; in *Terry*, we invalidated the same rule promulgated by the Jaybird Democratic Association, a "self-governing voluntary club," 345 U. S., at 463. These cases held only that, when a State prescribes an election process that gives a special role to political parties, it "endorses, adopts and enforces the discrimination against Negroes," that the parties (or, in the case of the Jaybird Democratic Association, organizations that are "part and parcel" of the parties, see *id.*, at 482 (Clark, J., concurring)) bring into the process– so that the parties' discriminatory action becomes state action under the Fifteenth Amendment. *Allwright*, *supra*, at

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[4] On this point, the dissent shares respondents' view, at least where the selection process is a state-run election. The right not to associate, it says, "is simply inapplicable to participation in a state election." "[A]n election, unlike a convention or caucus, is a public affair." *Post*, at 6 (opinion of STEVENS, J.). Of course it is, but when the election determines a party's nominee it is a party affair as well, and, as the cases to be discussed in text demonstrate, the constitutional rights of those composing the party cannot be disregarded.

664; see also *Terry*, 345 U. S., at 484 (Clark, J., concurring); *id.*, at 469 (opinion of Black, J.). They do not stand for the proposition that party affairs are public affairs, free of First Amendment protections– and our later holdings make that entirely clear.[5] See, *e.g.*, *Tashjian*, *supra*.

Representative democracy in any populous unit of governance is unimaginable without the ability of citizens to band together in promoting among the electorate candidates who espouse their political views. The formation of national political parties was almost concurrent with the formation of the Republic itself. See Cunningham, The Jeffersonian Republican Party, in 1 History of U. S. Political Parties 239, 241 (A. Schlesinger ed., 1973). Consistent with this tradition, the Court has recognized that the First Amendment protects "the freedom to join together in furtherance of common political beliefs," *Tashjian*, *supra*, at 214–215, which "necessarily presupposes the freedom to

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[5]The dissent is therefore wrong to conclude that *Allwright* and *Terry* demonstrate that "[t]he protections that the First Amendment affords to the internal processes of a political party do not encompass a right to exclude nonmembers from voting in a state-required, state-financed primary election." *Post*, at 6 (internal quotation marks and citation omitted). Those cases simply prevent exclusion that violates some independent constitutional proscription. The closest the dissent comes to identifying such a proscription in this case is its reference to "the First Amendment associational interests" of citizens to participate in the primary of a party to which they do not belong, and the "fundamental right" of citizens "to cast a meaningful vote for the candidate of their choice." *Post*, at 13. As to the latter: Selecting a candidate is quite different from voting for the candidate of one's choice. If the "fundamental right" to cast a meaningful vote were really at issue in this context, Proposition 198 would be not only constitutionally permissible but constitutionally required, which no one believes. As for the associational "interest" in selecting the candidate of a group to which one does not belong, that falls far short of a constitutional right, if indeed it can even fairly be characterized as an interest. It has been described in our cases as a "desire"– and rejected as a basis for disregarding the First Amendment right to exclude. See *infra*, at 16.

identify the people who constitute the association, and to limit the association to those people only,'" *La Follette*, 450 U. S., at 122. That is to say, a corollary of the right to associate is the right not to associate. "'Freedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association's being.'" *Id.*, at 122, n. 22 (quoting L. Tribe, American Constitutional Law 791 (1978)). See also *Roberts* v. *United States Jaycees*, 468 U. S. 609, 623 (1984).

In no area is the political association's right to exclude more important than in the process of selecting its nominee. That process often determines the party's positions on the most significant public policy issues of the day, and even when those positions are predetermined it is the nominee who becomes the party's ambassador to the general electorate in winning it over to the party's views. See *Timmons* v. *Twin Cities Area New Party*, 520 U. S. 351, 372 (1997) (STEVENS, J., dissenting) ("But a party's choice of a candidate is the most effective way in which that party can communicate to the voters what the party represents and, thereby, attract voter interest and support"). Some political parties– such as President Theodore Roosevelt's Bull Moose Party, the La Follette Progressives of 1924, the Henry Wallace Progressives of 1948, and the George Wallace American Independent Party of 1968– are virtually inseparable from their nominees (and tend not to outlast them). See generally E. Kruschke, Encyclopedia of Third Parties in the United States (1991).

