

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

May 3, 2023

RE: S279767; Boydston v. Padilla; Boydston v. Webber

Dear Chief Justice Guerrero and Associate Justices,

Pursuant to California Rules of Court rule 8.500(g)(2), and California Supreme Court Rule 43:14, I respectfully request your acceptance of this as an amicus curiae letter in support of plaintiffs and appellants request for review of the decision in the Court of Appeal, Fourth Appellate District, in the above captioned matter.

My interest is as the interim chairman of the Common Sense Party, a political body seeking to qualify as a political party and filed as such with the California Secretary of State. Please see <https://www.sos.ca.gov/elections/political-parties/political-bodies-attempting-qualify>. The Common Sense Party seeks to expand opportunities for Californians to participate in the elections supervised by the State of California, and we have a special interest in empowering those who are independent voters to do so.

The State of California allows political parties to decide whether or not to allow individuals who are not members of a party to vote in that party's Presidential primary election. The Democratic Party of California allows such individuals to participate in their Presidential primary election. However, the State of California has imposed a condition on those independent voters that the Democratic Party did not impose. The State insists that such independent voters request and obtain a separate ballot, whereas members of the Democratic Party are mailed Presidential primary ballots directly by the California Secretary of State without any action on their part. This constitutes a barrier to participation in an election that must be justified by the State.

The petitioners are prepared to make an evidentiary showing that this barrier has resulted in a substantially lower voter participation than faced by voters who do not have to overcome that barrier. Perhaps the State could offer an explanation for why the State believes this barrier is, nevertheless, justified.

The standard of proof the State must satisfy in such a showing would, at the least, be more than a minimal rational basis since a fundamental right is at issue.

However, the Superior Court's decision on the pleadings, and the Court of Appeal's affirmance of that judgment, pretermitted any factual showing the petitioners were prepared to make. Similarly, the adequacy of the State's possible justifications was never heard, much less weighed against the harm caused.

Petitioners request simply the chance to present their case that a barrier imposed on them in exercising their right to vote as allowed by the Democratic Party of California, not imposed on others to whom the Democratic Party of California has granted that right, has resulted in harm to them. Petitioners do not assert an abstract right to vote in any given party's primary. Rather, they challenge disparate treatment: namely, that there is a barrier uniquely imposed only on them, a difference in treatment not created by the Democratic Party of California, but by the State itself. Petitioners should be allowed to present evidence of how this unequally applied barrier has affected their rights, and to rebut whatever defense the State may assert for imposing this barrier on them and not others.

If the decisions below are allowed to stand, then the judicial branch of California's government will have ruled that no amount of harm disparately suffered by a subset of voters entitled to vote in the Democratic Party of California's presidential primary could ever be strong enough to overcome the State's putative justification for imposing the barrier that caused that harm – all without even knowing what justification the State might actually assert for having done so.

I have provided a copy of this letter electronically to all the parties, specifically,

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Respectfully,

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