



**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN BERNARDINO**
San Bernardino District
247 West 3rd St
San Bernardino, CA 92415
www.sb-court.org

MINUTE ORDER

Case Number: CIVDS1921480

Date: 1/29/2021

Case Title: BOYDSTON ET AL -V- PADILLA

Department S32 - SBJC

Date: 1/29/2021

Time: 9:00 AM

Demurrer

Judicial Officer: Wilfred J Schneider Jr.

Judicial Assistant: Kim Allain

Court Reporter: Kimberly Morrow

Court Attendant: Rafael Hernandez

Appearances

Attorney Cory Briggs appears by CourtCall for Plaintiffs JIM BOYDSTON, LINDA CARPENTER SEXAUER, STEVEN FRAKER, DANIEL HOWLE, JOSEPHINE PIARULLI, JEFF MARSTON, LINDSAY VUREK, INDEPENDENT VOTER PROJECT

Attorney Natasha Sheth appears by CourtCall for Defendants ALEX PADILLA, STATE OF CALIFORNIA

Motions

ALEX PADILLA, STATE OF CALIFORNIA's DEMURRER TO 2ND AMENDED COMPLAINT is heard.

The Court has read and considered opposition and reply

Argued by counsel and submitted.

After further consideration of testimony and evidence:

Court Finds

ALEX PADILLA, STATE OF CALIFORNIA's demurrer to 2nd AMENDED COMPLAINT is sustained without leave to amend.

Plaintiffs have been given an opportunity to amend and failed to effectively do so.

Counsel for defendants to prepare order/judgment of dismissal after hearing

Notice given by Judicial Assistant

Correspondence Coversheet Generated to Mail:

Copy of Court Ruling/Minute order

== Minute Order Complete ==



**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN BERNARDINO**

San Bernardino District
247 West 3rd St
San Bernardino CA 92415
www.sb-court.org
909-708-8678

Boydston Et Al -v- Padilla

IMPORTANT CORRESPONDENCE

Case Number
CIVDS1921480

Briggs Law Corporation
99 East C Street
Suite 111
Upland CA 91786

From the above entitled court, enclosed you will find:

Copies of Court Ruling/Minute Order

CERTIFICATE OF SERVICE

I am a Deputy Clerk of the Superior Court for the County of San Bernardino at the above listed address. I am not a party to this action and on the date and place shown below, I served a copy of the above listed notice:

- Enclosed in a sealed envelope mailed to the interested party addressed above for collection and mailing this date, following standard Court practices.
- Enclosed in a sealed envelope, first class postage prepaid in the U.S. mail at the location shown above, mailed to the interested party and addressed as shown above or as shown on the attached listing.
- A copy of this notice was given to the filing party at the counter.
- A copy of this notice was placed in the bin located at this office and identified as the location for the above law firm's collection of file stamped documents.

Date of Mailing: 1/29/2021

I declare under penalty of perjury that the foregoing is true and correct. Executed on 1/29/2021 at San Bernardino.

By: Kim Allain

1 SAN BERNARDINO SUPERIOR COURT
2 COUNTY OF SAN BERNARDINO
247 West Third Street
3 San Bernardino, California 92415-0210

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JAN 29 2021

4
5 By *K. M. Allen*
Deputy

6
7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN BERNARDINO

10
11 JIM BOYDSTON, et al.,
12 Plaintiffs,

13 vs.

14 ALEX PADILLA, et al.,
15 Defendants.

CASE NO. CIVDS1921480

RULING ON DEMURRER TO THE
SECOND AMENDED COMPLAINT

Date: January 29, 2021
Time: 9:00 A. M.
Dept: S32

16
17
18
19
20
21 After full consideration of the written and oral submissions by the parties, the Court
22 rules as follows:

23 **PROCEDURAL/FACTUAL BACKGROUND**

24 This litigation concerns the rights of non-party preference voters in voting in the
25 presidential primary election.

26 Plaintiffs Jim Boydston, Steven Fraker, Daniel Howle, Josephine Piarulli, Jeff
27 Marston, Lindsay Vurek, Linda Carpenter Sexauer, and Independent Voter Project ("IVP")
28 (collectively, Plaintiffs") filed this action against Defendants Alex Padilla in his capacity as

1 the Secretary of State and the State of California.¹

2 On November 19, 2019, the Court denied Plaintiffs' application for preliminary
3 injunction requiring Defendants to implement an open presidential primary whereby any
4 registered voter could vote for any political party without having to join, associate, or
5 otherwise pledge allegiance to that political party as a condition of casting their vote. The
6 Court found Plaintiffs failed to establish a likelihood of success and failed to establish
7 irreparable harm.

