



Individual Study Tour to the United States of America

# Engaging with the community

“An investigation into primaries, caucuses and a new organising model”

By Kaila Murnain (NSW Labor)

**Cities visited** Washington DC, Philadelphia (Pennsylvania), New York City (New York), Manchester (New Hampshire), Chicago (Illinois), Los Angeles (California), San Francisco (California), Madison (Wisconsin), Sanford (Maine), Boston (Massachusetts), Tampa (Florida).

**Date of visit** 25 January 2012 – 21 February 2012

## **Overview**

I am extremely grateful to the Australian Political Exchange Council for the opportunity to visit the United States of America in January 2012.

With political participation on the decline in Australia both in terms of membership of political parties and electoral participation, parties are increasingly looking towards new candidate selection models as a way to engage with voters.

The Labor Party is no exception. We recognise that the way people participate in politics is different now to 1891, when our Party was founded and that's why we want to create new opportunities for people to have their say. In 2012, the Labor Party will trial new ways for people to participate in our Party - including opening up our preselection process to members of the public.

The concept of a more participatory democracy is not new in the United States, with candidates at all levels of Government, from the local water reclamation board to the President, selected through primaries and caucuses for over a hundred years.

With Australian political parties trialing new candidate selection models, it is important to learn from the lessons learnt overseas and the US is a fantastic starting point with a plethora of different selection models being used across the fifty states.

My study tour came at a very interesting time in the American political cycle. Republican Presidential candidates were in full flight, campaigning to win their party's nomination with primaries and caucuses well underway. Meanwhile the Democratic Party were focussed on reenergising the base.

Whilst in the US, I was fortunate enough to meet representatives from the Democratic National Committee, the Obama Campaign team, the Romney Campaign team, Democratic and Republican Party Elected Officials and Consultants, Trade Unions and Academics.

During my visit, I also visited a primary in Florida and a caucus in Maine and experienced first-hand such selection models in action.

In my studies I sought to investigate the following:

- Which candidate selection models are best placed to encourage political parties to engage with the broader community?
- Which candidate selection models are best placed to activate and energise supporters of political parties?
- What are the challenges and opportunities associated with each selection model?
- How do Trade Unions and third party organisations interact with political campaigns?
- Who can vote in and nominate to run in a primary or caucus?
- What are the methods used by political parties and the State to select candidates?
- How do political parties organise with or without primaries and caucuses to mobilise around?

Please note that these are my views and not necessarily the views of the Australian Labor Party.

## **Meetings**

During the visit I was able to meet with the following organisations:

- American Federation of State, County and Municipal Employees
- Australian Consulate in Chicago
- Bill Lynch and Associates New York City
- Columbia Law School
- Columbia University – Politics faculty
- Cook County Democratic Party
- Cook County Republican Party
- County Executives of America
- Democratic Party of Wisconsin
- Democratic National Committee
- Fingerhut Campaigns
- Illinois State Representative – 19th District
- International Association of Machinists
- Mary Jane Theis Campaign
- New Partners (Campaign and communications firm)
- New York University
- Obama for America HQ
- Obama for America (Illinois Office)

- Obama for America (Philadelphia Office)
- Office of Congresswoman Nancy Pelosi
- Office of the US Surgeon General
- Purpose (online communications firm)
- Pivot Communications
- Retail, Wholesale and Department Store Union
- Service Employees International Union (San Francisco and Washington DC)
- Sanford County Republican Party
- The International Brotherhood of Teamsters

Some states hold only primary elections, some only hold caucuses, and others use a combination of the two. These elections are administered through state and local governments, while caucuses are run directly by political parties. The only exception is where a state decides to move a Presidential primary forward, and in such cases the political party is often responsible for the administration of the primary.

### **Challenges and opportunities with open, closed and semi-closed primaries and caucuses**

In a closed primary or caucus, only registered members of a party may vote in that party's vote. Meanwhile, Independents aren't allowed to vote in either primary. Twenty three states have closed primaries, including the state of Florida. The type of primary or caucus can affect how a campaign plays out in the media, and in the case of closed primaries and caucuses, can lead to a focus on negative campaigning and the most extreme candidates getting elected. The concern with closed primaries is that moderate candidates can be pushed out in such a contest, or that candidates are forced to pander to the party voters that make up that extreme in order to win. In Florida, Mitt Romney in the Jacksonville debate spent most of his time attacking Newt Gingrich and revealing conservative views to GOP party faithful. After winning the Florida primary, Romney's language and positioning changed dramatically and on election night in Tampa he turned his vitriolic attacks toward Obama and espoused more moderate political views with tapered language. With new media cycles capturing everything primary hopefuls say, this becomes an increasing problem for political parties. Once emerging victorious from a hostile primary or caucus, it can be difficult for candidates to shake free of not only the mud flung around by other candidates but also the sometimes extreme comments they themselves make.

