

Primary Elections in the Final Round: Ideas Pro Competition and Legitimacy

In the current social scenario, the primary election bill approval is a keystone to increase competition and participation in our democracy, and that three issues that are yet under discussion are adequately settled: the conditions in which independent candidates may run primaries, the role of party members –which in the current bill are not relevant actors- and, the campaign period and expenditures.

Members of the Republican Party have finally elected their candidate to run for president on November 3rd, 2012 to face the current President, democrat Barack Obama. With the recent victory in Texas of the former Governor of Massachusetts, Mitt Romney, who on May 29 reached the necessary threshold of 1,144 delegates which gives him the status of nominee to the Republican National Convention in Tampa, Florida. Thus, and after running the primaries in Montana, California, New Jersey, New Mexico and South Dakota on last June 5th, it only remains the primary election of Utah on June 26th, which will not bring any surprise. So, the Republican National Convention that will take place between August 27th and 30th will be prepared to nominate Romney as the winner.

Primary election constitutes a political tradition from the beginning of the 20th century, since the first primary election with legal status was held in Oregon in 1919, notwithstanding caucuses had begun years earlier¹.

Although in previous publications we have already made comments on the benefits of introducing the primary election system in our country² and analyzed specialized literature on the matter³, precisely

when the final amendments to the primary election bill⁴ are discussed in the Senate, in its second constitutional proceeding, it is of extreme importance to analyze another approach that we have learned from the American experience: how have parties historically tried to put barriers and padlocks to the competition and the entry of new actors which is worsened by the fact that those who write the game's rules are interested actors⁵.

Actually, in the current context, it is a key factor both the approval of the primaries' bill and that this final discussion period may resolve a set of specific subjects that have come up during the legislative process, and that seek to increase the bill's competition and legitimacy levels. In this sense, three reforms stand out: the conditions in which independent candidates may run primaries, the role of partisans –which in the current bill are not relevant actors– and, the campaign period and expenditures.

Current Bill

The pillars of the current primary election bill are the following: They are volunteer - being the General Council of political parties the body in charge of making the decision about participation, under the request of the Board of Directors, of a percentage of the said council or agency of territorial representation, which depends if it is a nomination to run for president, parliament member or mayor. They are binding – not only because primary election winners are designated as candidates to run for the general election but because it is important to prevent candidates who lost from running for general elections. They are simultaneously held – among political parties and/or coalitions and also between presidential and parliamentary primaries. Their objective is to appoint the positions of mayor, parliament member and president of the Republic. And General Councils must define the voter registration record that will be invited to the primary election by selecting from different options ranging from open primaries (all those registered in the voter registration record) to close primaries (where only party and/or electoral pact members may vote).

Likewise, primaries are financed by the State – until now they do not include reimbursements or subsidies to support nominations neither the existence of free TV time for political debates equivalent to those which benefits general elections- and where the Electoral Service Office is in charge of the organization.

Finally, Law Nr 19,884 on limits, control and transparency of campaign expenditures is applied to primaries, which implies that, along with the exceptions commented above on public financing matters, private donation mechanisms by juridical persons for profit and natural persons operate; and the accounting requirement among others. A relevant issue is that, concerning the expenditures' limit, the current bill establishes that up to 25% of total expenditures allocated to this electorate may be spent in general elections – a figure announced by the SERVEL- a percentage that is not charged to the general elections' expenditure.

Thus, in gross terms, it is a positive bill with a great potential to introduce fresh air in our politics, increase competition and legitimize the candidate nomination process.

Amendments pro Competition and Legitimacy

Nevertheless, there are at least three amendments –or amendment approaches- under discussion that could substantially improve the bill: In which conditions independent candidates may run the primaries; the role of party members – which in the current bill are not relevant actors-; and the campaign period and expenditures.

First, the bill forces independents to ask for a political party sponsorship to be included in the “voting paper”. This is a padlock. A suggestion that was put on the table is that as it deals with a special kind of independent – that who is easily identifiable with a political coalition-, he may request 10% of signatures from the electoral coalition members in order to run the primary election. It is a rule that would only operate in an electoral coalition and it is demanding: within a term of approximately 70 days, thousands of signatures have to be collected and they must additionally be representative of the affiliates of all parties of the said pact.

Precisely, because it must be an independent candidate who represents the whole electoral pact, it has to be complemented by an additional rule: a maximum of 50% of those signatures shall belong to a single party, rule that is obviously more demanding with regard to a two-party coalition than those of 3 or more parties, since it requires the same number of signatures from the two parties of the coalition. It is highly debatable that a candidate who obtains 99% of his signatures from one party represents the whole coalition.

Second, the relative influence of the members of political parties must be increased. Nowadays, they do not play a relevant role in basic decision-taking such as triggering a primary election before the General Council or including a name on the voting paper.