8 On December 6, 2019, Plaintiffs filed their First Amended Complaint ("FAC"),
9 which included six causes of action: (1) violation of Cal. Constitution, Art. II, § 5, subd. (c);
10 (2) violation of Cal. Constitution, Art. I, § 7 (due process); (3) violation of Cal. Constitution,
11 Art. I, § 7 (equal protection); (4) violation of violation of Cal. Constitution, Art. XVI, § 3
12 (unconstitutional misappropriation of public funds); (5) violation of 42 U.S.C. § 1983 (due
13 process); and (6) violation of 42 U.S.C. §1983 (non-association).

14 On October 2, 2020, the Court granted a motion filed by Defendants for judgment
15 on the pleadings of Plaintiffs' FAC, with leave to amend.

16 On October 22, 2020, Plaintiffs filed their operative Second Amended Complaint
17 ("SAC") against Defendants, which includes the same six causes of action previously
18 pleaded in the FAC.

19 The relevant allegations are largely unchanged. Plaintiffs allege the California
20 Constitution requires open presidential primary elections. But the State has adopted a
21 closed, or modified-closed, presidential primary.

22 Voters registered with an approved political party can vote for their party's
23 presidential candidates in the primary.

24 However, no preference party ("NPP") voters can only vote for the political parties
25 which have agreed/authorized NPPs to vote in their parties' presidential primaries; but only
26 if the NPP requested, either in writing associated with voting by mail or in person at the
27

28 ¹ Plaintiff Linda Carpenter Sexauer was not named as a plaintiff/petitioner in Plaintiffs' original complaint. She was added by stipulation and order as a party to Plaintiffs' First Amended Complaint.

1 polling place, a cross-over ballot. This requirement violates NPP voters' rights of
2 association, due process, and equal protection. (SAC, ¶¶1, 3, 39, 40, 43-48, 64-65, 72, and
3 77-78.)

4 Now at issue is Defendants' general demurrer to Plaintiffs' SAC. Plaintiffs filed a
5 timely opposition. Defendants filed a timely reply.

6 **DISCUSSION**

7 **New Allegations in Plaintiffs' SAC**

8 The most apparent amendment to the FAC is the addition of paragraphs 53 through
9 61. Essentially, Plaintiffs allege Defendants are imposing additional burdens on NPP voters.
10 Specifically, Plaintiffs allege the additional burdens include requiring NPP voters who vote
11 by mail to "either (a) respond to an innocuous postcard to request a crossover ballot; (b)
12 bring their NPP ballot to their polling place, surrender it, and request a crossover ballot at
13 their polling place; or (c) re-register with a party at their polling place and receive the party's
14 primary ballot." (SAC ¶54.) Defendants also allege the deadline for requesting crossover
15 ballots is arbitrary and the wording on the postcards relating to the deadlines "leads
16 reasonable NPP voters to believe that if they don't respond by such a deadline they will
17 have lost their right to vote for a presidential candidate in the primary" (SAC ¶55.)

18 Plaintiffs' allegations suggest Defendants should be providing NPP voters with non-
19 partisan ballots in the presidential primary election. The NNP voters could then vote for a
20 presidential candidate and the private political parties would be free to ignore the votes for
21 a presidential candidate. (*See* SAC ¶¶57-61.)

22 These allegations do not materially change the flawed nature of Plaintiffs' legal
23 theory.

24 Under their second cause of action, Plaintiffs added an allegation that "at least one
25 of IVP's members have been . . . forced to associate with a private political party in order to
26 participate in a presidential primary election *on the same burden-free basis* that party-affiliated
27 voters enjoy." (SAC ¶74 (emphasis added).) But that is not forced speech or forced
28 association.

