ing insufficient justification for a state's preventing a political party from allowing independents to vote in its primary.[1893]

It must not be forgotten, however, that it is only when a state extends the franchise to some and denies it to others that a "right to vote" arises and is protected by the Equal Protection Clause. If a state chooses to fill an office by means other than through an election, neither the Equal Protection Clause nor any other constitutional provision prevents it from doing so. Thus, in *Rodriguez v. Popular Democratic Party*,[1894] the Court unanimously sustained a Puerto Rico statute that authorized the political party to which an incumbent legislator belonged to designate his successor in office until the next general election upon his death or resignation. Neither the fact that the seat was filled by appointment nor the fact that the appointment was by the party, rather than by the governor or some other official, raised a constitutional question.

The right of unconvicted jail inmates and convicted misdemeanants (who typically are under no disability) to vote by absentee ballot remains unsettled. In an early case applying rational basis scrutiny, the Court held that the failure of a state to provide for absentee balloting by unconvicted jail inmates, when absentee ballots were available to other classes of voters, did not deny equal protection when it was not shown that the inmates could not vote in any other way.[1895] Subsequently, the Court held unconstitutional a statute denying absentee registration and voting rights to persons confined awaiting trial or serving misdemeanor sentences, but it is unclear whether the basis was the fact that persons confined in jails outside the county of their residences could register and vote absentee while those confined in the counties of their residences could not, or whether the statute's jumbled distinctions among categories of qualified voters on no rational standard made it wholly arbitrary.[1896]

[1893] Tashjian v. Republican Party of Connecticut, 479 U.S. 208 (1986). Although independents were allowed to register in a party on the day before a primary, the state's justifications for "protect[ing] the integrity of the Party against the Party itself" were deemed insubstantial. Id. at 224.

[1894] 457 U.S. 1 (1982). *See also* Fortson v. Morris, 385 U.S. 231 (1966) (legislature could select governor from two candidates having highest number of votes cast when no candidate received majority); Sailors v. Board of Elections, 387 U.S. 105 (1967) (appointment rather than election of county school board); Valenti v. Rockefeller, 292 F. Supp. 851 (S.D.N.Y. 1968) (three-judge court), aff'd, 393 U.S. 405 (1969) (gubernatorial appointment to fill United States Senate vacancy).

[1895] McDonald v. Board of Election Comm'rs, 394 U.S. 802 (1969). *But see* Goosby v. Osser, 409 U.S. 512 (1973) (*McDonald* does not preclude challenge to absolute prohibition on voting).

[1896] O'Brien v. Skinner, 414 U.S. 524 (1974). *See* American Party of Texas v. White, 415 U.S. 767, 794–95 (1974).