As a matter of fact, according to the current bill, and in presidential primary election matters, it will correspond to the General Council of each political party to make the decision on: (a) participating in a primary election to nominate a candidate to run for president; (b) doing it individually or with an electoral pact; and (c) the candidates' nomination to run the said election. Each party's General Council shall state his opinion on these issues when requested by the Central Board or 10% of the Council's members.

Concerning mayor and parliamentary primary election matters, the General Council shall take the three aforesaid decisions, and additionally of course that on letter (d) about the electoral regions where it will participate. The General Council of each party shall state its opinion on these matters when requested by the Central Board or the respective Regional Council. The Regional Council shall state its opinion on requesting for primary elections to the party's General Council in an electoral region of its jurisdiction to run for mayors or parliament members when requested by the party's Regional Board or 10% of the Regional Council's members.

Thus, it is matter of the party member's representative agencies where they do not have a direct participation channel. In this perspective, one proposal is that a percentage (10%) of the electoral

region may ask the general Council to state its opinion about running primaries in the said electoral region. Such a conservative but intelligent step, when putting pressure –and the media’s spotlights– on potential intents of blocking local nominations from above, goes in the right direction.

In the future, improvements to this regulation should be discussed in order to increase this participation, for example, allowing that a specific percentage of party affiliates may have the right to include a candidate in the voting paper.

Finally, with regard to the contenders’ possibilities of being elected, rules on the campaign expenditure limits (how much I can spend) and the campaign period are essential.

For contenders, the key is to become known by the electors. And we know that incumbents are fond of two rules: reducing the campaign period and having low campaign expenditures. To keep a reasonable primary election campaign period like the presently proposed of 70 days, and maybe allowing contenders to expend more than incumbents are two key pro competition rules.

With respect to the latter, Libertad & Desarrollo has declared its position against the existence of expenditure, even before the discussion of Law Nr 19,884 on campaign expenditure⁶. Following the literature on these matters, we have stated that it constitutes a key barrier to impact the election possibilities of contending candidates against incumbents⁷ who have great public acknowledgment and also rely on permanent financing not included as campaign expenditure during the election campaign (parliamentary allowances). This logic can also be applied to the situation of primary elections. As for the rest, the Supreme Court of the USA – a regulatory model that we have followed on this matter– declared these limits unconstitutional in 1976 (*Buckley v. Valeo*), a precedent which prevails until today.

Therefore, a rule that eliminates the expenditure limit or significantly increases it (from 25% to 50%) with regard to incumbents seems positive. On the contrary, any amendment reducing the 25% ceiling

or assigning this expenditure to the general election limit expenditure, will affect contenders' voting. Recent evidence in our country demonstrates it. In a late research, Agostini shows that a 1% increase of the campaign expenditure by the incumbent increases his voting by 0.7%. Likewise, a 1% increase of the expenditure by the contender reduces incumbent's voting between 0.2% and 0.3%⁸.

Conclusions

The primary election's bill is a key element to increase the competition and legitimacy levels in our political system. If it is approved, it has the potential of generating a culture of internal democracy, diversity, and handing real power over to the bases, thus generating incentives for the parties to open to the community.

And now that it is precisely in the final discussion stage at the Senate before becoming a law, it is essential to resolve certain issues that go in the mentioned direction: increasing this mechanism's competition and legitimacy.

Thus, a correct legislative solution will reinforce the assets of competition and legitimacy when considering relevant issues such as the way of incorporating independent people to primary elections (especially if they have a known political address in one of the coalitions and rely on the support of party members); strengthening the power of party affiliates to participate in decision-taking; and using the campaign expenditure limit rules in favor of contenders and political competition (and not as an entry barrier for new actors).

In brief...

PRIMARY ELECTIONS BILL:

- The bill on primary elections points at the right direction by increasing the participation and competition of the Chilean democracy; notwithstanding, there are three concerning issues that must be settled during the discussion:
 1. To improve conditions so that independent candidates may compete with incumbents.
 2. To increase the relative influence of the members of political parties. Nowadays, they do not play a relevant role in basic decision-taking such as triggering a primary election before the General Council or including a name on the voting paper.
 3. With regard to the contenders' possibilities of being elected, rules on the campaign expenditure limits (how much I can spend) and the campaign period are essential. To eliminate the expenditure limit or to significantly increase it, and to extend the campaign period will help new candidates.

¹ L. E. Aylsworth. "Presidential Primary Elections, Legislation of 1910-1912"; The American Political Science Review. Vol. 6, Nr 3, August 1912, p. 429-433.

² In 1993, Libertad & Desarrollo has already published on this subject. "*Elecciones Primarias en Chile y sus enseñanzas*". Public Issues Nr 145, May 27th, 1993. More recently: "*Primarias en Chile: Una propuesta*". Political Report Series Nr 94, August 21st, 2006; "*Primarias: Una propuesta para la democracia*", Public Issues Nr 927, July 24th, 2009 and "*Elecciones Primarias: Más competencia y representatividad*", Temas Públicos Nr 1,047, January 6th, 2012. All available in www.lyd.org.