1 As previously discussed in connection to Defendants' motion for judgment on the
2 pleadings, and is further discussed below, the law is clear that the semi-closed primary
3 system in California is constitutional and elections law will invariably impose some burden
4 on individual voters. Plaintiffs have still failed to allege facts to demonstrate arbitrary acts
5 on the part of the State or showing the State unreasonably deprived them of life, liberty or
6 property without due process.

7 **Plaintiffs' First, Second, Third, Fifth, and Sixth Causes of Action**

8 Plaintiffs' first, second, third, fifth, and sixth causes of action involve claims
9 Defendants violated Plaintiffs' due process and associational rights under the California and
10 United States Constitutions.

11 Under their first cause of action, Plaintiffs allege Elections Code section 13102,
12 which provides for "closed and/or modified-closed presidential primaries" violates the
13 requirement under Article II, section 5(c) of the California Constitution that the Legislature
14 shall provide for an "open presidential primary." (SAC ¶¶63-65.) Plaintiffs allege they were
15 unable to vote for the candidate of their choice in the 2016 and 2020 presidential primary
16 elections "unencumbered by a condition of party preference" (*Id.* ¶67.)

17 Under their second cause of action, Plaintiffs allege California's use of a "closed
18 presidential-primary election" violates their substantive due process rights guaranteed under
19 Article I, section 7, of the California Constitution. (SAC ¶¶70-75.)

20 Under their third cause of action, Plaintiffs allege Elections Code section 13102
21 denies Plaintiffs their equal protection rights guaranteed under the California Constitution
22 "by giving partisan voters an opportunity to cast a vote for a [presidential candidate]
23 without affording NPP voters the right to do the same." (SAC ¶77.)

24 Under their fifth cause of action, Plaintiffs allege a substantive due process claim
25 under the First and Fourteenth Amendments. (SAC ¶¶86-95.)

26 Under their sixth cause of action, Plaintiffs allege Elections Code section 13102
27 violates their First Amendment right of non-association. (SAC ¶¶96-100.)

28 Essentially, Plaintiffs still allege California's semi-closed presidential primaries violate

1 the California and United States Constitutions.²

2 Defendants correctly point out the Supreme Court struck down state statutes that
3 required blanket primaries (see *Cal. Democratic Party v. Jones* (2000) 530 U.S. 567, 574) and
4 closed primaries (see *Tashjian v. Republican Party of Conn.* (1986) 479 U.S. 208, 217), but has
5 upheld a statute that mandated semi-closed primaries (see *Clingman v. Beaver* (2005) 544 U.S.
6 581).

7 A state may not keep a party from welcoming unaffiliated voters to participate in its
8 primary. (*Tashjian, supra*, 479 U.S. 208 at pp. 213-29.) However, contrary to Plaintiffs'
9 contentions, it may prohibit party members from participating in another party's primary.
10 (*Clingman v. Beaver* (2005) 544 U.S. 581, 586-97.)

11 Plaintiffs cite no authority supporting their argument that Elections Code section
12 13102 violates the California Constitution.

13 Article II, section 5, of our State's Constitution provides:

14 The Legislature shall provide for partisan elections for presidential candidates,
15 and political party and party central committees, *including an open presidential*
16 *primary whereby the candidates on the ballot are those found by the Secretary of State to be*
17 *recognized candidates throughout the nation or throughout California for the office of*
18 *President of the United States, and those whose names are placed on the ballot by*
19 *petition, but excluding any candidate who has withdrawn by filing an affidavit*
20 *of noncandidacy.*(Emphasis added.)

21 This Constitutional provision addresses which candidates must be placed on the
22 ballot, not the procedures for voting for the candidates. As argued by Defendants, the
23 Supreme Court decided in *Jones* that the 1996 adoption of Proposition 198, which provided
24 for an "open primary," was unconstitutional because, in part, a "nonmember's desire to
25 participate in the party's affairs is overborne by the countervailing and legitimate right of
26 the party to determine its own membership qualifications." (*Cal. Democratic Party v. Jones*,

27
28 ² A "semi-closed" primary is one in which a party may invite independent voters as well as its own registered members to vote in its primary. (*Clingman v. Beaver* (2005) 44 U.S. 581, 584.)