Political parties in the USA often participate in primaries or caucuses of their opponents, hoping to affect the outcome. In an open primary or caucus, any voter can vote in the primary of either major party. Democrats may vote in the

Republican primary, Republicans may vote in the Democratic primary, and meanwhile Independents can vote in either party's primary. There are semi-closed primaries or caucuses, which are the same as a closed primary/caucus except that independents and those that are undeclared are allowed to participate. The foremost concern with this candidate selection model is that one side can show up to vote on the opposing party primary and vote for the weaker candidate. This is done to allow their own candidate to have a better chance to win the general election. Thirteen states have completely open primaries including Michigan. In Michigan, Democrats were being encouraged to turn out in March and vote for Rick Santorum in the Republican Primary. This process is referred to as "raiding" or "crossing over". Despite opportunities for opposing parties to "raid, there are many studies showing that open and semi-closed primaries lead to candidates whose positions are more in line with the average voter in their constituency.

Jokingly, the Republicans appropriately noted that the word "caucus" itself comes from the Native People of America and means "to gather together and make a great noise". In today's terms, a caucus is simply a series of meetings, usually in each district, where party activists select delegates to the State or National convention or directly elect Presidential candidates. Caucuses again differ from State to State. In Maine, Presidential candidates are chosen during a non-binding caucus. Party faithful meet in gymnasiums, church basements, and high schools across the State in every district, listening to representatives of each candidate as they persuade undecided's before they cast their vote. There is a heightened energy in the room of any caucus which empowers party faithful in ways unseen in a Primary. Senior political staff on both sides of the spectrum report that where caucuses are held, that is often where the most loyal and driven activists can be found. Despite this, turnout is relatively low with few voters actually participating - Romney won Maine's caucuses with 2,190 votes (39 percent), while Ron Paul had 1,996 votes (36 percent). Caucuses suffer a similar criticism to Australian candidate selection models, that it is a select few who choose the candidate, which doesn't necessarily equate to the best candidate winning.

### **Nominating to run in a primary or caucus**

The criteria allowing American citizens to run as candidates in primaries and caucuses vary from state to state. In some states, an elector need only be a citizen to file to run and in others may be required to submit a filing fee or supply a prerequisite number of signatures or in some cases a mixture of the two. In the USA, there is a lack of coherent principles setting constitutional boundaries between state authority, party interests and voter and candidate rights, which results in some ambiguity surrounding eligibility to run in a primary. In most States,

primaries and caucuses are covered by detailed State based legislation which outlines methods for nomination. Such requirements include:

### Filing fees

In many states in the US, candidates are required to pay a filing fee. Depending on State legislation, either the State or the Party are able to set the filing fee for candidates to run. There has been some discussion around whether filing fees deter those from lower socioeconomic background from running and as such there have been many cases where the Judiciary have struck down more restrictive ballot access laws. In the United States, the courts have repealed excessive filing fees which violate the Equal Protection Clause because they discriminate against poor candidates and their supporters (for example the Supreme Court found this in *Bullock v. Carter*). However, senior officials within each of the major parties maintain that filing fees are important in not only covering the costs of the primary but also help to “weed out non-serious contenders” as fundraising is an important skill required to run in any election in the US.

States can impose a filing fee in any of the following ways:

- A set filing fee: In Alaska the filing fee is set for Congressional Candidates at \$100.
- As a percentage of the salary for the position in that state or district: In many States, including California, the filing fee is equivalent to one or two percent of first year’s salary.
- A choice between a filing fee or a petition requirement: In Texas those who nominate to run in a Primary can opt to either provide petition requirements set out for them under state legislation or a filing fee. They may choose one option or the other.

There are some concerns about where filing fees end up, with political parties using fees to finance the campaigns of those candidates they wish to see successful in the primary contest. In some States the filing fee is set by the Party and paid direct to that party. In the state of Delaware, a filing fee is due at the point of filing which is submitted to the Commissioner of Elections. While the cheque is collected by the Commissioner’s office, the fee amount is set by the candidate's political party and the cheque is payable to the candidate's political party. In Delaware there were concerns that the fees from candidates not supported by the Party, went towards the campaigns of the party endorsed candidates. It is important that if Australian political parties introduce fees at the point of nomination when trialling new candidate selection models, that there is transparency around what the fees are directed to and that they do not disadvantage people from lower socioeconomic backgrounds.

