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**COURT RULING ON PLA'S MTN FOR PRELIMINARY
INJUNCTION filed.**



NEW FILE

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

NOV 19 2019

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5 By Kim M. Allen
Deputy

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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, etc., et al.,
15 Defendants.

CASE NO. CIVDS 1921480
RULING ON MOTION FOR
PRELIMINARY INJUNCTION
Date: November 19, 2019
Time: 8:30 A.M.
Department: S32

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

20 **PROCEDURAL/FACTUAL BACKGROUND**

21 This litigation concerns the rights of non-party preference voters in
22 voting in the presidential primary election. On July 23, 2019, Plaintiffs Jim
23 Boydston, Steven Fraker, Daniel Howle, Josephine Piarulli, Jeff Marston,
24 Lindsay Vurek, and Independent Voter Project ("IVP") filed their Complaint
25 against Defendants Alex Padilla in his capacity as the Secretary of State and
26 the State of California.¹

27
28
¹ Both sides reference a Stipulation allowing Plaintiffs to file a First Amended Complaint which adds Plaintiff Linda Carpenter Sexauer. The Stipulation was submitted to the Court on October 21, 2019.

1 The Complaint pleads five causes of action: (1) violation of Cal.
2 Constitution, Art. II, §5, subd. (c), (2) violation of Cal. Constitution, Art. I, §7
3 (due process), (3) violation of Cal. Constitution, Art. I, §7 (equal protection),
4 (4) violation of 42 U.S.C. §1983 (due process), and (5) violation of 42 U.S.C.
5 §1983 (non-association).²

6 The Complaint alleges the California Constitution requires open
7 presidential primary elections.

8 However, the State currently uses a closed or modified-closed
9 presidential primary. More particularly, voters registered with an approved
10 political party could vote for their party's presidential candidates in the
11 primary.

12 However, no preference party ("NPP") voters could only vote for the
13 political parties who agreed/authorized NPPs to vote in their party's
14 presidential primary. But only if the NPP requested either in writing
15 associated with voting by mail or in person at the polling place for a cross-
16 over ballot.

17 Such a requirement, it is alleged, violates NPP voters' due process and
18 equal rights and associational rights (§§1-2, 39, 42-47, 54-55, 63, 66-67).

19 Plaintiffs now seek a preliminary injunction by way of requiring the
20 State and Secretary Padilla to administer an open presidential primary
21 election in 2020 whereby any registered voter may request and cast a ballot
22 for any political party without having to join, associate, or otherwise pledge
23 allegiance to that political party as a condition of casting their vote.³

24 Defendants State and Secretary Padilla oppose.

25 Plaintiffs reply.

26
27 ² In the Complaint's caption, it states it is a Complaint for Declaratory and Injunctive relief for Civil-Rights
28 Violations [and] Petition for Writ of Mandate. Although the caption states Plaintiffs have filed a Petition for
Writ of Mandate, no cause of action/claim is actually pled for the issuance of a writ.

³ A court may issue a preliminary injunction that mandates an affirmative act occur that would change the
status quo. *Integrated Dynamic Solutions, Inc. v. VitaVet Labs, Inc.* (2016) 6 Cal.App.5th 1178, 1184.

1 **DISCUSSION**

2 **Statement of the Law**

3 Code of Civil Procedure section 527, subd. (a) allows for the issuance of
4 preliminary injunctions at any time before judgment upon a verified
5 complaint or upon affidavits that show satisfactorily that sufficient ground
6 exists. Nevertheless, a preliminary injunction is a drastic and extraordinary
7 remedy that should not be granted unless the movant, by a clear showing,
8 carries the burden of persuasion. *Mazurek v. Armstrong* (1997) 520 U.S.
9 968, 972.

10 A preliminary injunction is appropriate if irreparable harm will result
11 to the applicant if the injunction is denied. Code of Civ. proc., §526, subd.
12 (a)(2). The issuance of a preliminary injunction rests within the sound
13 discretion of the trial court. *IT Corp. v. County of Imperial* (1983) 35 Cal.3d
14 63, 69; *Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 527. That
15 discretion, however, should be exercised in favor of the party most likely to
16 be injured. *McCoy v. Matich* (1954) 128 Cal.App.2d 50, 52. The purpose of a
17 preliminary injunction is to preserve the status quo until a final
18 determination following a trial. *Scaringe v. J.C.C. Enterprises, Inc.* (1988)
19 205 Cal.App.3d 1536, 1542 (overruled in part and on other grounds, *Citizens*
20 *for Covenant Compliance v. Anderson* (1995) 12 Cal.4th 345, 353).
21 Typically, the court considers two factors: (1) the reasonable probability that
22 the movant will prevail on the merits at trial, and (2) whether the harm to
23 the movant from the refusal to grant preliminary injunction outweighs the
24 harm to the respondent from the imposition of the preliminary injunction.
25 *IT Corp., supra*, 35 Cal.3d at pp. 69-70. The latter factor involves
26 consideration of the inadequacy of the other remedies, the degree of
27 irreparable harm, and the necessity of preserving the status quo. *14859*
28 *Moorpark Homeowner's Assn. v. VRT Corp.*, (1998) 63 Cal.App.4th 1396,

1 1402.