1 *supra*, 530 U.S. at p. 583, quoting *Tashjian, supra*, 479 U.S. at pp. 215-216.)

2 Defendants' RJN Exhibit 5 is a copy of the Voter Information Guide from the June
3 8, 2010 election, which includes Proposition 14—the most recent amendment to Article II,
4 section 5 of the California Constitution (“Top Two Candidates Open Primary Act”).³ It
5 includes the following declaration:

6 (f) Presidential Primaries. This act makes no change in current law as it relates
7 to presidential primaries. This act conforms to the ruling of the United States
8 Supreme Court in *Washington State Grange v. Washington State Republican Party*
9 (2008) 128 S.Ct. 1184. Each political party retains the right either to close its
10 presidential primaries to those voters who disclose their party preference for
11 that party at the time of registration or to open its presidential primary to
12 include those voters who register without disclosing a political party
13 preference.(Def's RJN Ex. 5 at p. 65.)

14 This is consistent with the relevant language of Elections Code section 13102:

15 (b) At partisan primary elections, each voter not registered disclosing a
16 preference for any one of the political parties participating in the election shall
17 be furnished only a nonpartisan ballot, unless the voter requests a ballot of a
18 political party and that political party, by party rule duly noticed to the
19 Secretary of State, authorizes a person who has declined to disclose a party
20 preference to vote the ballot of that political party. The nonpartisan ballot
21 shall contain only the names of all candidates for nonpartisan offices, voter-
22 nominated offices, and measures to be voted for at the primary election. Each
23 voter registered as preferring a political party participating in the election shall
24 be furnished only a ballot for which the voter disclosed a party preference in
25 accordance with Section 2151 or 2152 and the nonpartisan ballot, both of
26 which shall be printed together as one ballot in the form prescribed by Section
27

28 ³ Defendants' demurrer references the exhibits of which the Court previously took judicial notice in ruling on Defendants' motion for judgment on the pleadings.

1 13207.

2 (c) A political party may adopt a party rule in accordance with subdivision (b)
3 that authorizes a person who has declined to disclose a party preference to
4 vote the ballot of that political party at the next ensuing partisan primary
5 election. The political party shall notify the party chair immediately upon
6 adoption of that party rule. The party chair shall provide written notice of the
7 adoption of that rule to the Secretary of State not later than the 135th day
8 before the partisan primary election at which the vote is authorized.

9 (Elections Code, § 13102, subds. (b), (c).)

10 Plaintiffs argues *Jones* and *Clingman* are distinguishable because they focus on the
11 rights of the political parties, rather than the rights of the individual voters. The Court
12 previously explained that appears to be a distinction without a difference. Plaintiffs take
13 issue with that characterization. They argue it is permissible for political parties to make
14 distinctions, but not the state. But Plaintiffs still fail to allege state action which deprives
15 them of a cognizable right.

16 Plaintiffs, as non-party affiliated voters, do not have a *constitutional right* to vote in a
17 presidential primary for a political party's candidate.

18 The Civil Rights Act, 42 U.S.C. section 1983 ("Section 1983") does not create any
19 substantive rights but is a vehicle used to vindicate rights secured by the federal constitution
20 and federal law. (*Chapman v. Houston Welfare Rights Org.* (1979) 441 U.S. 600, 616, 617-18.)

21 For a Section 1983 violation, the following must be established: (1) the conduct was
22 committed by a person acting under the color of state law, and (2) it deprived the person of
23 rights, privileges, or immunities secured by the Constitution or other laws of the United
24 States. (*Vergos v. McNeal* (2007) 146 Cal.App.4th 1387, 1402.)

25 The First Amendment of the U.S. Constitution guarantees citizens the right to
26 associate, including the right to associate with the political party of one's choice. (*Tashjian v.*
27 *Republican Party* (1986) 479 U.S. 208, 214.) Also, the freedom of association presupposes the
28 freedom not to associate. (*Roberts v. United States Jaycees* (1984) 468 U.S. 609, 623.)

