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## Sore Loser Laws

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Sore loser laws now have become a nearly ubiquitous feature of election law ignored even by practicing lawyers and scholars who specialize in the field. In all but four states today, sore loser laws of different permutations prevent a losing candidate in a party primary election from running in the subsequent general election as the nominee of another party or as an independent candidate. Not only are these laws usually overlooked, and even when considered, their near omnipresence is typically assumed to be a stable feature of twentieth century politics. However, their spread across the United States has occurred in significant part only during the past twenty years. As late as 1987, roughly half the states did not have a sore loser law or a functional equivalent that prohibited losing candidates in a party primary from running in the general election. By 2007, however, almost every state had enacted one.

Sore loser laws thus help entrench the major parties, but what has gone almost unnoticed is how ballot access restrictions in general influence the internal politics of the major parties themselves just as importantly. Any scholarly attention to ballot access has been focused on minor parties and the interparty competition they might offer the major parties. This focus follows from the faith among election law scholars that partisan competition can serve as a structural means of addressing far-reaching and diverse problems in election law. Provided the background rules of politics are set appropriately, political parties seeking to win elections possess the proper motivation to meet public preferences and compete to the benefit of the median voter to satisfy demand-side incentives. The focus on interparty competition, while a paradigmatic advance in election law, gives short shrift to the necessary conditions of competition within important political groups, most prominently the major parties themselves. And more importantly for my purposes here, meaningful political competition may be suppressed within the parties without any significant recognition, when the dominant focus showers attention predominantly on competition between parties. The election law scholarship tends not only to underemphasize heterogeneity and conflict within the major parties, it correspondingly underemphasizes the importance of intraparty competition in promoting genuine deliberation. Problems traditionally seen as matters of interparty competition can be reframed as intraparty matters.

In Part I, I explain the perceived problem of major party polarization and describe both the demand-side approaches to responsive reform and the constitutional challenges that have crippled them. At the end of Part I, I explain how intraparty diversity may offer a different approach—a supply-side approach—that attempts to harness intraparty competition toward normative ends, including the moderation of party politics.

In Part II, I introduce sore loser laws and explain the role that these overlooked laws play in producing party polarization. Sore loser laws deny party dissenters the ability to exit the party following the primary. Although different elements of the party are likely to possess political incentives to continue cooperation with the rest of the party, sore loser laws lock dissenters into the party as a matter of state law, where the more ideologically oriented base of voters and leaders tend to dominate.

In Part III, I propose the repeal of sore loser laws as a supply-side approach to reform. I argue that the repeal of sore loser laws would force important elements of each major party, whether victorious or not in primary elections, to compromise if their parties are to continue as effective political coalitions going forward. In the absence of a sore loser law to lock dissent inside each major party, the party leadership would need to make necessary ideological and other political compromises to prevent dissenters from exiting.