2 The mix of these two factors should guide the court in its exercise of
3 discretion. *Butt v State of Calif.* (1992) 4 Cal.4th 668, 678. The greater the
4 showing on one of the factors, the less that must be shown on the other. *Id.*

5 Nonetheless, both elements must be established before a preliminary
6 injunction is granted. *Id.*

7 Objections

8 Plaintiffs filed evidentiary objections to the entirety of Jana M. Lean's
9 Declaration and particularly to paragraphs 2, 3-5, 6, and 7, and to the
10 entirety of Susan Lapsley's Declaration and particularly to paragraphs 2 and
11 3-7 on the grounds of irrelevant and/or lacks foundation/ personal
12 knowledge.

13 The Court **OVERRULES** all objections.

14 Analysis

15 Injunctive relief is afforded when related to a cause of action in the
16 complaint that provides such relief. *Shell Oil Co. v. Richter* (1942) 52
17 Cal.App.2d 164, 168. A cause of action must exist before injunctive relief
18 may be granted, and where the complaint fails to state a cause of action that
19 would afford injunctive relief, no preliminary injunction can be granted.
20 *Major v. Miraverde Homeowners Assn* (1992) 7 Cal.App.4th 618, 623.

21 Here, Plaintiffs seek injunctive relief associated with their civil rights
22 claim for violation of their 1st Amendment Right to Association (or non-
23 Association).

24 ***Likelihood of Prevailing.*** The Civil Rights Act, 42 U.S.C. §1983
25 ("Section 1983") does not create any substantive rights but is a vehicle used
26 to vindicate rights secured by the federal constitution and federal law.
27 *Chapman v. Houston Welfare Rights Org.* (1979) 441 U.S. 600, 616, 617-18.
28 For a section 1983 violation, the following must be established: (1) the

1 conduct was committed by a person acting under the color of state law, and
2 (2) it deprived the person of rights, privileges, or immunities secured by the
3 Constitution or other laws of the United States. *Vergos v. McNeal* (2007) 146
4 Cal. App. 4th 1387, 1402.

5 The First Amendment of the U.S. Constitution guarantees citizens the
6 right to associate, including the right to associate with the political party of
7 one's choice. *Tashjian v. Republican Party* (1986) 479 U.S. 208, 214; *Unger*
8 *v. Superior Court* (1984) 37 Cal.3d 612, 636. Also, the freedom of association
9 presupposes the freedom not to associate. *Roberts v. United States Jaycees*
10 (1984) 468 U.S. 609, 623.

11 On the one hand, the right to vote freely for one's candidate choice is
12 the essence of the democratic society and restrictions on that right strike at
13 the heart of the representative government. *Moore v. Ogilvie* (1969) 394 U.S.
14 814, 814; *Gray v. Sanders* (1963) 372 U.S. 368, 380.

15 On the other hand, it is recognized that a political party has the
16 constitutional right to preclude non-party members from interfering with the
17 rights of its members, i.e., preclude non-party members from voting in its
18 primary election. *Cal. Democratic Party v. Jones* (2000) 530 U.S. 567, 583;
19 *Tashjian v. Republican Party* (1986) 479 U.S. 208, 216, fn. 6.

20 The apparent contradiction of these holdings is reconciled by the fact
21 that every citizen has the right to freely vote in general type elections
22 whereas in a presidential primary election the vote is not the means by
23 which the presidential nominees are chosen. They are chosen by delegates of
24 the political parties. [Elections Code, §§6020, sub. (b), 6480, subd. (b), 6620,
25 subd. (a) and (d), 6821, subd. (a), and 6851], the political parties' right to
26 determine its own membership trumps.

27 As recognized in the law, the right to vote in any manner and the right
28 to associate for political purposes through the ballot are not absolute.

1 *Burdick v. Takushi* (1992) 504 U.S. 428, 433.

2 Elections law will invariably impose some burden on individual voters.
3 *Id.* So the fact the State's system may create barriers tending to limit the
4 field of candidates from which voters might choose does not compel close
5 scrutiny. *Id.* Rather,

6 [A] more flexible standard applies. A court considering a
7 challenge to a state election law must weigh "the character and
8 magnitude of the asserted injury to the rights protected by the
9 First and Fourteenth Amendments that the plaintiff seeks to
10 vindicate" against "the precise interests put forward by the State
11 as justifications for the burden imposed by its rule," taking into
12 consideration "the extent to which those interests make it
13 necessary to burden the plaintiff's rights."

