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8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12
13 **PEACE AND FREEDOM PARTY, et al.,**
14 Plaintiff,
15 v.
16 **Dr. SHIRLEY N. WEBER, CALIFORNIA**
17 **SECRETARY OF STATE,**
18 Defendant.

3:24-cv-08308-MMC

**REPLY IN SUPPORT OF MOTION TO
DISMISS SECOND AMENDED
COMPLAINT**

Date: October 2, 2026
Time: 9:00 a.m.
Dept: Courtroom 7 – 19th Floor
Judge: Hon. Maxine M. Chesney
Trial Date: None set
Action Filed: 11/21/2024

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INTRODUCTION

Two constitutional challenges remain in the operative Second Amended Complaint (“SAC”). In Count 1, Plaintiffs challenge California’s scheduling of its primaries in March of presidential election years. In Count 2, Plaintiff American Solidarity Party of California (“ASPC”) challenges Elections Code statutes requiring candidates’ ballot labels to state “Party Preference: None” if they prefer a non-qualified political party. For relief on both Counts, Plaintiffs seek to enjoin enforcement of the challenged statutes for *all* of their candidates in *all* future elections.

Both of these counts fail to state a claim because the challenged laws satisfy *Anderson/Burdick* review: the laws do not impose severe burdens on Plaintiffs’ constitutional rights and they are justified by California’s important regulatory interests. The SAC should therefore be dismissed without leave to amend.

ARGUMENT

I. THE SECOND AMENDED COMPLAINT ASSERTS FACIAL CHALLENGES

As an initial matter, for all intents and purposes, Plaintiffs constitutional challenges in the SAC are facial ones. Plaintiffs do not allege that the challenged laws are unconstitutional as applied in any specific factual circumstances (i.e., to a particular candidate or in any particular election). Instead, Plaintiffs seek to have the statutes enjoined for all future primary elections for, at minimum, all candidates who wish to identify APSC as their preferred party. *See* SAC at 14-19; *Cal. Rifle & Pistol Ass’n, Inc. v. City of Glendale*, 644 F. Supp. 3d 610, 620-21 (C.D. Cal. 2022) (finding plaintiff organization’s characterization of its challenge as as-applied “dubious” where plaintiff made no allegations related any particular member in any particular circumstances and plaintiff sought injunction against enforcement of challenged law “in any manner against their members”). “[A] plaintiff can only succeed in a facial challenge by “establish[ing] that no set of circumstances exists under which the Act would be valid,” *i.e.*, that the law is unconstitutional in all of its applications.” *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 429 (2008) (“*Washington P*”) (citing *United States v. Salerno*, 481 U.S. 739 (1987)).

II. COUNT 1: PLAINTIFFS’ CHALLENGE TO MARCH PRIMARIES IN PRESIDENTIAL ELECTION YEARS FAILS TO STATE A CLAIM

California’s scheduling of its primaries in March of presidential election years satisfies *Anderson/Burdick* review; it does not impose a severe burden on Plaintiffs’ political opportunities and is justified by California’s important interests. *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983); *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). Count 1 in the SAC should therefore be dismissed without further leave to amend.

A. California’s March Primaries in Presidential Election Years Do Not Severely Burden Plaintiffs’ Political Opportunities

California’s scheduling of primary elections in March of presidential election years is a “reasonable, nondiscriminatory” regulation that is not subject to heightened scrutiny. *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983).

Importantly, the March primary simply shifts the normal primary process—and the attendant political campaigns—up by three months in presidential election years. The March primary does not change the requirements for a party or candidate to appear on the primary ballot and the scheduling applies equally to all candidates and parties—major and minor alike.

As a matter of law, the March primary scheduling does not impose a “severe burden” for the purposes of *Anderson/Burdick*. Plaintiffs do not allege that the March scheduling makes it any more difficult for them to appear on the primary ballot. Rather, they primarily allege that it is more difficult for them *successfully* appeal to voters earlier in the election year than if the primaries occurred in June. SAC at 15-16. However, the Constitution does not require California to “handicap” minor party candidates as compared to their major party counterparts to make them more likely to advance from the primary to the general election. *Munro v. Socialist Workers Party*, 479 U.S. 189, 198 (1986); *accord De La Fuente v. Padilla*, 930 F.3d 1101, 1107 (9th Cir. 2019); *Munro* 479 U.S. at 199 (a law’s “effect on a candidate’s constitutional rights is slight” when a state “affords a minor-party candidate easy access to the primary election ballot and the opportunity to wage a ballot-connected campaign”).

