

IN THE SUPREME COURT OF PENNSYLVANIA

Docket No. ____ EM 2025

MICHAEL SMERCONISH, JEFFERY DOTY,
RACHEL SHANOK, AND DAVID THORNBURGH,

Petitioners,

v.

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF STATE,
AL SCHMIDT, SECRETARY OF THE COMMONWEALTH,
in his official capacity,

Respondents,

**PETITION OF MICHAEL SMERCONISH, JEFFERY DOTY, RACHEL
SHANOK, AND DAVID THORNBURGH FOR EXERCISE OF KING'S
BENCH JURISDICTION AND DECLARATORY RELIEF**

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TO MADAME CHIEF JUSTICE TODD AND THE HONORABLE JUSTICES OF THE
SUPREME COURT OF PENNSYLVANIA:

Petitioners Michael Smerconish, Jeffery Doty, Rachel Shanok, and David Thornburgh respectfully request that this Court exercise its King's Bench jurisdiction and grant them declaratory relief. The grounds for and nature of relief are set forth below.

I. INTRODUCTION

Laws that give some voters more power than others are “the antithesis of a healthy representative democracy.” *League of Women Voters v. Commonwealth*, 178 A.3d 737, 813-14 (Pa. 2018). Preventing such laws has been a central concern of Pennsylvania law since the 18th century. In that era, the then-dominant Proprietary Party, loyal to the British Crown, used property-ownership requirements and manipulated electoral districts to entrench its power and dilute the power of rivals who favored independence. As the Revolutionary War broke out, Pennsylvanians promulgated the 1776 Constitution to unshackle the remnants of the proprietary system. The Constitution addressed a range of issues including the reform of the electoral system. In particular, they enacted a constitutional provision to forever bar “the dilution of the right of the people of this

Commonwealth to select representatives to govern their affairs based on considerations of the region of the state in which they lived, and the religious and political beliefs to which they adhered.” *Id.* at 808-09. This provision enshrined the right of Pennsylvania’s citizens “to cast an equally weighted vote” and to “have an equal opportunity to translate their votes into representation.” *See* Pa. Const., art. I § 5; *League of Women Voters*, 178 A.3d at 804, 822.

The concerns that motivated the 1776 Constitution remain present today. Petitioners are four of the over 1.4 million Pennsylvanian voters who cannot or do not wish to register as members of a political party and have registered as independent voters.¹ The General Assembly has prohibited these voters—and all independent voters in Pennsylvania—from participating in primary elections pursuant to Section 2812 of the Election Code. *See* 25 P.S. § 2812. This statutory prohibition dilutes Petitioners’ ability to support candidates for nomination to the general election and from there to elected office. This dilution of voting power is exacerbated by the fact that

¹ Pennsylvania voters register as “not affiliated” or “other” if they eschew party affiliation. However, Petitioners use the colloquial term “independent” to refer to these voters.

primary elections determine electoral outcomes in many of the Commonwealth's legislative districts. Exclusion from primary elections is the functional equivalent of losing the right to vote in those districts.

In addition to requiring free and equal elections, the Pennsylvania Constitution prohibits the Commonwealth from discriminating against Pennsylvanians in the exercise of their civil rights. Pa. Const., art. I § 26. Section 2812 discriminates against Petitioners by treating them differently than other voters based on their political beliefs. It discriminates against Petitioners regarding their ability to decline to have a public declaration that they associate with a particular political party.

Under both the free and equal elections and anti-discrimination provisions of the Pennsylvania Constitution, Petitioners may not be categorically excluded from primary elections. They are entitled to an opportunity to translate their support for candidates into nominations and representation. They are entitled to equal treatment regardless of their exercise of their constitutional rights. Accordingly, Petitioners ask this Court to declare Section 2812 unconstitutional as applied to them.

II. CONCISE STATEMENT OF THE CASE

A. **Petitioners are among the roughly 1.4 million independent voters in Pennsylvania who do not identify as registered members of a political party.**

Petitioner Michael Smerconish is a resident of Villanova, Montgomery County, Pennsylvania. He is an attorney, radio host, television presenter, political commentator, and author. He hosts the Michael Smerconish program on Sirius XM's POTUS channel and a weekly program on CNN and CNN International. Mr. Smerconish is registered as an independent voter both for political and professional reasons. Mr. Smerconish, who describes himself as a "Reagan/Bush guy," changed his registration from Republican to be an independent voter because he believed that his party had "moved away from him." He fears that his registration as a member of a political party would undermine his professional credibility. This concern is well founded, as there is an expansive volume of network and viewer commentary suggesting that where a media personality is a registered member of a political party, audiences believe that he is using his professional platform to advocate for that party. Mr. Smerconish's registration as an independent voter aligns with his political views and allows him to protect his professional credibility.