## Petition requirements

There are many states where candidates are required to submit a minimum number of signatures in order to nominate to run in a primary or caucus for public office. In some states, like New York and Virginia, it is argued that it is too difficult for candidates to get on the ballot due to restrictive petition requirements. There have been many cases challenging the validity of such requirements set by both States and political parties. In 1999, Senator John McCain and his supporters filed a successful complaint seeking a declaration that the ballot access laws governing the Republican Presidential primary constituted an undue burden on their First Amendment rights. The question was asked; why have a primary at all if the practical barriers to candidate entry makes it impossible for non party backed candidates? In 2012, both Newt Gingrich and Rick Santorum failed to appear on the Virginia primary ballot, leaving that race to Romney and Paul. With only two candidates in the race, Paul got 40% of the votes and carried one of Virginia's eleven congressional districts. With Romney taking out most of the other primaries and caucuses, it can be assumed that a large portion of voters were unable to cast a vote for their preferred candidate.

Petition requirements can be imposed in states in any of the following ways:

- Percentage of votes cast at last election for elected position: In Alabama, Candidates for the Senate must submit signatures equal to at least 3% of the votes for the office of Governor in the last general election.
- Minimum number of signatures from each Congressional district: in Louisiana for example, Candidates for the Senate can submit nominating petitions in lieu of fees with 5,000 signatures, with no less than 500 signatures from each congressional district.
- Minimum number of signatures State wide: It can be as little as 15 signatures (Hawaii).
- A combination of the above.

Petition requirements provide candidates with an enormous opportunity to engage with voters before the campaign proper even begins. During my visit, volunteers on the Obama re-election campaign in Pennsylvania were working hard to gather the 2000 signatures required to ensure the President's name appeared on the primary ballot by the filing deadline on 14 February. The campaign were finding it difficult to convince electors that they actually needed the signatures for Obama to be listed on the ballot, with some voters refusing to sign because they believed the drive was a scam. The next problem the Obama campaign had was that opponents have the ability to challenge the legitimacy of signatures, meaning they work hard to supply the 2000 required signatures to nominate in the event that large numbers are excluded. The result? The campaign was 'forced' to visit thousands of homes and in doing

so speak to electors about the issues that matter most to them, providing an enormous opportunity for engagement with the community. Senior officials in the Obama campaign confess that while petition requirements can be challenging – they ensure campaigners are actually out meeting people.

### **The Party's role in choosing its candidates**

In the United States, the party organisation occasionally plays a role in justifying the exclusion of particular candidates from primary contests on ideological grounds, however this practice is uncommon and in most cases the nomination process remains open. Ideological litmus tests to filter candidates raise serious concerns about First Amendment rights and so in most cases the ability of the Party to discriminate against candidates on ideological grounds have been overturned. Two panels of the Eleventh Circuit excluded David Duke from the Republican ballot as he was identified as being “ideologically outside of the Party” because he was a leader of the Klu Klux Klan. Professor Persily argued that because a party can define who the party membership consists of, that there is no need to restrict who can run, as the voters will eventually ensure “outliers” don't get elected. For example David Duke may run, but because the Party can choose who actually constitutes an eligible voter, they will naturally exclude him from winning. It begs an interesting question for the Australian context, with former candidates from no longer active far right or left parties, attempting to run for positions within one of the major parties. For example, if the Coalition were to hold a series of primaries, would former One Nation candidates be permitted to run? And what checks would the party need to put into place to prevent such a situation from occurring.

In the State of Illinois, a process of ‘slating’ occurs where a senior Democratic Party committee reviews the nominations of candidates and after a process of interviews and background checks, candidates are formally endorsed by the Party. The Cook County Democratic Party slating committee perfunctorily listens to candidates for all positions including judgeships, state's attorney, and commissioner posts at the reclamation district and the Board of Review. The committee then decides which candidate to formally back for the primary. For candidates, being endorsed by the Party machine can be a virtual guarantee of victory, especially with positions like reclamation district commissioner, since most voters will probably vote along party lines in the Democratic stronghold. Once endorsed the party supports slated candidates by providing financial and logistical resources and strategic advice. The party officials in Cook Country explained that this allows them to support the most talented candidates who best represent the ideologies espoused by their party.