1 Plaintiffs appear to argue that this Court should not determine at the motion to dismiss stage
2 whether the alleged burdens are severe because the Court must accept the allegations in the
3 Second Amendment Complaint as true. However, Courts “routinely conduct the
4 *Anderson/Burdick* analysis at the motion to dismiss stage.” *Election Integrity Project California,*
5 *Inc. v. Weber*, 113 F.4th 1072, 1085 (9th Cir. 2024) (citing as examples *Clark v. Weber*, 54 F.4th
6 590, 593–94 (9th Cir. 2022); *Tedards v. Ducey*, 951 F.3d 1041, 1068 (9th Cir. 2020); *Rodriguez*
7 *v. Newsom*, 974 F.3d 998, 1011 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2754 (2021)). And,
8 specifically here, even if Plaintiffs’ allegations are true regarding the challenge of winning over
9 voters earlier in the election year, those facts would still not give rise to a severe burden for the
10 reasons described above: the March scheduling applies to all candidates, it does not affect
11 candidates’ ability to appear on the ballot, and minor parties do not have the right to a primary
12 date that will maximize their chances of beating major party candidates to advance to the general
13 election.

14 Plaintiffs also contend that the Ninth Circuit suggested in *Washington State Republican*
15 *Party v. Washington State Grange*, 676 F.3d 784 (9th Cir. 2012) (“*Washington I*”) that its ruling
16 upholding Washington’s top-two primary could be different if Washington’s primary were in
17 March instead of June. *Oppo.* at 17. However, *Washington II* did not actually consider the issue
18 of whether a March top-two primary would be constitutional. *See* 676 F.3d at 794. And, as this
19 Court aptly noted in Order dismissing the First Amended Complaint, the Ninth Circuit’s holding
20 in *Washington II* “was based primarily on the parties’ ‘participation in [that] primary at the same
21 time, and on the same terms, as major party candidates.’” *Dkt. No. 57* at 21 n.12 (quoting
22 *Washington II*, 676 F.3d at 794).

23 Finally, Plaintiffs argue that the March primaries impose a severe burden on their political
24 opportunity because that scheduling purportedly requires them to identify their candidates in
25 September of the previous year, 165 days before the primary. *Oppo.* at 18. However, Plaintiffs
26 offer no explanation for why this allegedly is so. They cite no legal authority that requires this,
27 and it is certainly not required by the challenged statute setting primaries for March in
28 presidential election years. *See* Cal. Elec. Code § 1202. In fact, under the California Elections

Code section 8020(b), candidates need not file their nomination documents until 88 days before the primary election. Cal. Elec. Code § 8020(b). Plaintiffs do not challenge the constitutionality of that statute in this action but, even if they did, that challenge would fail. Unlike in the petition deadline cases that Plaintiffs cite (see *Oppo.* at 18-19), here, California requires candidates to file, at most, *only 100* petition signatures to appear on the ballot. Cal. Elec. Code § 8062. Plaintiffs are surely not severely burdened by the State’s requirement that candidates of all parties submit 100 petition signatures in the December, rather than the March, preceding the primary.

California’s law scheduling primary elections in March of presidential election years does not impose a severe burden on Plaintiffs.

B. California’s Interests Justify Any Burden Imposed by Holding Primaries in March of Presidential Election Years

Because March primaries in presidential election years are “reasonable [and] non-discriminatory” and do not impose a “severe” burden on Plaintiffs, to survive review, the law need only be justified by the state’s important regulatory interests. *Anderson*, 460 U.S. at 788. The interest must be “legitimate” and the law must “reasonably advance” that interest. *Election Integrity Project California, Inc. v. Weber*, 113 F.4th 1072, 1084 (9th Cir. 2024) (citing *Burdick v. Takushi*, 504 U.S. 428, 439-40 (1992)). That is the situation here.

California’s March primaries in presidential election years serve several important and legitimate interests. Unlike when California held its primary elections in June, the March presidential primaries allow California voters to weigh in on the race before it is already “effectively decided.” Sen. Third Reading, 2017-2018 Reg. Sess., Analysis of SB 568, as amended August 31, 2017 (Cal. Sept. 13, 2017), at 1. The benefits of the March primary to California voters and the State therefore include:

- Greater influence on candidates’ campaign agendas and positions;
- Greater influence on the ultimate outcome of the primary races;
- More candidate choices, because fewer have dropped out of the race;
- Greater voter participation in the primary elections due to the benefits above.

