



April 28, 2023

Supreme Court of California
Attn: Clerk of the Court, Jorge E. Navarrete
350 McAllister Street
San Francisco, CA 94102-4797

Re: Docket No. E076797 IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FOURTH APPELLATE DISTRICT, DIVISION TWO JIM BOYDSTON, STEVEN FRAKER, DANIEL HOWLE, JOSEPHINE PIARULLI, JEFF MARSTON, and INDEPENDENT VOTER PROJECT, Plaintiffs and Appellants, v. ALEX PADILLA, as SECRETARY OF STATE; and STATE OF CALIFORNIA, Defendants and Respondents. San Bernardino County Superior Court Case No. CIVDS1921480 (Judge Wilfred J. Schneider, Jr. – Department S-32) From Judgment after Court Trial

Dear Chief Justice Guerrero and Associate Justices,

Pursuant to California Rules of Court rule 8.500(g)(2), and California Supreme Court Rule 43:14, I respectfully request your acceptance of this as an amicus curiae letter in support of plaintiffs and appellants request for review of the decision in the Court of Appeal, Fourth Appellate District, in the above captioned matter.

Our interest is as Open Primaries, a national nonpartisan, non-profit organization dedicated to the full inclusion of independent voters into the American electoral system and to advancing open and nonpartisan election systems that allow equal access to primary elections. We study and document the myriad of ways the American electoral system discriminates against independent voters. We were part of a coalition of groups that helped pass the “top two” open primary in California in 2010, and have maintained an active role in the state working with and representing the interests of the state’s 4,941,314 registered independent voters (as of February 10, 2023).

The State of California allows political parties to decide whether or not to allow individuals who are not members of a party to vote in that party’s Presidential primary election. The Democratic Party of California allows such individuals to participate in their Presidential primary election. However, the State of California has imposed a condition

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on those independent voters that the Democratic Party did not impose. The State insists that such independent voters request and obtain a separate ballot, on their own initiative without any prompting from the State, whereas members of the Democratic Party are mailed Presidential primary ballots directly by the California Secretary of State without any action on their part. Other states, such as Colorado, automatically send independent voters a ballot with no additional action required on their part. This constitutes a barrier to participation in an election that must be justified by the State.

This barrier to mail in voting is exacerbated by well documented practices at polling sites that have directed independent voters away from their constitutional right to a Democratic Party ballot and towards nonpartisan or provisional ballots.

The petitioners are prepared to make an evidentiary showing that these barriers have resulted in a substantially lower voter participation rate than faced by voters who do not have to overcome these barriers. The standard of proof the State must satisfy in such a showing would, at the least, be more than a minimal rational basis since a fundamental right-voting- is at issue.

Petitioners request simply the chance to present their case that barriers imposed on them in exercising their right to vote as allowed by the Democratic Party of California, not imposed on others to whom the Democratic Party of California has granted that right, has resulted in harm to them. We believe Petitioners should be allowed to present evidence of how these unequally applied barriers have affected the rights of otherwise qualified voters with independent status, and to rebut whatever defense the State may assert for imposing these barriers on them and not others.

Sincerely,

John, Opdycke
President
Open Primaries
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