1 On one hand, the right to vote freely for one's candidate choice is the essence of the
2 democratic society and restrictions on that right strike at the heart of the representative
3 government. (*Moore v. Ogilvie* (1969) 394 U.S. 814, 814.) On the other hand, it is recognized
4 a political party has the constitutional right to preclude non-party members from interfering
5 with the rights of its members, i.e., preclude non-party members from voting in its primary
6 election. (*Cal. Democratic Party v. Jones* (2000) 530 U.S. 567, 583; *Tashjian v. Republican Party*
7 (1986) 479 U.S. 208, 216, fn. 6.)

8 The apparent contradiction of these holdings is rectified by every citizen has the
9 right to freely vote in general type elections but as to presidential primary elections, which
10 the vote is not the means by which the presidential nominees are chosen, as they are chosen
11 by delegates of the political parties (Elections Code, §§ 6020, sub. (b), 6480, subd. (b), 6620,
12 subd. (a) and (d), 6821, subd. (a), and 6851), the political parties' right to determine its own
13 membership trumps. As recognized in the law, the right to vote in any manner and the right
14 to associate for political purposes through the ballot are not absolute. (*Burdick v. Takushi*
15 (1992) 504 U.S. 428, 433.)

16 Elections law will invariably impose some burden on individual voters. (*Id.*) The fact
17 the State's system may create barriers tending to limit the field of candidates from which
18 voters might choose does not compel close scrutiny. (*Id.*) Rather,

19 a more flexible standard applies. A court considering a challenge to a state
20 election law must weigh "the character and magnitude of the asserted injury to
21 the rights protected by the First and Fourteenth Amendments that the
22 plaintiff seeks to vindicate" against "the precise interests put forward by the
23 State as justifications for the burden imposed by its rule," taking into
24 consideration "the extent to which those interests make it necessary to burden
25 the plaintiff's rights." [Citation.]

26 Under this standard, the rigorousness of our inquiry into the propriety
27 of a state election law depends upon the extent to which a challenged
28 regulation burdens First and Fourteenth Amendment rights. Thus, as we have

1 recognized when those rights are subjected to “severe” restrictions, the
2 regulation must be “narrowly drawn to advance a state interest of compelling
3 importance.” But when a state election law provision imposes only
4 “reasonable, nondiscriminatory restrictions” upon the First and Fourteenth
5 Amendment rights of voters, “the State’s important regulatory interests are
6 generally sufficient to justify” the restrictions. [Citations.]

7 (*Burdick*, supra, 504 U.S. at p. 434 (citations omitted); see also *Rawls v. Zamora* (2003) 107
8 Cal.App.4th 1110, 1116 (“Courts will uphold as “not severe” restrictions that are generally
9 applicable, even-handed, politically neutral, and which protect the reliability and integrity of
10 the election process. This is true even when the regulations “have the effect of channeling
11 expressive activities at the polls.” ‘Courts will strike down state election laws as severe
12 speech restrictions only when they significantly impair access to the ballot, stifle core
13 political speech, or dictate electoral outcomes.’” (citations omitted))).

14 Here, California’s presidential primary process, unlike any other type of election for
15 a public office (federal or state), provides generally for only party members to vote on their
16 party’s presidential candidates.

17 Nevertheless, qualified political parties may adopt a rule to allow no party preference
18 (“NPP”) voters to vote in its primary election. The political party is to notify the Secretary
19 of State by the 135th day before the primary election if they will allow NPPs to vote in their
20 primary. For the 2016 primary election, the Democratic, Libertarian, and American
21 Independent Parties authorized NPP voters to participate. (SAC ¶¶44-47.)

22 The ballot a NPP receives associated with the presidential primary will contain
23 information on the option to vote for all matters except the candidates for President. To
24 vote for a presidential candidate, the NPP voter must request a cross-over ballot for one of
25 the parties allowing NPP voters by either an application associated with voting by mail or at
26 the polling place. (SAC ¶¶44, 48.)

27 Plaintiffs have still not pointed to any provision in the presidential primary statutory
28 scheme which mandates they associate with any political party. In order to participate in the

1 presidential primary election, one must either be a member of the political party or the
2 political party is allowing NPPs to vote in its primary.

