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# Pennsylvania's 1.4 million unaffiliated voters can't vote in primaries. A new lawsuit argues that's unconstitutional.

Four Pennsylvania voters are asking the state Supreme Court to invalidate the commonwealth's closed primary system in an effort to allow unaffiliated voters to cast a ballot in partisan primaries.

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Published July 15, 2025, 1:18 p.m. ET

Four Pennsylvania voters are asking the state Supreme Court to invalidate the commonwealth's closed primary system in an effort to allow unaffiliated voters to cast a ballot in partisan primary elections in the crucial swing state.

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The voters, including Sirius XM radio host Michael Smerconish and activist David Thornburgh, filed a so-called King's Bench petition Tuesday to the Pennsylvania Supreme Court arguing state law restricting participation in partisan primaries to registered Republicans and Democrats violates the rights of Pennsylvania's nearly 1.4 million unaffiliated voters.

Thornburgh, the former CEO of the Committee of Seventy, now chairs Ballot PA Action, which advocates for open primaries.

In many counties across the state, one party is so dominant that local and statehouse elections are functionally decided in the primary rather than the general election. By the time independent voters can cast a ballot in November, there are fewer candidates, and oftentimes a race is unopposed.

"Exclusion from primary elections is the functional equivalent of losing the right to vote in those districts," the petition said.

If the Pennsylvania Supreme Court accepts the case, the high court justices could upend decades of precedent in Pennsylvania elections, welcoming new voters to the primary process and ushering in an open primary system that, studies have shown, could have a moderating force on political candidates in both parties. If the plaintiffs prevail, it would potentially give these voters a say in the 2026 primary, when Republicans will nominate a challenger to take on Democratic Gov. Josh Shapiro.

The Supreme Court could refuse to take on the case without considering the constitutionality of closed primaries. If this occurs, plaintiffs said, they will file a new case in Commonwealth Court.

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A spokesperson for the Pennsylvania Department of State, which is the defendant in the case, said the department was still reviewing the petition Tuesday.

Pennsylvania is one of 10 states with a completely closed primary system that allows voters to participate only in primaries that align with their party registration, according to the National Conference of State Legislatures. New Jersey and Delaware similarly have closed primaries.

Nine other states maintain a partially closed system, allowing political parties to decide whether or not to allow unaffiliated voters to participate.

Christian Grose, a University of Southern California political scientist who studies primary systems, said open primaries are often associated with less extreme lawmakers over time and, as a result, more voter engagement, especially in noncompetitive districts.

“If you have the threat of mobilizing some new voters in the primary, that could actually change the behavior of the elected official,” he said.

According to Pennsylvania Department of State data, nearly 1.4 million Pennsylvania voters were unaffiliated as of May’s primary election, accounting for about 15% of the electorate.

Voting rights advocates have called for more states to open their primary systems, arguing that it allows for more participation and eases polarization.

Furthermore, they argue independent voters’ tax dollars should not pay for elections in which they cannot participate. In recent months, advocates at

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Open Primaries, a national advocacy group, backed lawsuits in Maryland, Wyoming, and Oregon challenging the closed and partially closed primary systems in those states.

“We cannot continue to publicly fund primary elections that shut out voters at historic levels that we are if we want to call ourselves a democracy,” Jeremy Gruber, senior vice president of Open Primaries, said at a news conference Tuesday in Philadelphia.

Advocates, however, were divided on the strategy of addressing the issue via litigation.

Despite former CEO Thornburgh’s participation, the Committee of Seventy, a Philadelphia-based civic engagement group that has long called for open primaries, criticized the lawsuit in a statement on the grounds that it circumvented the legislature and normal court process in a way that would hinder meaningful progress.

Unite America, a national advocacy group pushing for nonpartisan primaries, similarly dismissed the suit as the wrong tack in a statement even as it declared closed primaries in Pennsylvania a “fundamental issue of fairness” that demands urgent action.

For years, lawmakers in Pennsylvania have considered creating an open primary system, but legislation persistently stalled in the divided statehouse.

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But State Rep. Jared Solomon, a Philadelphia Democrat who authored legislation this year, celebrated the petition as a potential path forward even as he continues to work to advance his bill.

“Anyone weighing in on this favorably … that’s always going to be positive,” he said.

At Tuesday’s news conference across the street from Independence Hall, Thornburgh — the son of Dick Thornburgh, the former Pennsylvania governor and U.S. attorney general — said the suit was meant to work in tandem with the legislative process. If plaintiffs prevail, he said, the court would ensure independents could participate in partisan primaries, but the General Assembly would be free to decide exactly what that looks like.

The plaintiffs argued the voting rights of independent voters was too important of an issue to wait on — especially in an era when many Americans are fed up with both parties.

“Simply put, for those of us who are independents, let us vote,” Thornburgh said.