



PHIL McGRANE
IDAHO SECRETARY OF STATE

MEMORANDUM

TO: County Clerks and Election Staff
FROM: Phil McGrane, Secretary of State
DATE: January 3, 2024
Re: County role in presidential caucuses

Our office has received many questions and requests for guidance related to what role the county elections offices play in the upcoming presidential caucuses that will be held by the Idaho Republican and Democratic parties. This memo is an attempt to consolidate those questions and provide some baseline guidance for counties. While it may not be comprehensive, it is aimed at providing some direction for the most common questions.

Overview

During the past two presidential election cycles, Idaho has held a “presidential preference primary” on the second Tuesday in March. Following the passage of H138 & H292 this past legislative session, the state and counties will not be holding a March election, nor will the question of presidential preference be included on the May State Primary ballot. In the absence of a presidential preference primary, it is left to the state political parties to determine the method for selecting presidential nominees at the national conventions. Both the Idaho Republican and Democratic parties have chosen to conduct caucuses. Below are the key dates involved:

	Republican Presidential Caucus	State Primary Election	Democratic Presidential Caucus
Event Date	Saturday, March 2 nd	Tuesday, May 21 st	Thursday, May 23 rd
Deadline to change party affiliation	December 31, 2023	March 15 th	May 23 rd
Deadline for unaffiliated to affiliate	December 31, 2023	May 21 st	May 23 rd
Who may participate	Registered Republicans	Varies by Party	Registered Democrats & Unaffiliated Voters

Who is Responsible?

A key difference between the primary election and the party caucuses is who is responsible for conducting them. Primary elections as we think of them are conducted under state law by the state and county using public resources. In primary elections, the political parties are recognized in many ways under state law and the candidates selected during the state primary move on to the general election as the nominees of their party. However, the cost and responsibility of conducting the primary elections falls upon the counties and state.

In contrast, the caucuses are conducted by the political parties as private organizations. This places the burden of running and paying for the caucuses on the parties. It also means that the parties are not bound by state election laws in terms of how the caucuses are conducted. Each party, without input from the state, determines the processes and methods they deem best, based on their local and national rules.

Because the caucuses are being held by the political parties as private organizations, it also impacts how the state and counties may be involved with the caucuses. Since caucuses are run by each political party separately, the caucuses are inherently partisan, and designed to favor the hosting political party and the presidential candidates of that party. As such, the parties should be aware of the Public Integrity in Elections Act, found in Idaho Code Title 74, Chapter 6, which places certain limitations on public resources being used in political activities. One of the key things to note is that county prosecutors enforce the Public Integrity in Elections Act at the local level. For this reason, it is strongly recommended that you consult with your county prosecutor prior to any involvement.

Idaho's History with Caucuses

Presidential caucuses are not new to Idaho. Prior to 2020, the Idaho Democratic Party held a presidential caucus for many cycles. In 2012, the Idaho Republican Party held a caucus for president. The involvement of the state and counties in these events was generally limited to some public awareness and, in a few instances, voter registration and party affiliation. All of these caucuses took place prior to the passage of the Public Integrity in Election Act.

Public Awareness

It is our office's intention to provide basic information regarding the caucus to the public. This includes contact information for the political parties and key dates. We have consulted with other states where caucuses are held and learned that some do not play any role in their caucuses, including public awareness. Given the shift and confusion surrounding the change from the primary to the caucuses, we feel it is important to help assist voters by providing basic information. When we launch the updated VoteIdaho.gov it will include this basic information and link voters to party resources for more information.

Here are the links for more information by the parties:

Idaho Democratic Caucus: <https://idahodems.org/2024-presidential-nomination-caucus/>

Idaho Republican Caucus: <https://www.idahorepublicancaucus.com/>

As a reminder, if you choose to share information regarding the caucuses in your official capacity, it is important to remain non-partisan and share information about both party caucuses. We also encourage you to share information regarding the May 21st primary election. Having separate caucuses has caused some confusion on whether the primary will still take place. As you are well aware, there are many important state and local races taking place during our primary.

Use of Public Facilities

In September, our office shared Attorney General Opinion No. 23-03 which addressed whether public facilities (i.e., state meeting rooms, city halls, schools, etc.) could be used to conduct the caucuses under the Public Integrity in Elections Act. In short, public facilities may be used so long as they are generally open to the public and all political parties are given “equal and fair access” to the facilities.