1 See Sen. Third Reading, 2017-2018 Reg. Sess., Analysis of SB 568, as amended August 31, 2017
 2 (Cal. Sept. 13, 2017), at 1; Sen. Rules Comm., Analysis of SB 568, 2017-2018 Reg. Sess. (Cal.
 3 Sept. 15, 2017), at 5; Senate Third Reading, 2017-2018 Reg. Sess., Analysis of SB 568, as
 4 amended June 21, 2017, (Cal. Aug. 18), 17 at 1-3. California’s interest in these voter benefits is
 5 legitimate (particularly given California’s status as the nation’s most populous state) and
 6 “reasonably advance[d]” by the March primaries. *Election Integrity Project California*, 113 F.4th
 7 at 1084. These interests have also already been identified by courts as “important” state interests
 8 for purposes of the *Anderson/Burdick* analysis. See *Tedards v. Ducey*, 951 F.3d 1041, 1067 (9th
 9 Cir. 2020) (“we agree that Arizona’s interest in voter turnout is important”); *Short v. Brown*, 893
 10 F.3d 671, 679 (9th Cir. 2018) (“California’s general interest in increasing voter turnout” justified
 11 vote-by-mail regulations) (*California Democratic Party v. Jones*, 530 U.S. 567, 584 (2000)
 12 (noting that in some circumstances increasing voter choice and participation may be “compelling”
 13 interests). Thus, particularly in light of the minimal burden on Plaintiffs’ political opportunities,
 14 the March primaries are justified by California’s interests.

15 Plaintiffs argue that the Court should not evaluate these important state interests at the
 16 motion to dismiss stage before evidence has been submitted. However, again, the full
 17 *Anderson/Burdick* analysis is “routinely” done at this stage. *Election Integrity Project California*,
 18 113 F.4th at 1085; see also *Tedards*, 951 F.3d at 1067-68; *Rubin v. City of Santa Monica*, 308
 19 F.3d 1008, 1012-13 (9th Cir. 2002). When a challenged law imposes only a “slight” burden and
 20 advances an important state interest, dismissal on the pleadings is proper. See *Tedards*, 951 F.3d
 21 at 1067-68; *Soltysik v. Padilla*, 910 F.3d 438, 445-47 (2020).

22 Plaintiffs’ cited cases do not support their argument that dismissal at the pleading stage is
 23 improper here. Oppo. at 22. *Mandel* was issued prior to *Anderson* and *Burdick*, in which the
 24 Supreme Court clarified the standards of review for election law challenges. See *Mandel v.*
 25 *Bradley*, 432 U.S. 173 (1977). *Reed* is not analogous because, in that case, the Ninth Circuit was
 26 conducting strict scrutiny after determining that the challenged law *did* impose a severe burden.
 27 See *Democratic Party v. Reed*, 343 F.3d 1198, 1204 (9th Cir. 2003). The relevant analysis in
 28 *Soltysik* was subsequently explained and clarified in *Tedards*. *Soltysik v. Padilla*, 910 F.3d 438,

445-48 (2020); *Tedards*, 951 F.3d at 1067-68. And, *Storer* does not purport to preclude dismissal on the pleadings. *Storer v. Brown*, 415 U.S. 724 (1974). The remaining cited cases are out of circuit and therefore do not govern here to the extent they are inconsistent with *Tedards* and other Ninth Circuit authorities that provide that courts may conduct the *Anderson/Burdick* analysis and dismiss cases at the pleadings stage. *Oppo*. at 22.¹

California’s law scheduling primaries for March in presidential election years is justified by the state’s important regulatory interests and is therefore constitutional under *Anderson/Burdick*. Count 1 should be dismissed.

III. COUNT 2: AMERICAN SOLIDARITY PARTY’S CHALLENGE TO CALIFORNIA’S “PARTY PREFERENCE” STATUTES FAILS TO STATE A CLAIM

The challenged “Party Preference” statutes also satisfy *Anderson/Burdick* review. Count 2 in the SAC should therefore also be dismissed without further leave to amend.

A. ASPC and Its Candidates Are Neither Severely, Nor “More Than Slightly,” Burdened By the Party Preference Statutes

As Intervenors aptly summarized in their motion to dismiss, Dkt. No. 64 at 22, ASPC alleges in the SAC that the Party Preference statutes impose two types of burdens: 1) denying ASPC the opportunity to attract voters and supporters by appearing on the ballot with its candidates; and 2) misleading and confusing voters by requiring ASPC candidate labels to state “Party Preference: None.” *Oppo*. at 18.

