

Supreme Court of California
Attn: Clerk of the Court, Jorge E. Navarrete
350 McAllister Street, San Francisco, CA 94102-4797
May 5, 2023

Re: Case No. 279767

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.

Dear Chief Justice Guerrero and Associate Justices,

FairVote, a nonpartisan organization working for democracy reform, requests acceptance of this amicus curiae letter in support of Plaintiff/Appellants Independent Voter Project's Petition for Review of the Decision by the Court of Appeal Fourth Appellate District, Div. One, Docket no. D080921, San Bernardino County Superior Court Case No. CIVDS1921480 pursuant to California Rules of Court Rule 8.500(g)(2), and California Supreme Court Rule 43:14. FairVote is a nonpartisan organization working for better elections for all. We research and advance voting reforms that make democracy more functional and representative for every American.

In this case, Plaintiff/Appellant Independent Voter Project ("IVP") argues voters unaffiliated with any party are unconstitutionally and unequally burdened by the state of California's voting process in the presidential primary. FairVote has an interest in ensuring all voters have an equal opportunity to express their right to vote and requests this Court allow IVP and its No Party Preference ("NPP") voters the chance to present evidence of the burden this process presents.

The state of California holds a "Top Two" primary for all U.S. Senate, U.S. House, and state elections, where every voter gets the same primary ballot listing with every candidate running in the primary for each office. For presidential primaries, however, the state of California holds a semi-closed primary. That means political parties decide whether to allow voters unaffiliated with their party to vote in their primary. For affiliated voters, the state sends a voter the relevant ballot. Yet unaffiliated voters, such as NPP voters, must request a ballot by a deadline well before the primary, which many of these voters do not realize is the case. The request requirement is an additional and detrimental burden on an NPP voter's ability to vote.

Document received by the CA Supreme Court.

The Court of Appeals justifies this burden by holding NPP voters' ballots are "purely symbolic." It held, "(t)he State's strong interest in maintaining public confidence in the integrity of the election system outweighs any interest of NPP voters to cast purely symbolic votes for the candidate of a political party they have chosen not to join." See, [Boydston v. Weber, No. D080921, 2023 WL 2906277, at *10 \(Cal. Ct. App. Mar. 21, 2023\)](#), [as modified on denial of reh'g](#) (Apr. 11, 2023). Thus, the Court diminishes the value of an NPP voter's ballot as merely symbolic. Yet, the Court fails to consider that every ballot, affiliated or unaffiliated, is largely symbolic under the current system.

Under the California Election Laws, the party is not required to accept the voters' preferences. Instead, the party sets its own rules for considering the presidential primary results. (See for example, "the elements and practices to select delegates and alternates shall be the same as set forth in the standing rules and bylaws of the Democratic National Committee and the Democratic Party of California. . . ." Election Code Section 6300(b).) In that sense, both affiliated and NPP voters are on equal footing. Their votes may be considered symbolic. Yet, NPP voters are treated differently and burdened in a way that affiliated voters are not. They must request a ballot from the state while other voters do not.

For the reasons above, FairVote urges the Court to GRANT Plaintiff/Appellants' Petition for Review to reconsider the burden this imposes and to grant a hearing on the merits to present evidence.

A copy of this letter has been provided electronically to all the parties,
Specifically,

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Respectfully Submitted,



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