



## MEMORANDUM

**To:** Executive Board, of AZ League of Women Voters  
**From:** Nancy Ross and Harry Kresky for IndependentVoting.org  
Dr. Ted Downing, Arizonans for Top 2 Primary  
**Re:** **Response to “Pro/Con report on the Arizona Top 2 (Open Primaries)”**  
**Date:** May 21, 2012

We take this opportunity to offer additional arguments – in support of Top 2 open primaries from an independent perspective – to those in the League’s “Pro/Con Report on Top 2 (‘Open Primaries’).” We believe the report does not fully reflect the arguments in favor of and the support for this important reform. Given the League’s reputation for fair, balanced reporting of issues, we trust you will consider this memo carefully and share it with those of your members who will be considering this important question.

By way of introduction, IndependentVoting.org is a national strategy and training center for the 40% of Americans who consider themselves independents. We work with activists and organizations in 43 states. In Arizona, there are now over 1 million independents. At 33% of the electorate, independents are now the second largest voting bloc in the state, inching up toward the Republicans and greater than the Democrats.

Former State Rep. Ted Downing worked closely with IndependentVoting.org in preparing the initial draft of the Arizona initiative. His group, which includes Larry Sakin and former State Legislator Bill Konopnicki, joined with Paul Johnson and other distinguished Arizonans to found the Open Elections/Open Government Coalition. Our California affiliate, IndependentVoice.org, was active in the successful passage of Top 2 in that state in 2010. And our counsel, Harry Kresky, a signer of this letter, has litigated in support of open primaries in Idaho and South Carolina where the Republican Party sued to close their state’s open primaries. In South Carolina we put together a multi-lateral coalition that included 13 Democratic Party members of the SC Legislative Black Caucus, the SC Independence Party, the Constitution Party, the Columbia Tea Party, and the Progressive Network (a coalition of trade unions). Our national president, Jacqueline Salit, worked with New York City Mayor Michael Bloomberg in a decade-long effort to bring a Top 2 system to New York City. In the course of that effort, advocates of Top 2 nonpartisan municipal elections won the support of the city’s premier good government group, *The Citizens Union*, largely on the grounds that – more so than any other reform – the Top 2 nonpartisan system would increase voter participation.

There are a million independent voters in Arizona who generally do not vote in partisan primary elections. Independents prefer to vote for the best candidate rather than for a party. If there is anything that suppresses voter participation, it is the party domination of primary elections. In Idaho’s first closed primary (after the Republican Party won its lawsuit to force a partisan registration, closed primary system), turnout plummeted. See *The Idaho Statesman*.  
[http://voices.idahostatesman.com/2012/05/17/idahopolitics/intraparty\\_squabble\\_over\\_closed\\_idaho\\_gop\\_primary\\_conti\\_nues\\_with#storylink=cpy#storylink=cpy](http://voices.idahostatesman.com/2012/05/17/idahopolitics/intraparty_squabble_over_closed_idaho_gop_primary_conti_nues_with#storylink=cpy#storylink=cpy)

The LWV's report correctly points out that, "voters believe our elected officials are beholden not to them, but to the political party bosses and lobbyists." This is exactly what Top 2 aims to remedy, by allowing the voters, rather than the parties, to determine who will represent them. Under a partisan, closed primary system, the choices voters have in the general election are determined by the partisan activists who generally comprise between 5% and 20% of the electorate, who vote in their party's primary. And, when you factor in the practice of gerrymandering that creates safe districts, the winner of the primary in whichever party is dominant, nearly always wins in November.

Top 2 is a structural solution to this serious problem. It has been definitively upheld by the U.S. Supreme Court.<sup>1</sup> As former Oklahoma Congressman Mickey Edwards put it: "The problem is not division, but partisanship – advantage-seeking by private clubs whose central goal is to win political power."<sup>2</sup> Closed primaries muzzle voters' ability to reorganize our highly partisan electoral system.

The LWV report concludes "that the key thing reformers want is a 'sensible center.'" We would argue that the key thing reformers (and most Americans) want is nonpartisan governance. Party control of the electoral process makes that virtually impossible. Opening the door to participation by all voters in the critical first round is a means to changing that dynamic.

The LWV report lists "official opponents" of Top 2 in California but fails to list the numerous supporters. To name a few: AARP, California Chamber of Commerce, Latin Business Association, Governor Arnold Schwarzenegger, Lt Gov. Abel Maldonado, *The Los Angeles Times*, the *Sacramento Bee*, the *San Francisco Chronicle* and virtually every other major newspaper in the State, as well as organizations of independent voters such as IndependentVoice.org and Independent Voter's Network. Most significantly, the voters of California chose to adopt Top 2 by the highest margin for a political reform initiative in a dozen years.

The LWV report raises a concern for third parties. We believe that Top 2 helps third parties by giving them more options. Under the current system, third parties are largely marginalized. Under Top 2, third parties would have the opportunity to develop coalitions and by doing so, create a real opportunity for one of their candidates to win election to office. It would be unfortunate for the LWV to advocate subordinating the democratic rights of what will soon be the largest bloc of voters in Arizona to the interest of third parties in having a guaranteed line on the general election ballot. The point of Top 2 is to disperse more electoral power to the voters, and to limit the privileges of the parties – major and minor. As Dr. Downing stated in his address to the Maricopa County LWV, "In America, it is one person one vote, not one party one vote."

Further, we disagree with the assertion in your "Support" statement that suggests "Ranked Choice Voting" is a better solution. First, Ranked Choice Voting will not be on the ballot this year. Top 2 is. Second, Ranked Choice still leaves the primary process in the hands of the parties. Top 2 puts the choice in the hands of the voters. In addition, under Top 2 the voters get a second opportunity to view and hear from those candidates in the general election who survived the rigor of voter selection in the first round. Who you would decide to vote for in a runoff is not necessarily the same as who you might rank as your second choice in a primary election.

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<sup>1</sup>*Washington State Grange v. Washington State Republican Party*, 552 U.S. 442 (2008)

<sup>2</sup>Mickey Edwards, "How to Turn Republicans and Democrats into Americans," *Atlantic*, July/August 2011.

The report uses Louisiana as an example of Top 2, rather than California or Washington, which are larger, more representative states. However, the process proposed in the AZ initiative is closer to that of CA and WA. The first round in LA occurs at the time of the general election, and a 50% +1 winner of the primary will win the election. There is no runoff as in Top 2.

All cities in Arizona except Tucson now have nonpartisan elections. This has not hurt the parties. But it does give insurgents and independents more opportunities, and it forces the candidates to campaign amongst all voters rather than just “prime” voters. Top 2 increases voter choice; it is inaccurate to suggest otherwise.

The AZ Top 2 initiative does allow the candidate to list his or her party affiliation as declared on their registration form, if they so wish. This is different from California where candidates can list a preference that may differ from how they are registered to vote. The Arizona initiative is a corrective in this respect.

The pursuit of open and inclusive non-partisan primaries is, we believe, the most direct way to address the political stalemate our country faces. Partisanship and its negative effects are a serious detriment to the democratic process. Top 2 changes the structure that reinforces it.