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Maryland's primary elections are unconstitutional, lawsuit alleges

By Katie Mettler for the Washington Post



So for years, Sauerburger protested outside primary polling places and advocated for change before state lawmakers in Annapolis — without success.

Now she is taking her fight to the courts, leading a group of independents in a lawsuit against Maryland and the Board of Elections that alleges the state's partisan, or closed, primary process is unconstitutional and violates the rights of registered voters like her who are not affiliated with a political party.

The lawsuit filed against the state and the Board of Elections will be a test case for advocates who are working to make primaries open to all voters nationwide.

About 10 years ago, Dona Sauerburger, a longtime Maryland Democrat disillusioned with America's two-party system, decided to become an independent voter.

But that choice, she said, was immediately disenfranchising because Maryland residents who register as unaffiliated with a political party are not allowed to vote in primary elections.



The lawsuit was filed Tuesday in state court in Anne Arundel County by attorney Boyd Rutherford, Maryland's former Republican lieutenant governor, in collaboration with the nonpartisan Open Primaries Education Fund, at a time when third-party and independent voters are a growing segment of the electorate.

A litigation test case for advocates who are working to make primaries open to all voters nationwide, it could influence the Maryland gubernatorial primaries in the spring of 2026, when Gov. Wes Moore (D) is expected to seek reelection as the Democratic Party's nominee.

"We believe it is a fundamental American value that every citizen should have a right to vote in a public election," said Jeremy Gruber, Open Primaries senior vice president. "We all pay for them as taxpayers, but independent voters by the millions are being shut out of public elections. It's a voting crisis in this country."

Maryland is one of 14 states that closes its primaries to unaffiliated registered voters. If a state judge was to find Maryland's election process illegal, it could force lawmakers and party leaders to overhaul how they run primaries — empowering nearly 960,000 independent voters in Maryland to vote in them. According to the lawsuit, the state's Democratic, Republican and Green parties are among those with primary elections that exclude unaffiliated voters.

"I'm interested in ending this division and polarization, and I'm realizing now that it's really our election system that's doing this as much as anything else," said Sauerburger, 78, who has lived in Anne Arundel County for nearly four decades. "I still am liberal. I still have my same views. But I have become disenchanted with the political parties themselves."

The Board of Elections and the state attorney general's office did not immediately respond to requests for comment Thursday and the governor's office declined to comment; representatives from the Maryland Democratic, Republican and Green parties also did not respond to requests for comment.

Those opposed to open primaries in other states have argued that they allow for crossover voters from one political party to interfere with the opposing party's nomination process by supporting a candidate who is more vulnerable during a general election.

Gruber dismissed those arguments, saying that crossover voting doesn't happen on a meaningful scale and that even under the current system, voters can flip their registered affiliation.

The legal argument at the heart of the lawsuit relates to suffrage rights enumerated in the state constitution,

which was written in 1867 and guarantees that registered voters are entitled to vote in “all elections to be held in this State.” That includes primary elections, the lawsuit argues, which the political parties control and taxpayers fund.

Because the parties receive taxpayer money to run their primaries, the lawsuit alleges, the exclusion of registered unaffiliated voters is illegal.

“This is all a voting rights issue,” said Rutherford, who served alongside Gov. Larry Hogan (R) for eight years and now works as an attorney with the law firm Davis, Agnor, Rapaport & Skalny. “The parties can still decide how they want people to participate in their primaries. But the state should not be paying for it because it is unconstitutional.”

Rutherford was a political independent as a young adult. He registered as a Democrat while living in D.C., so he could vote in primary elections in the overwhelmingly Democratic city. He later joined the Republican Party, he once told The Washington Post, after feeling that Democrats “didn’t speak for me.”

In December, after Donald Trump (R) defeated Vice President Kamala Harris (D) in the general election, Rutherford penned a guest column for the Baltimore Sun making the case for open primaries.

“In the leadup to the elections in November, both of the leading candidates for president of the United States had negative favorability ratings. How did we get to this point?” he wrote. “Perhaps part of the problem is that a large number of voters are excluded from participating in their state’s primary (or caucus) process, leaving the most hardened partisan voters to choose the major party candidates for office.”

Gruber, from Open Primaries, and Sauerburger, who had founded a local organization in Maryland for independent voters, both read his words — and decided to get in touch.



Gruber and Sauerburger had been working together for years to end Maryland’s closed primary process, including lobbying lawmakers to pass bills that would open primaries to independent voters and testifying before the General Assembly in Annapolis. One lawmaker, Sauerburger recalled, responded to her testimony by saying such a change would require him to raise more money to appeal to independents.

Sauerburger protested outside polling places during primary elections, holding a sign that read: “I can’t vote today! Ask me why.”

But their efforts to change primaries in Maryland through legislation never gained traction, even as other states around the country adopted open primary election models through ballot initiatives and new state laws, including Colorado, Alaska, Maine and New Mexico.

Nearby Virginia has had open primaries for decades. The District passed a ballot initiative last year that enabled about 76,000 registered independents to vote in primaries — a contest more relevant to the general election in the deep blue city. The same is true of Maryland, where primaries often decide elected officials in the overwhelmingly Democratic strongholds of Baltimore, Prince George’s County and Montgomery County and the Republican-dominated Eastern Shore.

Unaffiliated voters in Maryland have climbed over the last decade, jumping from 16 percent in 2012 to 22 percent in 2025, according to the state Board of Elections. Gruber said that an analysis of the last general election cycle found that nearly half of the state legislative races were unopposed and less than 10 percent were competitive.

After years of lobbying in Annapolis, Gruber and Sauerburger started researching other avenues — including litigation.

Their team researched the Maryland constitution and spoke with attorneys and law professors. Just as they were crystalizing their legal landscape, Rutherford wrote his Baltimore Sun endorsement of open primaries.

“It was a perfect storm of individuals, all of whom were dedicated to independent voters and primary reform who just happened to come together at the right moment,” Gruber said.

Rutherford took on the case as lead counsel, and Open Primaries located two dozen independent voters who were willing to join the lawsuit, Gruber said. Five were selected, all of them from jurisdictions where the primary is the only election of consequence: Sauerburger and Robert Sartwell in Anne Arundel County, Serena Bryson in Prince George’s County, Kimberle Fields in St. Mary’s County and Amber Ivey in Baltimore City.

Sauerburger said she hopes the lawsuit will force Maryland party leaders to listen to independent voters, after years of feeling dismissed.

The major political parties, she said, “seem more interested in power than addressing their constituents’ needs.”

“I don’t feel that I’m part of the constituents who candidates are appealing to,” Sauerburger said.

Independent voters, Gruber said, decide almost every close election in the U.S.

“The parties are starting to wake up, however late, to the idea that they need independent voters,” Gruber said. “And the best way to build a relationship with an independent voter is to simply let them vote.”