

News Election and Political Law

Commonwealth Court Asked to Declare Closed Primary Voting Unconstitutional

A group of independent voters, which includes journalist Michael Smerconish and the chairman of Ballot PA Action, David Thornburgh, filed a petition for review Wednesday, asking the court to strike down the state's closed-primary voting system.

December 11, 2025 at 03:44 PM By **Tristin Hoffman**



Pennsylvania's commonwealth court judges. Courtesy photo.

Five independent voters filed a petition for review in the Commonwealth Court of Pennsylvania Wednesday, asking the court to declare state law prohibiting independent voters from voting in primary elections as unconstitutional.

The group, which includes journalist Michael Smerconish and chairman of Ballot PA Action, David Thornburgh, is specifically asking the court to review Section 2812 of the state's election code, which currently allows registered members of political parties to vote in those parties' primary elections.

In its petition, the group, represented by attorneys from Kline & Specter, argued that the code violates the Free and Equal Elections Clause of the Pennsylvania Constitution.

The petition also argues that Section 2812 violates Article I, Section 26 of the state's constitution, which prohibits the Commonwealth from discriminating against citizens by treating independent voters differently and giving major-party voters greater influence in electoral outcomes.

"By the time an independent voter can vote in a general election, many candidates have been taken off the ballot and the universe of candidates for a particular office has been significantly narrowed," the petition reads. "Sometimes there is only one candidate on the ballot."

The petition contends that the current law has created a two-tiered electorate.

Kline & Specter's release stated that the members of the group are independent voters because they felt neither the Republican or Democrat party represented their values, or that registering under a specific political party could undermine their professional credibility.

"After 88 years of being treated as second-class Pennsylvania citizens, 1.4 million independent voters will finally get our day in court," Thornburgh said. "We're confident in our argument that a state constitution that promises to treat all voters equally will no longer permit this political discrimination to continue."

Shanin Specter said that the state's current law disenfranchises voters like Thornburgh and Smerconish.

"It is past time independent voters are given the same rights as Republican and Democratic voters," Specter said.

Matthew A. Fontana of Faegre Drinker Biddle & Reath, who also represents the petitioners, said that it's a privilege to represent the group.

"For too long, independent voters have been unconstitutionally excluded from the primary process," Fontana said. "We look forward to the Commonwealth Court hearing this matter on the merits."

Page printed from: <https://www.law.com/thelegalintelligencer/2025/12/11/commonwealth-court-asked-to-declare-closed-primary-voting-unconstitutional-/print/>

NOT FOR REPRINT

© 2025 ALM Global, LLC, All Rights Reserved. Request academic re-use from www.copyright.com. All other uses, submit a request to asset-and-logo-licensing@alm.com. For more information visit [Asset & Logo Licensing](#).