As to the first alleged burden, as Defendant and Intervenors explained in their motions, the case law is clear that a political party’s associational right to attempt broaden its support is not severely burdened when the party’s name does not appear next to its candidates on the ballot. *See Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997) (noting parties’ alternative means

¹ Plaintiffs also purport to identify evidence that the March primaries have not, in fact, increased voter turnout. *Oppo*. at 20. Even if this were true, it would not change the outcome here, because the March primaries serve other important state interests, including those identified above. In any event, Plaintiffs’ purported evidence is flawed: they cite overall trends going back to 2012 when the top-two primary system was enacted. *Id.* at 20 n.8. However, the current law scheduling all primaries for March in presidential election years was not enacted until 2017, meaning that there have only been two March primaries to date.

1 to associate with candidates, spread their messages, and broaden public support); *id.* at 362-63
 2 (“[b]allots serve primarily to elect candidates, not as forums for political expression”); *Socialist*
 3 *Workers Party v. Eu*, 591 F.2d 1252, 1262 (9th Cir. 1978) (requiring candidates affiliated with
 4 non-qualified parties to appear on the ballot as “independent” was “not [a] substantial” burden);
 5 *Libertarian Party of Cal. v. Eu*, 28 Cal.3d 535, 616 (1980); *accord Lightfoot v. Eu*, 964 F.2d 865,
 6 870–71 (9th Cir. 1992), as amended (July 6, 1992), *cert. denied* 507 U.S. 919 (1993); *Washington*
 7 *I*, 552 U.S. at 453 n.7; *see also* Dkt No. 64 at 23-25 (Intervenors’ case summaries). Plaintiffs do
 8 not appear to dispute that this alleged burden is not severe. *See* *Oppo.* at 24-29.

9 The second alleged burden—that the Party Preference statutes could mislead or confuse
 10 voters as to candidates’ affiliation—is also not “severe” under *Anderson/Burdick*, as the Ninth
 11 Circuit already determined in *Soltysik*. 910 F.3d at 444-45. Accordingly, Plaintiffs do not
 12 attempt to argue to the contrary. *See Oppo.* at 24-27. Instead, the apparent point of contention
 13 between the parties here is whether this burden is “slight” (in which case the claim may be
 14 dismissed on the pleadings, *see Tedards*, 951 F.3d at 1067) or whether it is something “more than
 15 slight” (in which case, accordingly to Plaintiffs, evidence is required for the *Anderson/Burdick*
 16 analysis). *Soltysik*, 951 F.3d at 445. While Plaintiffs point to *Soltysik*, in that case the Ninth
 17 Circuit determined that the burden was “more than slight” as to a particular candidate running in a
 18 particular election. *Id.* In contrast, Plaintiffs here must allege facts establishing that the burden
 19 would necessarily be “more than slight” as to every ASPC candidate in all future elections
 20 because that is the scope of the relief Plaintiffs seek (*see SAC* at 19), regardless of whether the
 21 challenge should be technically categorized as facial or as-applied. *See Ayotte v. Planned*
 22 *Parenthood of N. New England*, 546 U.S. 320, 328-29 (2006) (“[w]e prefer, for example, to
 23 enjoin only the unconstitutional applications of a statute while leaving other applications in
 24 force”).

25 Plaintiffs have not and cannot allege this, as illustrated in *Washington I*. There, the
 26 plaintiffs’ facial challenge to Washington’s party preference statute failed because, as the Court
 27 explained, it could not conclude that the statute would necessarily cause voter confusion in all
 28 future elections. *Washington I*, 552 U.S. at 454-58. The Court recognized that Washington could

1 potentially take steps to remediate any such confusion. *Id.* (“we must, in fairness to the voters of
 2 the State of Washington who enacted I-872 and in deference to the executive and judicial
 3 officials who are charged with implementing it, ask whether the ballot could conceivably be
 4 printed in such a way as to eliminate the possibility of widespread voter confusion and with it the
 5 perceived threat to the First Amendment”). The Court gave examples of adding prominent
 6 disclaimers on the ballots, allowing clarification in candidate statements, and providing the public
 7 with educational materials. *Id.* at 465.

