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Voters sue Maryland election board for 'unconstitutional' closed primary elections

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Five politically unaffiliated Maryland voters sued the state Board of Elections this week, claiming that taxpayer funding of closed primary elections in which they can't vote violates their constitutional rights.

In Maryland, Democratic and Republican primary elections are "partially closed." The state's nearly 1 million unaffiliated, Green Party and Libertarian voters may only participate in major party primary elections with permission from the respective party, even though they help fund them, according to state law. This includes the recent March 4 special primary election in Prince George's County, estimated by election officials to cost county taxpayers $2 million.

Boyd Rutherford, a Republican who served two terms as former Gov. Larry Hogan's lieutenant governor, is representing the plaintiffs. The lawsuit seeks to stop the state from funding closed primary elections.

"It's ultimately a question of suffrage," said Rutherford, who is now an attorney with the Davis Agnos Rapaport Skalny law firm, in a statement. "We are not seeking to require the political parties to allow Unaffiliated voters to vote in partisan party Primary Elections. This action is to prevent the State from funding these primaries that unconstitutionally exclude Unaffiliated voters."

The lawsuit claims that election officials are violating Article 1, Section 1 of the state constitution,

which guarantees that every qualified U.S. citizen who is a resident of Maryland "shall be entitled to vote in the ward or election district in which the citizen resides at all elections to be held in this State."

The plaintiffs, also backed by the Open Primaries Education Fund, claim the state is additionally violating Articles 7 and 24 of Maryland's Declaration of Rights, under the Free Elections Clause and the Equal Protection Clause.

The lawsuit was filed in the Circuit Court of Anne Arundel County on Tuesday. The plaintiffs are registered voters residing in Baltimore City, Anne Arundel, Prince George's and St. Mary's counties.

The action follows a federal judge's ruling in March that found the state election board violated federal law, the National Voter Registration Act and unlawfully suppressed efforts by voter activists to research anomalies in the state's voter records.

State Elections Administrator Jared DeMarinis said his office has not yet been served. He referred questions to the Office of the Attorney General, which did not immediately comment on Wednesday.

As of April, there were 957,228 Unaffiliated voters registered in Maryland, an increase of 50,000 since November, according to the state Board of Elections' registration statistics. The number of unaffiliated voters in the heavily Democratic state has been rising for years. In 2020, there were 788,812 of them.

The Democratic Party has 2.2 million registered voters, and Republicans count about 1 million.

The lawsuit also addresses the fact that several Maryland jurisdictions have non-competitive general elections. Registered Democrats outweigh registered Republicans by as much as 10 to 1 in Baltimore City, 9 to 1 in Prince George's County and 4 to 1 in Montgomery.

“Nearly a million of Maryland voters shut out of voting is a crisis,” Open Primaries Education Fund Senior Vice President Jeremy Gruber said in a joint news release with the law firm.

“Independent voters are the fastest growing group of voters in America, but they are treated as second-class citizens in Maryland and across the country. We cannot continue to publicly fund and administer elections that shut these voters out if we want to continue to call ourselves a democracy.”