Unsurprisingly, our cases vigorously affirm the special place the First Amendment reserves for, and the special protection it accords, the process by which a political party "select[s] a standard bearer who best represents the party's ideologies and preferences." *Eu*, *supra*, at 224 (internal quotation marks omitted). The moment of choosing the party's nominee, we have said, is "the crucial

juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community." *Tashjian*, 479 U. S., at 216; see also *id.*, at 235–236 (SCALIA, J., dissenting) ("The ability of the members of the Republican Party to select their own candidate . . . unquestionably implicates an associational freedom"); *Timmons*, 520 U. S., at 359 ("[T]he New Party, and not someone else, has the right to select the New Party's standard bearer" (internal quotation marks omitted)); *id.*, at 371 (STEVENS, J., dissenting) ("The members of a recognized political party unquestionably have a constitutional right to select their nominees for public office").

In *La Follette*, the State of Wisconsin conducted an open presidential preference primary.[6] Although the voters did not select the delegates to the Democratic Party's National Convention directly— they were chosen later at caucuses of party members— Wisconsin law required these delegates to vote in accord with the primary results. Thus allowing nonparty members to participate in the selection of the party's nominee conflicted with the Democratic Party's rules. We held that, whatever the strength of the state interests supporting the open primary itself, they could not justify this "substantial intrusion into the associational freedom of members of the National Party."[7] 450

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[6] An open primary differs from a blanket primary in that, although as in the blanket primary any person, regardless of party affiliation, may vote for a party's nominee, his choice is limited to that party's nominees *for all offices*. He may not, for example, support a Republican nominee for Governor and a Democratic nominee for attorney general.

[7] The dissent, in attempting to fashion its new rule— that the right not to associate does not exist with respect to primary elections, see *post*, at 6— rewrites *Democratic Party of United States* v. *Wisconsin ex rel. La Follette*, 450 U. S. 107 (1981), to stand merely for the proposition that a political party has a First Amendment right to "defin[e] the organization and composition of its governing units," *post*, at 3. In fact, however, the state-imposed burden at issue in *La Follette* was the "intrusion by those

U. S., at 126.

California's blanket primary violates the principles set forth in these cases. Proposition 198 forces political parties to associate with– to have their nominees, and hence their positions, determined by– those who, at best, have refused to affiliate with the party, and, at worst, have expressly affiliated with a rival. In this respect, it is qualitatively different from a closed primary. Under that system, even when it is made quite easy for a voter to

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with adverse political principles'" upon the selection of the party's nominee (in that case its presidential nominee). 450 U. S., at 122 (quoting *Ray* v. *Blair*, 343 U. S. 154, 221–222 (1952) *(per curiam)*). See also 450 U. S., at 125 (comparing asserted state interests with burden created by the "imposition of voting requirements upon" delegates). Of course *La Follette* involved the burden a state regulation imposed on a national party, but that factor affected only the weight of the State's interest, and had no bearing upon the existence *vel non* of a party's First Amendment right to exclude. 450 U. S., at 121–122, 125–126. Although JUSTICE STEVENS now considers this interpretation of *La Follette* "specious", see *post*, at 4, n. 3, he once subscribed to it himself. His dissent from the order dismissing the appeals in *Bellotti* v. *Connolly* described *La Follette* thusly: "There this Court rejected Wisconsin's requirement that delegates to the party's Presidential nominating convention, selected in a primary open to nonparty voters, must cast their convention votes in accordance with the primary election results. In our view, the interests advanced by the State . . . did not justify its substantial intrusion into the associational freedom of members of the National Party. . . . Wisconsin *required* convention delegates to cast their votes for candidates who might have drawn their support from nonparty members. The results of the party's decisionmaking process might thereby have been distorted." 460 U. S. 1057, 1062–1063 (1983) (emphasis in original).