8 Similarly here, California can take steps to remediate any “more than slight” voter
 9 confusion purportedly caused by the Party Preference statutes. As Intervenor has pointed out,
 10 the State has already taken such steps since *Soltysik*, including by distinguishing in Voter
 11 Information Guides between candidates who genuinely prefer no party and those who prefer no
 12 “qualified” party. Dkt. No. 64 at 26-27; *see also Anderson v. Celebrezze*, 460 U.S. 780, 797
 13 (1983) (“[o]ur cases reflect a greater faith in the ability of individual voters to inform themselves
 14 about campaign issues”). Plaintiffs have identified no reason why the State could not also
 15 implement additional remedial measures. They have therefore failed to allege facts showing that
 16 the Party Preference statutes will impose a “more than slight” burden in all future primary
 17 elections.

18 **B. The Party Preference Statutes Are Justified by California’s Important**
 19 **Regulatory Interests**

20 The Party Preference statutes satisfy *Anderson/Burdick* review because any burden they
 21 may impose on ASPC is justified by California’s important regulatory interests. *See Anderson*,
 22 460 U.S. at 788.

23 As the Ninth Circuit has explained, “states have significant authority to regulate ... the
 24 identification of candidates on the ballot.” *Rubin v. City of Santa Monica*, 308 F.3d 1008, 1017
 25 (9th Cir. 2002) (quoting *Schrader v. Blackwell*, 241 F.3d 783, 790 (6th Cir. 2001) (omitting
 26 citations)). This is because states have “an interest in protecting the integrity, fairness, and
 27 efficiency of their ballots and election processes as means for electing public officials. *Timmons*,
 28 520 U.S. at 364. These interests permit states even “to enact reasonable election regulations that

1 may, in practice, favor the traditional two-party system.” *Id.* at 367 (prohibiting candidate from
 2 appearing on the ballot with more than one political party designation). Thus, for
 3 *Anderson/Burdick* purposes, “[h]istorically, a state’s interest in preventing confusion, deception,
 4 and frustration in the general election process has been regarded as an ‘important state interest.’”
 5 *Rubin*, 308 F.3d at 1017 (citing *Timmons*, 520 U.S. at 364; *Eu v. San Francisco Cnty. Democratic*
 6 *Cent. Comm.*, 489 U.S. 214, 226 (1989)).

7 Here, California has important interests in permitting candidates to identify on the ballot
 8 only political parties that have qualified to participate in an election. Those interests include
 9 preventing misrepresentation, avoiding electoral confusion and deception, and ensuring the
 10 efficiency, integrity, and fairness of the ballots. California also an interest in avoiding the costs
 11 and efforts involved in case-by-case determinations of whether a candidate’s “Preferred Party” is
 12 actually a political party at all, as opposed to an ideological statement, advertising slogan, or
 13 status designation, any of which could also mislead or confuse voters. *Chamness v. Bowen*, 722
 14 F.3d 1110, 1119 (9th Cir. 2013) (“[l]imiting the ballot designations to political parties, a
 15 prescribed term (‘No Party Preference’), or a blank space avoids both the problem of allowing
 16 questionable self-designation and the alternative prospect of having to make case-by-case
 17 governmental decisions regarding the acceptability of various self-designations”); *see also Rubin*,
 18 308 F.3d at 1019.

19 Plaintiffs do not appear to dispute that these are “important state interests” advanced by the
 20 the Party Preference statutes. See *Oppo*. at 27-29. Plaintiffs argue only that Count 2 should not
 21 be dismissed so that Plaintiffs may have the opportunity to submit evidence regarding the weight
 22 of these interests and how they compare to the purported burden caused by the Party Preference
 23 statutes. *Id.* However, as explained above, since Plaintiffs have not and cannot allege facts
 24 establishing that the burden would necessarily be “more than slight” as to every ASPC candidate
 25 in all future elections. This Court therefore can and should conclude at this stage that California’s
 26 important state interests justify any burden. Count 2 therefore satisfies *Anderson/Burdick* review
 27 and should be dismissed.
 28

CONCLUSION

For the reasons above, Plaintiffs' Second Amended Complaint should be dismissed without leave to amend.

Dated: August 24, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

Case Name: **Peace and Freedom Party, et al.** No. **3:24-cv-08308-MMC**
v. Dr. Shirley N. Weber

I hereby certify that on August 24, 2026, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

REPLY IN SUPPORT OF MOTION TO DISMISS SECOND AMENDED COMPLAINT

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on August 24, 2026, at Los Angeles, California.

Cecilia Apodaca
Declarant

/s/ Cecilia Apodaca
Signature

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