³ Dowdle, A.J., Adkins, R.E. and Steger W.P. "The Viability Primary: Modeling Candidate Support before the Primaries". Political Research Quarterly, Vol. 62 Nr 1, 2009; Kaufmann, K. M., Gimpel, J. G. and Hoffman, A. H.. "A Promise Fulfilled? Open Primaries and Representation". The Journal of Politics. Vol. 65 Nr 2, 2003. Also see, Bullock, CH. S., Gaddie, R. K. and Ferrington A. "System Structure, Campaign Stimuli and Voter Falloff in Runoff Primaries". The Journal of Politics Vol. 64 Nr 4, 2002; Jewell, M. E. and Sigelman, L. "Voting in Primaries: The impact of Intra and Inter-Party Competition"; The Western Political Quarterly Vol. 39 Nr3 (1986); and Norrander, B "Explaining Individual Participation in Presidential Primaries". The Western Political Quarterly, Vol. 44 Nr 3, 1991.

⁴ Bulletin Nr 7911-06; bill "Establishing the Primary Election System for the Nomination of Candidates for President of the Republic, Parliamentary Members y Mayors", entered on

September 6th, 2011; and that complies by authority of law with article 19 Nr 15 of the Political Constitution, subparagraph 5, incorporated by the Constitutional Reform Act Nr 20,414 of January 4th, 2010, which stipulates that an organic constitutional law will establish a primary election system to be used by political parties for the nomination of candidates for popular election positions.

⁵ For example, Ensley et al (2007), talk about the “survival instinct” of the incumbents facing specific political scenarios. In this way, the one who is a strong player within a party coalition is actually the one who has more electoral weight, which is determined by the number of elected candidates. Thus, the “survival instinct” exerted by the party or by the stronger political faction will determine its shape and character in a primary scenario. Ensley, Michael; Scott de Marchi and Michael Munger. (2007). “Candidate Uncertainty, Mental Models, and Complexity: Some Experimental Results”. In *Public Choice*, Vol. 132, Nr. 1-2. Likewise, Cherry and Kroll (2003) sustain that the primary format may be significantly different according to the State where it develops. Thus, for example, in some States only party affiliates may participate, while in others the criteria is less restrictive and allows independents to participate, and also, in some States it is accepted that affiliates of other parties participate in the nomination. In view of this fact, the authors’ question is How do the primary election rules affect the electoral behavior, and as a consequence, the election results? The research has found that primary rules are important since the strategic vote does exist although in low levels; notwithstanding, even within this low level there are differences in the strategic behavior rates (positive strategic vote: to benefit a moderate candidate who does his utmost in general electoral chances, and negative strategic vote: to benefit an utmost candidate who decreases the general electoral chances), who differs in each primary format. In this sense, the article outlines that contrary to the belief, open primaries do not necessarily benefit moderate candidates, and shows that semi-closed primaries provide better “wellbeing” to voters, by understanding “wellbeing” as the sum of the distance between the voter’s position and the primary winner candidate’s position, while close primaries generate the worst “wellbeing” for the voter. Cherry, Todd & Stephan Kroll. (2003). “Crashing the Party: An Experimental Investigation of Strategic Voting in Primary Elections”. In *Public Choice*, Vol. 114, Nr. 3-4.

⁶ “*Dinero, política y límite al gasto electoral*”, Public Issues Nr 514, January 12th, 2001 and “*La ilusión del límite al gasto electoral*”, Public Issues Nr 539, July 27th, 2001.

⁷ This is the main argument line of the influential Public Choice school. See Abrams, B. A. and Settle, R. F. “Campaign-Finance Reform: A Public Choice Perspective”, *Public Choice*, Vol. 120, 2004; Jacobson, G. “The Effects of Campaign Expenditure in House Elections: New Evidence for Old Arguments”, *American Journal of Political Science*, Vol. 34, 1990; Smith, B., “Faulty Assumptions and Undemocratic Consequences of Campaign Finance Reform”, *Yale Law Journal* Vol. 105, 1995; Box-Steffensmeier, J. “A Dynamic Analysis of the Role of War Chests in Campaign Strategy”, *American Journal of Political Science* Vol. 40, 1996 y Levitt, S. D. “Using Repeat Challengers to Estimate the Effect of Campaign Expenditure on Election Outcomes in the U.S. House”, *Journal of Political Economy* Vol. 102, 1994.

⁸ Agostini, Claudio. “*Financiamiento de la Política en Chile: Campañas Electorales 2009-2010*”, CEP-CIEPLAN Document, 2010. Available in http://www.cepchile.cl/dms/lang_1/doc_5011.html