Not only does the dissent's principle of no right to exclude conflict with our precedents, but it also leads to nonsensical results. In *Tashjian* v. *Republican Party of Conn.*, 479 U. S. 208 (1986), we held that the First Amendment protects a party's right to invite independents to participate in the primary. Combining *Tashjian* with the dissent's rule affirms a party's constitutional right to allow outsiders to select its candidates, but denies a party's constitutional right to reserve candidate selection to its own members. The First Amendment would thus guarantee a party's right to lose its identity, but not to preserve it.

change his party affiliation the day of the primary, and thus, in some sense, to "cross over," at least he must formally *become a member of the party;* and once he does so, he is limited to voting for candidates of that party.[8]

The evidence in this case demonstrates that under California's blanket primary system, the prospect of having a party's nominee determined by adherents of an opposing party is far from remote– indeed, it is a clear and present danger. For example, in one 1997 survey of California voters 37 percent of Republicans said that they planned to vote in the 1998 Democratic gubernatorial primary, and 20 percent of Democrats said they planned to vote in the 1998 Republican United States Senate primary. Tr. 668–669. Those figures are comparable to the results of studies in other States with blanket primaries. One expert testified, for example, that in Washington the number of voters crossing over from one party to another can rise to as high as 25 percent, *id.*, at 511, and another that only 25 to 33 percent of all Washington voters limit themselves to candidates of one party throughout the ballot, App. 136. The impact of voting by nonparty members is much greater upon minor parties, such as the Libertarian Party and the Peace and Freedom Party. In the first primaries these parties conducted following California's implementation of Proposition 198, the total votes

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[8]In this sense, the blanket primary also may be constitutionally distinct from the open primary, see n. 6, *supra,* in which the voter is limited to one party's ballot. See *La Follette, supra,* at 130, n. 2 (Powell, J., dissenting) ("[T]he act of voting in the Democratic primary fairly can be described as an act of affiliation with the Democratic Party. . . . The situation might be different in those States with 'blanket' primaries– *i.e.*, those where voters are allowed to participate in the primaries of more than one party on a single occasion, selecting the primary they wish to vote in with respect to each individual elective office"). This case does not require us to determine the constitutionality of open primaries.

cast for party candidates in some races was more than *double* the total number of *registered party members*. California Secretary of State, Statement of Vote, Primary Election, June 2, 1998, http://primary98.ss.ca.gov/Final/Official_Results.htm; California Secretary of State, Report of Registration, May 1998, http://www.ss.ca.gov/elections/elections_u.htm.

The record also supports the obvious proposition that these substantial numbers of voters who help select the nominees of parties they have chosen not to join often have policy views that diverge from those of the party faithful. The 1997 survey of California voters revealed significantly different policy preferences between party members and primary voters who "crossed over" from another party. Pl. Exh. 8 (Addendum to Mervin Field Report). One expert went so far as to describe it as "inevitable [under Proposition 198] that parties will be forced in some circumstances to give their official designation to a candidate who's not preferred by a majority or even plurality of party members." Tr. 421 (expert testimony of Bruce Cain).

In concluding that the burden Proposition 198 imposes on petitioners' rights of association is not severe, the Ninth Circuit cited testimony that the prospect of malicious crossover voting, or raiding, is slight, and that even though the numbers of "benevolent" crossover voters were significant, they would be determinative in only a small number of races.[9] 169 F. 3d, at 656–657. But a single election in which the party nominee is selected by non-party members could be enough to destroy the party. In the 1860 presidential election, if opponents of the fledgling

[9]The Ninth Circuit defined a crossover voter as one "who votes for a candidate of a party in which the voter is not registered. Thus, the cross-over voter could be an independent voter or one who is registered to a competing political party." 169 F. 3d 646, 656 (1999).