The Democratic Party also maintain some control over the nomination process, by allowing the existence of superdelegates at their nominating conventions. A



superdelegate is someone who represents a large number of voters and pledge their support behind one candidate or another. Unique to the Democratic Party, superdelegates are drawn from the Democratic National Committee, members of Congress, Governors, former Presidents, Vice Presidents, and Congressional leaders. Some are also selected by state conventions. The Democratic Party argue that the expertise of these superdelegates is gained after running for office themselves and that as a result they are more engaged and have a better understanding of how potential candidates may be perceived in their own states and districts. Critics of superdelegates, namely those in the Republican Party, argue that such delegates are " beholden to no voter " and have too much influence over the nominating process. That they are simply a product of political machines trying to maintain power over a process which they are somewhat removed from. The perfect system lies somewhere between the two, as it is important for the active members of political parties to have some say over who their candidate should be.

### **The proliferation of Super Public Action Committees (PACs)**

The 2012 Presidential Primary is the first to be affected by the Supreme Court ruling (Citizens United v. Federal Election Commission) allowing unlimited fundraising for candidates through super Public Action Committees (PACs). Republican candidates in particular, have quickly adapted to this change, relying on PACs to give them the edge in Primaries. Unlike candidates, PACs have no limits on fundraising or expenditure, and often involve a number of wealthy donors. In January, financial reports filed with the Federal Election Commission indicate that Romney's campaign spent \$19 million - nearly three times as much as it raised. In January, the Super PAC known as Restore Our Future, raised \$6.6 million and spent \$13.5 million, mostly on ads attacking Gingrich, helping Romney win the Florida primary. This has significantly altered the way political Parties function, with more money being spent on campaigns through non-party sources than ever before. In Australia, future funding and disclosure legislation needs to address this concern, to ensure that a wealthy few don't control the political agenda through unlimited spending through third parties.

The way Trade Unions interact with American political campaigns is also changing, with many Unions financing their own campaigns instead of writing large cheques to the Democratic Party or its candidates. The International Brotherhood of Teamsters as well as several major unions, now run their own super PACs. Last year, Labor Political Action Committees gave Democratic candidates and committees \$21 million, a drop of 20 per cent from the same period in the 2008 election (Centre for Responsive Politics). Since the Supreme Court's Citizens United decision, labor can run get-out-the-vote operations targeting all voters, not just union members. This has had a significant impact on

the way Unions structure campaigns. It has already seen realignment within some of the largest Unions, such as the SEIU, in the way they structure and fund staffing arrangements. Unions first tested the new laws in Ohio last November to mobilise both union and non union voters in a battle to repeal a law that attacked the bargaining rights of Ohio's teachers, fire-fighters and other public employees. Labor won, with Ohioans voting 62 percent to 38 percent to repeal the anti-public sector laws.

### **Empowering young people by lowering the voting age**

There is much debate in the US and little consistency across States, about the minimum voting age. Like Australia, you cannot vote in a general election in the USA unless you are 18 years of age. However, nineteen states permit 17 year olds to vote in the primary if they will be of age when the general election is held. In Illinois, an amendment to the state constitution is being considered to lower the voting age to 17 for non-federal elections, however because the change will only apply to state elections, 17-year-olds will not be able to vote in primaries and general elections for representatives, senators, and President of the United States even if the amendment passes the legislature. This provides an interesting point for discussion for the Australian context, should under 18's be allowed to vote in a primary? Or for State Elections where the election date is known, should 17-year-olds (turning 18 before the general election) be permitted to vote? This begs another question, if you are allowed to join a political party in Australia at age 15 (the minimum join age in the Labor Party), why shouldn't you be allowed to help select the candidate who your party puts forward for the general election?

### **Towards a new organising model**

President Obama's campaign – largely intact since 2008 – is strong and focused, and without a primary to mobilise behind, they are focussed on reactivating their 2008 base using new and innovative organising principles. Their philosophy is as simple as it is effective: they empower supporters to take initiative. They see their role as coordinators, not enforcers. Field Directors meet one on one with volunteers who demonstrate a capacity for organising. Those volunteers then organise another swathe of supporters beneath them who then organise issues based campaigns in their local communities. There are rewards for those who contribute the most – so people feel like they are getting something in return. The new Obama machine enables people to participate in the things they care about – allowing them to cut through the clutter and engage in meaningful dialogue with their political Party and candidates of choice. Activists can participate in the campaigns they care about – not what focus groups are telling them they should care about.

## **Conclusion**

With the Australian Labor Party moving down the path of holding community preselections, there are many lessons to be learnt from the United States, however there is no silver bullet with over fifty States using very different candidate selection models. For the Australian context, this means taking the best elements of each candidate selection model and trialing a combination of primaries and caucuses, taking into account the limitations around nomination and voting procedure as well as issues relating to funding and disclosure legislation.

Political Exchanges between Australia and the United States coordinated by the Australian Political Exchange Council, the Australian Department of Foreign Affairs and the US State Department are integral to the development and improvement of political campaigns and the operations of political parties in Australia.

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