We have received a few questions following this opinion. It is not required that a facility be made available for conducting a caucus. That decision is left to the public entity in control of the facility. The opinion merely indicates that it is not prohibited and that equal access must be granted should the controlling public entity allow use of the facility. Additionally, if a public entity typically charges a fee for the use of a facility, that same fee may still be charged for facility use. However, fees should be equal and fair for all political parties requesting use of the facility.

Use of County Election Equipment

In addition to the use of public facilities, we have also received questions regarding the parties' use of county election equipment for conducting the caucuses. While the question is similar to the question regarding facilities, there are some key differences that need to be taken into consideration.

Allowing political parties to use any electronic equipment, such as tabulation machines, scanners, or e-poll books, is clearly prohibited. These systems are subject to specific security requirements and certification by the Secretary of State's Office. This equipment should not leave the possession of the county clerk or elections staff. Any unauthorized use could result in decertification and prevent future use of these systems.

The use of non-electronic equipment is less clear. This is an area where you should consult with your county prosecutor. Unlike certified equipment, items such as voting booths, ballot boxes, and other equipment do not have any specific restrictions beyond the fair and equal treatment outlined in the Public Integrity in Elections Act. However, the exemption contained within I.C. § 74-603(5) is specific to resources available to the general public and there is a question as to whether this election equipment is considered “available to the general public.” While these items are used by the public during the voting process, it is not common for the public to use this equipment outside of election day.

Similar to the analysis provided for public facilities, any election resources deemed available to the general public must be shared in a manner that ensures “all political parties are given ‘equal and fair access.’” There is a question on the timing and the feasibility of a county being able to share equipment with all political parties. This may vary county by county. Given the March 2nd

date for the Republican Caucus, it is unlikely that any conflicts with county use of election equipment will arise. However, the Democratic Caucus is scheduled two days after the May 21st Primary Election, making a conflict with county use much more likely. Ensuring the county has the equipment needed to conduct the Primary Election should be one of the highest considerations.

A final consideration is that a county elections office may not accept compensation above \$100 for lending, leasing any elections equipment or replacing or repairing equipment. This new limitation is important to note in the event charging a fee is being considered. Idaho Code § 34-218 specifically prohibits election offices from accepting money from political parties.

Voter Registration/Party Affiliation

There are a few things to be considered related to voter registration. First is providing voter registration information to the political parties. It is our plan to provide the state parties with the needed voter registration information at a statewide level. This should address the need for counties to provide county parties with the same information. We have already made arrangements with the Idaho Republican Party to provide a list following the party's December 31st deadline for affiliation among existing voters. We will also be providing a statewide list to the Idaho Democratic Party.

In terms of registration timeframes, we will be continuing to follow the law regarding voter registration. Registration will be open online and at the county office up to the 25-day cutoff prior to the primary election.

At this time, it is our understanding that both parties are considering allowing new voters who are not currently registered in Idaho to participate in the caucuses. We will work with the parties to provide any updates with new registrants as the caucuses approach.

Parties may allow people to register at the caucuses. This should be treated similarly to a voter registration drive. The same processes that apply to any other voter registration drive will apply here. A county may be asked to assist with this process in order to check identification and residency information. Whether the county assists is a decision for the county clerk. A clerk may appoint qualified registrars to assist and perform these functions. We will be providing more information regarding registrars coming up at the elections conference. Alternatively, the same process as a mail-in registration will apply for verification purposes.

Clerk and Election Staff Participation

There are two instances of participation to be considered for county clerks and their elections staff. The first is participating as a voting member in either of the caucuses. If you meet the criteria of the party caucus and wish to participate, it is acceptable and appropriate to do so. It is worth noting that the county clerk is a partisan office, and we have both elected Democrats and Republicans among the elected clerks.

Depending on the county and its relationship with the local party, county clerks and staff may be asked to assist in the running of the caucuses in some form. While the county clerk is a partisan office, it is important to remember that in your official capacity as an election official, you

should conduct yourself in a non-partisan manner. This means that any assistance by the office should be provided to all political parties fairly and equally and any public information shared regarding the caucuses should be shared for all parties. This includes things like providing registrars for voter registration. Beyond this, a county clerk may assist in a non-official capacity so long as they are mindful to maintain a distinction between roles and adherence to the guidance provided in the Public Integrity in Elections Act.