Republican Party had been able to cause its nomination of a pro-slavery candidate in place of Abraham Lincoln, the coalition of intraparty factions forming behind him likely would have disintegrated, endangering the party's survival and thwarting its effort to fill the vacuum left by the dissolution of the Whigs. See generally, 1 Political Parties & Elections in the United States: An Encyclopedia 398–408, 587 (L. Maisel ed. 1991). Ordinarily, however, being saddled with an unwanted, and possibly antithetical, nominee would not destroy the party but severely transform it. "[R]egulating the identity of the parties' leaders," we have said, "may . . . color the parties' message and interfere with the parties' decisions as to the best means to promote that message." *Eu*, 489 U. S., at 231, n. 21.

In any event, the deleterious effects of Proposition 198 are not limited to altering the identity of the nominee. Even when the person favored by a majority of the party members prevails, he will have prevailed by taking somewhat different positions– and, should he be elected, will continue to take somewhat different positions in order to be *re*nominated. As respondents' own expert concluded, "[t]he policy positions of Members of Congress elected from blanket primary states are . . . more moderate, both in an absolute sense and relative to the other party, and so are more reflective of the preferences of the mass of voters at the center of the ideological spectrum." App. 109 (expert report of Elisabeth R. Gerber). It is unnecessary to cumulate evidence of this phenomenon, since, after all, the whole *purpose* of Proposition 198 was to favor nominees with "moderate" positions. *Id.*, at 89. It encourages candidates– and officeholders who hope to be renominated– to curry favor with persons whose views are more "centrist" than those of the party base. In effect, Proposition 198 has simply moved the general election one step earlier in the process, at the expense of the parties' ability to perform the "basic function" of choosing their own leaders. *Kusper*, 414 U. S., at 58.

Nor can we accept the Court of Appeals' contention that the burden imposed by Proposition 198 is minor because petitioners are free to endorse and financially support the candidate of their choice in the primary. 169 F. 3d, at 659. The ability of the party leadership to endorse a candidate is simply no substitute for the party members' ability to choose their own nominee. In *Eu*, we recognized that party-leadership endorsements are not always effective—for instance, in New York's 1982 gubernatorial primary, Edward Koch, the Democratic Party leadership's choice, lost out to Mario Cuomo. 489 U. S., at 228, n. 18. One study has concluded, moreover, that even when the leadership-endorsed candidate has won, the effect of the endorsement has been negligible. *Ibid.* (citing App. in *Eu* v. *San Francisco County Democratic Central Comm.*, O. T. 1988, No. 87–1269, pp. 97–98). New York's was a closed primary; one would expect leadership endorsement to be even less effective in a blanket primary, where many of the voters are unconnected not only to the party leadership but even to the party itself. In any event, the ability of the party leadership to endorse a candidate does not assist the party rank and file, who may not themselves agree with the party leadership, but do not want the party's choice decided by outsiders.

We are similarly unconvinced by respondents' claim that the burden is not severe because Proposition 198 does not limit the parties from engaging fully in *other* traditional party behavior, such as ensuring orderly internal party governance, maintaining party discipline in the legislature, and conducting campaigns. The accuracy of this assertion is highly questionable, at least as to the first two activities. That party nominees will be equally observant of internal party procedures and equally respectful of party discipline when their nomination depends on the general electorate rather than on the party faithful seems

to us improbable. Respondents themselves suggest as much when they assert that the blanket primary system "'will lead to the election of more representative 'problem solvers' *who are less beholden to party officials.*'" Brief for Respondents 41 (emphasis added) (quoting 169 F. 3d, at 661). In the end, however, the effect of Proposition 198 on these other activities is beside the point. We have consistently refused to overlook an unconstitutional restriction upon some First Amendment activity simply because it leaves other First Amendment activity unimpaired. See, *e.g., Spence* v. *Washington*, 418 U. S. 405, 411, n. 4 (1974) *(per curiam); Kusper*, 414 U. S., at 58. There is simply no substitute for a party's selecting its own candidates.