3 However, neither method mandates the NPP associate with one party or another.

4 To the extent the heart of the Plaintiffs' complaint is that they are being denied the
5 right to vote in the presidential primary election unless they associate with a party, the
6 problem is the U.S. Supreme Court has found the political parties' freedom to associate
7 means they get to dictate who is permitted to participate in the primaries that will assist in
8 deciding the political parties' candidate for the general election.

9 The U.S. Supreme Court noted: "[E]ven if it were accurate to describe the plight of
10 the non-party-member in a safe district as 'disenfranchisement,' Proposition 198 is not
11 needed to solve the problem. The voter who feels himself disenfranchised should simply
12 join the party. That may put him to a hard choice, but it is not a state-imposed restriction
13 upon *his* freedom of association, whereas compelling party members to accept his selection
14 of their nominee *is* a state-imposed restriction upon theirs." (*Cal. Democratic Party, supra*, 530
15 U.S. at p. 584.)

16 The same is true here.

17 Neither Secretary Padilla nor the State is imposing a restriction on the NPPs'
18 associational freedoms in order to vote in the presidential primary; the restriction is coming
19 from the political parties themselves to which they are authorized to do so under the law
20 above.

21 Additionally, a NPP has available the ability to vote (in part) in the presidential
22 primary election by three of the six qualified political parties allowing them to vote in their
23 primaries. To vote in those parties' primaries is no requirement that the NPP associate with
24 that party, i.e., NPPs are not required to register as a Democrat, Libertarian, or American
25 Independent to obtain the cross-over ballot for that party.

26 An equal protection claim has two essential elements. Plaintiffs must plead and
27 prove the State adopted a classification that affects two or more similarly situated groups in
28 an unequal manner (for purposes of the law challenged) and an insufficient reason for

1 distinguishing between the two groups. (*Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253.)
2 Substantive due process applies to governmental action which arbitrarily or unreasonably
3 deprives a person of life, liberty, or property. (See, e.g., *Terminal Plaza Corp. v City & County*
4 *of San Francisco* (1986) 177 Cal.App.3d 892, 908.)

5 Plaintiffs want to vote for their presidential candidate of choice in the presidential
6 election without the burden of having to associate with a political party or requesting a
7 crossover ballot.

8 Plaintiffs allegations demonstrate they are treated differently than members of
9 political party members.

10 However, *Jones* and *Clingman* establish a sufficient reason for the different treatment.

11 They also demonstrate Plaintiffs failed to allege facts demonstrating arbitrary acts on
12 the part of the State or that the State unreasonably deprived them of life, liberty or
13 property.

14 In short, Plaintiffs cite no authority, and none is apparent, holding that the semi-
15 closed primary system in California, as set forth in Section 13102 of the Elections Code is
16 unconstitutional.

17 Likewise, Plaintiffs failed to allege facts demonstrating voter disenfranchisement or
18 any other cognizable constitutional claim.

19 Therefore, the Court will sustain the Defendants' demurrer to the Plaintiffs' first,
20 second, third, fifth, and sixth causes of action.

21 **Plaintiffs' Fourth Cause of Action**

22 Section 3 of Article XVI of the California Constitution provides that "[n]o money
23 shall ever be appropriated or drawn from the State Treasury for the purpose or benefit of
24 any corporation, association, asylum, hospital, or any other institution not under the
25 exclusive management and control of the State as a state institution, nor shall any grant or
26 donation of property ever be made thereto by the State," with certain enumerated
27 exceptions.

28 Plaintiffs allege California's semi-closed presidential primary serves a predominately

1 private purpose—to benefit private political parties—and thus Elections Code section
2 13102 violates the California’s Constitution’s prohibition against appropriating public funds
3 for a private purpose. (SAC ¶¶80-85.)

4 Notably, Plaintiffs’ allegations, which were previously determined to have been
5 deficient, appear to be unchanged.

6 Just as before, Defendants argue Plaintiffs’ fourth causes of action fails as a matter
7 of law because using public funds to conduct primary elections does not violate the
8 Constitution.