14
15 Under this standard, the rigorousness of our inquiry into the
16 propriety of a state election law depends upon the extent to which
17 a challenged regulation burdens First and Fourteenth
18 Amendment rights. Thus, as we have recognized when those
19 rights are subjected to "severe" restrictions, the regulation must
20 be "narrowly drawn to advance a state interest of compelling
21 importance." But when a state election law provision imposes
22 only "reasonable, nondiscriminatory restrictions" upon the First
23 and Fourteenth Amendment rights of voters, "the State's
24 important regulatory interests are generally sufficient to justify"
25 the restrictions. *Id.* at p. 434 (internal citations omitted).

26 *See also Rawls v. Zamora* (2003) 107 Cal.App.4th 1110, 1116 ("Courts
27 will uphold as "not severe" restrictions that are generally applicable, even-
28 handed, politically neutral, and which protect the reliability and integrity of

1 the election process.

2 This is true even when the regulations “have the effect of channeling
3 expressive activities at the polls.” ‘Courts will strike down state election
4 laws as severe speech restrictions only when they significantly impair access
5 to the ballot, stifle core political speech, or dictate electoral outcomes.’”
6 [Citations omitted.]

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

10 Nevertheless, qualified political parties may adopt a rule to allow no
11 party preference (“NPP”) voters to vote in its primary election. The political
12 party is to notify the Secretary of State by the 135th day before the primary
13 election if they will allow NPPs to vote in their primary. For the upcoming
14 March 2020 election, the Democratic, Libertarian, and American
15 Independent Parties have authorized NPP voters to participate. Complaint
16 at ¶¶43-46; Lean Decl. at ¶¶2-3, Exh. 1.

17 The ballot an NPP receives associated with the presidential primary
18 will contain information on the option to vote for all matters except the
19 candidates for President. To vote for a presidential candidate, the NPP voter
20 must request a cross-over ballot for one of the parties allowing NPP voters
21 by either an application associated with voting by mail or at the polling
22 place. Complaint at ¶¶43, 47; Lean Decl. at ¶5.

23 Accordingly, in considering plaintiffs’ arguments in light of California’s
24 presidential primary election system, Plaintiffs fail to establish a likelihood
25 of prevailing.

26 *First*, Plaintiffs have not pointed to any provision in the presidential
27 primary system that mandates they associate with any political party.

28 Currently, in order to participate in the presidential primary election,

1 one must either be a member of the political party or the political party can
2 allow NPPs to vote in its primary. However, neither method mandates that
3 NPPs associate with one party or another.

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

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

18 The same exists here, neither Secretary Padilla nor the State is
19 imposing a restriction on the NPPs associational freedoms in order to vote in
20 the presidential primary; the restriction is coming from the political parties
21 themselves to which they are authorized to do under the law above.

22 Additionally, an NPP has the ability to vote (in part) in the
23 presidential primary election by three of the six qualified political parties
24 allowing them to vote in their primaries.

25 There is no requirement that the NPPs associate with that party to
26 vote in that parties' primaries, i.e., NPPs are not required to register as a
27 Democrat, Libertarian, or American Independent to obtain the cross-over
28 ballot for that party.

1 Therefore, Plaintiffs fail to establish a likelihood of prevailing.

2 **Irreparable harm.** Even if you were to assume that Plaintiffs have a
3 likelihood of prevailing, they fail to establish any irreparable harm.

4 The U.S. Supreme Court has stated that the loss of First Amendment
5 freedoms, for even minimal periods of time, unquestionably constitutes
6 irreparable injury. *Elrod v. Burns* (1976) 427 U.S. 347, 373.

7 However, in this case, there is no establishment of the loss of the
8 freedom to associate or not associate within the California presidential
9 primary system.

10 Additionally, Plaintiffs offer no evidence that an undue burden exists
11 for NPPs to request cross-over ballots by mail or at the polling place. They
12 offer no evidence that Padilla or the State is impeding their ability to obtain
13 cross-over ballots in a timely manner so they can participate in the
14 presidential primary elections of the three political parties agreeing to open
15 their primaries to NPPs.

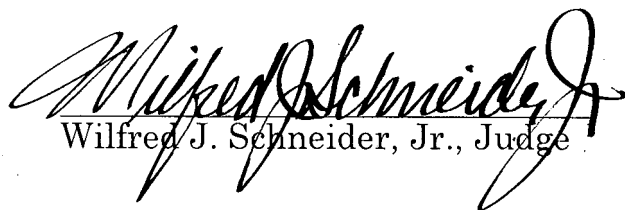
16 Accordingly, the Court will **DENY** Plaintiffs' Motion for Preliminary
17 Injunction.

18 **RULING**

19 The Court **DENIES** Plaintiffs' Motion for Preliminary Injunction in
20 that they fail to establish a likelihood of prevailing and irreparable harm.

21 The Court **OVERRULES** Plaintiffs' evidentiary objections to Lean's
22 and Lapsley's Declarations.

23 Dated: November 19, 2019

24
25 
26 Wilfred J. Schneider, Jr., Judge
27
28