In sum, Proposition 198 forces petitioners to adulterate their candidate-selection process– the "basic function of a political party," *ibid.*– by opening it up to persons wholly unaffiliated with the party. Such forced association has the likely outcome– indeed, in this case the *intended* outcome– of changing the parties' message. We can think of no heavier burden on a political party's associational freedom. Proposition 198 is therefore unconstitutional unless it is narrowly tailored to serve a compelling state interest. See *Timmons*, 520 U. S., at 358 ("Regulations imposing severe burdens on [parties'] rights must be narrowly tailored and advance a compelling state interest"). It is to that question which we now turn.

III

Respondents proffer seven state interests they claim are compelling. Two of them– producing elected officials who better represent the electorate and expanding candidate debate beyond the scope of partisan concerns– are simply circumlocution for producing nominees and nominee positions other than those the parties would choose if left to their own devices. Indeed, respondents admit as much. For instance, in substantiating their interest in "represen-

tativeness," respondents point to the fact that "officials elected under blanket primaries stand closer to the median policy positions of their districts" than do those selected only by party members. Brief for Respondents 40. And in explaining their desire to increase debate, respondents claim that a blanket primary forces parties to reconsider long standing positions since it "compels [their] candidates to appeal to a larger segment of the electorate." *Id.*, at 46. Both of these supposed interests, therefore, reduce to nothing more than a stark repudiation of freedom of political association: Parties should not be free to select their own nominees because those nominees, and the positions taken by those nominees, will not be congenial to the majority.

We have recognized the inadmissibility of this sort of "interest" before. In *Hurley* v. *Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U. S. 557 (1995), the South Boston Allied War Veterans Council refused to allow an organization of openly gay, lesbian, and bisexual persons (GLIB) to participate in the council's annual St. Patrick's Day parade. GLIB sued the council under Massachusetts' public accommodation law, claiming that the council impermissibly denied them access on account of their sexual orientation. After noting that parades are expressive endeavors, we rejected GLIB's contention that Massachusetts' public accommodation law overrode the council's right to choose the content of its own message. Applying the law in such circumstances, we held, made apparent that its "object [was] simply to require speakers to modify the content of their expression to whatever extent beneficiaries of the law choose to alter it with messages of their own. . . . [I]n the absence of some further, legitimate end, this object is merely to allow exactly what the general rule of speaker's autonomy forbids." *Id.*, at 578.

Respondents' third asserted compelling interest is that

the blanket primary is the only way to ensure that disenfranchised persons enjoy the right to an effective vote. By "disenfranchised," respondents do not mean those who cannot vote; they mean simply independents and members of the minority party in "safe" districts. These persons are disenfranchised, according to respondents, because under a closed primary they are unable to participate in what amounts to the determinative election– the majority party's primary; the only way to ensure they have an "effective" vote is to force the party to open its primary to them. This also appears to be nothing more than reformulation of an asserted state interest we have already rejected– recharacterizing nonparty members' keen desire to participate in selection of the party's nominee as "disenfranchisement" if that desire is not fulfilled. We have said, however, that a "nonmember's desire to participate in the party's affairs is overborne by the countervailing and legitimate right of the party to determine its own membership qualifications." *Tashjian*, 479 U. S., at 215–216, n. 6 (citing *Rosario* v. *Rockefeller*, 410 U. S. 752 (1973), and *Nader* v. *Schaffer*, 417 F. Supp. 837 (Conn.), summarily aff'd, 429 U. S. 989 (1976)). The voter's desire to participate does not become more weighty simply because the State supports it. Moreover, even if it were accurate to describe the plight of the non-party-member in a safe district as "disenfranchisement," Proposition 198 is not needed to solve the problem. The voter who feels himself disenfranchised should simply join the party. That may put him to a hard choice, but it is not a state-imposed restriction upon *his* freedom of association, whereas compelling party members to accept his selection of their nominee *is* a state-imposed restriction upon theirs.

