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OPEN PRIMARIES EDUCATION FUND FILES SUIT AGAINST MARYLAND STATE BOARD OF ELECTIONS ALLEGING CLOSED PRIMARIES ARE UNCONSTITUTIONAL

COLUMBIA, MD – May 28, 2025 – The Open Primaries Education Fund, a national leader in election reform, in conjunction with Davis, Agnor, Rapaport & Skalny, LLC ("DARS"), one of Maryland's leading law firms, filed a lawsuit today on behalf of five plaintiffs across the state against the Maryland State Board of Elections ("MDSBE"), challenging the State's closed primary elections as unconstitutional. The Complaint, filed in the Circuit Court for Anne Arundel County, alleges that the MDSBE is denying Maryland citizens their fundamental right to vote, and seeks to stop the State from funding "closed" primary elections in violation of the Maryland Constitution.

The Complaint (available upon request) alleges that the plaintiffs listed below, as registered "Unaffiliated" voters in the State of Maryland, have been unconstitutionally denied their right to vote.

- Serena Bryson, Prince George's County
- Kimberle Fields, St. Mary's County
- Amber Ivey, Baltimore City
- Robert Sartwell, Anne Arundel County
- Dona J. Sauerburger, Anne Arundel County

"Nearly a million Maryland voters shut out of voting is a crisis. 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," says Jeremy Gruber, SVP of the Open Primaries Education Fund.

The Complaint identifies specific constitutional issues, alleging that the State's funding of partisan Primary Elections violate the Maryland Constitution, which guarantees that all duly registered voters shall be entitled to vote in "all elections to be held in this State." The State's funding of these closed primary elections violates the Plaintiffs' rights, as unaffiliated voters, to vote and participate in all elections held in the State as guaranteed by Article 1, Section 1 of the

Maryland Constitution of 1867, and secured by Articles 7 (the "Free Elections Clause") and 24 (the "Equal Protection Clause") of the Maryland Declaration of Rights.

"It's ultimately a question of suffrage," says former Maryland Lt. Governor Boyd K. Rutherford, DARS counsel for the Plaintiffs. "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." In addition, states Rutherford, "The State's endorsement and funding of partisan Primary Elections unconstitutionally denies a million duly registered Maryland citizens their right to vote in State elections." Joining Rutherford as counsel for the Plaintiffs are Michael W. Davis, Eric W. Gunderson, and Hannah L. Martinson.

Maryland trails most states by having closed primary elections, with 37 states having open primaries. In the past five years alone, Alaska, Colorado, Maine, and New Mexico have opened their primaries, as well as the cities of St. Louis and Washington, D.C. New Mexico is the most recent, following the passing of a bipartisan reform bill granting more than 330,000 Independent voters the right to vote in that state's primary elections starting in 2026.

Maryland jurisdictions have non-competitive General Elections. For example, nearly half of state legislative races were uncontested in the last cycle and only 5% were competitive. That means that the winner of the primary election is virtually guaranteed to win the General Election in almost every race. Accordingly, candidates and elected officials in these jurisdictions only need to appeal to an increasingly smaller group of hardcore party voters in their respective primary elections instead of crafting a message for a wider more diverse electorate. By broadening candidates' appeal to a wider electorate - to include the 22% of Maryland's Unaffiliated voters – voter participation will likely improve.

"I would like to have candidates consider and appeal to my concerns and values, but they tend to dismiss me unless I affiliate with their party so I can vote in the primaries. That's just not right. I want my voice to be heard," declares Dona Sauerburger, a plaintiff from Anne Arundel County.

Primary elections in Maryland and across the country cost taxpayers millions of dollars. A 2024 *Baltimore Sun* article stated that the cost of running a single primary election in Prince George's County was likely to be $2 million.

"Put simply, closed primaries are taxation without [a choice in] representation," says Gruber. The Open Primaries Education Fund is dedicated to challenging closed primary elections around the country. Maryland is just the beginning."

About the Open Primaries Education Fund

The Open Primaries Education Fund is a national non-profit organization that conducts research advances litigation and educates the public and policymakers on electoral reform.

For more information, visit https://openprimarieseducationfund.org/

About Davis, Agnor, Rapaport & Skalny, LLC

As a leading law firm in the Baltimore - Washington region, Davis, Agnor, Rapaport & Skalny, LLC services business owners, entrepreneurs, private clients, and companies in a variety of market sectors, including technology and government contracting, medical and service-related industries, real estate investment and development, commercial lending and non-profit organizations. Client engagements are throughout the mid-Atlantic region and beyond.

For more information, visit www.darslaw.com.

Available for Interview

- Jeremy Gruber, JD -SVP Open Primaries Education Fund
- The Honorable Boyd K. Rutherford, Partner Davis, Agnor, Rapaport & Skalny, LLC
- Donna Sauerburger, Plaintiff