9 Plaintiffs quote Section 3 of Article II of the California Constitution which states
10 “[t]he Legislature shall define residence and provide for registration and *free elections*.”
11 (Emphasis added.)

12 Plaintiffs argue a “primary election serves a substantially different purpose than a
13 general election, particularly for the position of the President of the United States, in that it
14 is merely advisory and intended to serve only the interests of the parties.” (Opp. 21:7-9.)

15 However, Plaintiffs cite no authority to support that argument.

16 In paragraph 50 of their SAC, Plaintiffs allege “the California presidential primary is,
17 in effect, a state-sponsored straw poll for the exclusive and private benefit of the political
18 parties.”

19 That is a colorful conclusion, not a fact.

20 Plaintiffs’ fourth cause of action is novel.

21 But Plaintiffs cite no authority showing it is colorable under the law.

22 Therefore, the Court will sustain the Defendants’ demurrer to the Plaintiffs’ fourth
23 cause of action.

24 **The State as an Improper Defendant**

25 Defendants argue the State is not a proper defendant in this action.

26 There is a “general and long-established rule that in actions for declaratory and
27 injunctive relief challenging the constitutionality of state statutes, state officers with
28 statewide administrative functions under the challenged statute are the proper parties

1 defendant.” (*Serrano v. Priest* (1976) 18 Cal.3d 728, 752; see also *Templo v. State of California*
2 (2018) 24 Cal.App.5th 730, 737 [“in the instant case, it is the Judicial Council, and not the
3 State as a whole, that has the ‘direct institutional interest’ necessary to defend the action.”].)

4 Just as before, Plaintiffs’ opposition does not address Defendants’ argument.

5 Defendants appear to be correct that Defendant Alex Padilla, in his capacity as the
6 Secretary of State, not the State as a whole, has the direct institutional interest necessary to
7 defend the action.

8 Therefore, the Court will sustain the Defendants’ demurrer as to claims against the
9 State.

10 **Leave to Amend**

11 Courts are very liberal in permitting amendments, not only where a complaint is
12 defective in form, but also where substantive defects are apparent: “Liberality in permitting
13 amendment is the rule, if a fair opportunity to correct any defect has not been given.”

14 (*Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217.)

15 It is an abuse of discretion for the court to deny leave to amend where there is any
16 *reasonable possibility* that plaintiff can state a good cause of action. (*Bounds v. Superior Court*
17 (2014) 229 Cal.App.4th 468, 484 [court should grant leave to amend if in all probability
18 plaintiff will cure defect].)

19 However, no abuse of discretion will be found unless a potentially effective
20 amendment is “both apparent and consistent with plaintiff’s theory of the case.” (*Camsi IV*
21 *v. Hunter Technology Corp.* (1991) 230 Cal.App.3d 1525, 1542.)

22 “Leave to amend *should be denied* where the facts are not in dispute and the nature of
23 the claim is clear, but no liability exists under substantive law.” (*Lawrence v. Bank of America*
24 (1985) 163 Cal.App.3d 431, 436 (emphasis added); *Schonfeldt v. State of Calif.* (1998) 61
25 Cal.App.4th 1462, 1465 [if no liability as a matter of law, leave to amend should not be
26 granted].)

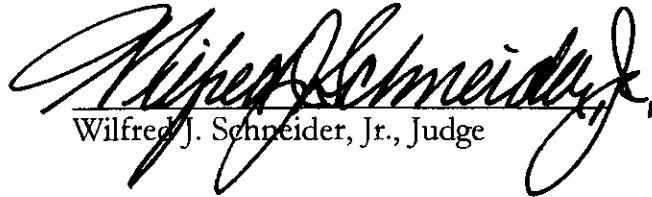
27 Plaintiffs have been given an opportunity to amend and failed to effectively do so.

28 Therefore, the Court will sustain this demurrer without leave to amend.

1 **RULING**

2 The Court **SUSTAINS** the Defendants' demurrer to the Plaintiffs' Second
3 Amended Complaint, *without leave to amend*.

4 Dated: January 29, 2021

5
6 
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Wilfred J. Schneider, Jr., Judge