Respondents' remaining four asserted state interests– promoting fairness, affording voters greater choice, increasing voter participation, and protecting privacy– are not, like the others, automatically out of the running; but

neither are they, *in the circumstances of this case*, compelling. That determination is not to be made in the abstract, by asking whether fairness, privacy, etc., are highly significant values; but rather by asking whether the *aspect* of fairness, privacy, etc., addressed by the law at issue is highly significant. And for all four of these asserted interests, we find it not to be.

The aspect of fairness addressed by Proposition 198 is presumably the supposed inequity of not permitting nonparty members in "safe" districts to determine the party nominee. If that is unfair at all (rather than merely a consequence of the eminently democratic principle that— except where constitutional imperatives intervene— the majority rules), it seems to us less unfair than permitting nonparty members to hijack the party. As for affording voters greater choice, it is obvious that the net effect of this scheme— indeed, its avowed purpose— is to *reduce* the scope of choice, by assuring a range of candidates who are all more "centrist." This may well be described as broadening the range of choices *favored by the majority*— but that is hardly a compelling state interest, if indeed it is even a legitimate one. The interest in increasing voter participation is just a variation on the same theme (more choices favored by the majority will produce more voters), and suffers from the same defect. As for the protection of privacy: The specific privacy interest at issue is not the confidentiality of medical records or personal finances, but confidentiality of one's party affiliation. Even if (as seems unlikely) a scheme for administering a closed primary could not be devised in which the voter's declaration of party affiliation would not be public information, we do not think that the State's interest in assuring the privacy of this piece of information in all cases can conceivably be considered a "compelling" one. If such information were generally so sacrosanct, federal statutes would not require a declaration of party affiliation as a condition of appoint-

ment to certain offices. See, *e.g.*, 47 U. S. C. §154(b)(5) ("[M]aximum number of commissioners [of the Federal Communications Commission] who may be members of the same political party shall be a number equal to the least number of commissioners which constitutes a majority of the full membership of the Commission"); 47 U. S. C. §396(c)(1) (1994 ed., Supp. III) (no more than five members of Board of Directors of Corporation for Public Broadcasting may be of same party); 42 U. S. C. §2000e–4(a) (no more than three members of Equal Employment Opportunity Commission may be of same party).

Finally, we may observe that even if all these state interests were compelling ones, Proposition 198 is not a narrowly tailored means of furthering them. Respondents could protect them all by resorting to a *nonpartisan* blanket primary. Generally speaking, under such a system, the State determines what qualifications it requires for a candidate to have a place on the primary ballot– which may include nomination by established parties and voter-petition requirements for independent candidates. Each voter, regardless of party affiliation, may then vote for any candidate, and the top two vote getters (or however many the State prescribes) then move on to the general election. This system has all the characteristics of the partisan blanket primary, save the constitutionally crucial one: Primary voters are not choosing a party's nominee. Under a nonpartisan blanket primary, a State may ensure more choice, greater participation, increased "privacy," and a sense of "fairness"– all without severely burdening a political party's First Amendment right of association.

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Respondents' legitimate state interests and petitioners' First Amendment rights are not inherently incompatible. To the extent they are in this case, the State of California has made them so by forcing political parties to associate

with those who do not share their beliefs. And it has done this at the "crucial juncture" at which party members traditionally find their collective voice and select their spokesman. *Tashjian*, 479 U. S., at 216. The burden Proposition 198 places on petitioners' rights of political association is both severe and unnecessary. The judgment for the Court of Appeals for the Ninth Circuit is reversed.

It is so ordered.