Petitioner Jeffery Doty is a resident of Hughesville, Lycoming County, Pennsylvania. He manages a grocery store there. Mr. Doty is registered as an independent voter for political and professional reasons. Mr. Doty believes that neither the Democratic nor the Republican parties as institutions appropriately reflect his political views. Mr. Doty also fears that if he were to register as a member of the Democratic Party, he would suffer personally and professionally among Lycoming County's overwhelmingly Republican population. Mr. Doty's fear is not based on idle musing. On a number of occasions, customers dissatisfied with his store policies have remarked that he "must be a Democrat." This phenomenon was at its zenith when Mr. Doty observed social distancing requirements during the onset and initial stages of the global coronavirus pandemic. Mr. Doty's registration as an independent voter aligns with his political views and allows him to avoid personal and professional harm in his community as well.

Petitioner Rachel Shanok is a resident of Ambler, Pennsylvania. She is employed as a physical therapist. In addition to her professional employment, Ms. Shanok is an active member of Forward, a political organization committed to interjecting "new ideas and new debates" into our political discourse. Ms. Shanok is an independent voter for political and

community reasons. Ms. Shanok, who was formerly registered as a Democrat, believes that neither the Democratic nor Republican parties as institutions appropriately reflect her political views. Ms. Shanok also believes that party registration requirements have contributed to the hyper-partisanship which has infected our political discourse and is particularly corrosive at the local and municipal level, where she feels that her decision to affiliate or not affiliate with a political party may be an obstacle to serving her community, whether elected or appointed.

Petitioner David Thornburgh is a resident of Philadelphia, Pennsylvania. He is the current Chair of Ballot PA Action, a statewide advocacy campaign to restore the rights of the 1.4 million Pennsylvania independent voters to vote in primary elections. Prior to serving as Chair of Ballot PA Action, Mr. Thornburgh was the President and CEO of the Committee of Seventy, an independent civic group in Philadelphia, Pennsylvania, focused on government reform. Previously, Mr. Thornburgh also served as Executive Director of the Economy League of Greater Philadelphia, another long-established “good government” group. Mr. Thornburgh is an independent voter for political and professional reasons. Like Mr. Smerconish, Mr. Thornburgh, a former registered Republican,

changed his registration because he viewed his party as no longer reflecting his political views. Second, he believed that his registration as a member of a political party undermined his professional interest as the CEO of the Committee of Seventy and his effort in pursuing non-partisan government reform. Mr. Thornburgh's registration as an independent voter aligns with his political views and protects his ability to advocate for good government.

As illustrated by Petitioners' stories, Pennsylvania citizens have many different reasons for registering as independent voters. Some citizens have ideological reasons. For example, voters who register as independent are likely to identify as more "moderate," and/or to express eclectic agreement with different parties with respect to particular issues.² Some citizens are independent based on their assessments of political parties. For example, citizens who register as independents are likely to view the major parties as focused on special interests and the perpetuation of partisan power, rather than the common good, and to view them as too partisan and extreme. Some citizens have personal reasons to be independent. For example, citizens who

² See generally Joseph Cerrone, "Growing Cohort of Independent Voters Becomes Critical Segment of Electorate," <https://www.uniteamerica.org/articles/research-brief-growing-cohort-of-independent-voters-becomes-critical-segment-of-electorate> (last visited Jul. 7, 2025).

register as independent may view registration with a political party as inconsistent with their religious views, or inconsistent with the value of independence and critical thinking in a democratic republic, or inconsistent with their personal or professional interests. These are but a few of the many reasons why citizens decline to register as members of political parties. Because of the profile of independent voters in general, primaries which include independent voters tend to have greater turnout, and tend to produce candidates and public officials who more often work collaboratively and pragmatically across party lines and exercise independent judgment in performing their official duties.^{3 4 5}

Petitioners' experiences reflect those of the large number of Americans

³ See, e.g., Steven H. Haeberle, "Closed Primaries and Party Support in Congress," 13 *American Politics Quarterly* 341-52 (1986).

⁴ See, e.g., Christian R. Grose, "Reducing Legislative Polarization: Top-Two and Open Primaries Are Associated With More Moderate Legislators," 1 *Journal of Political Institutions and Political Economy*, no. 2, 267-87 (2020); Ashley Lopez, *Why some states are turning to nonpartisan primaries*, All Things Considered, NPR, available at <https://www.npr.org/2023/09/16/1200012618/why-some-states-are-turning-to-nonpartisan-primaries> (last visited June 12, 2024).

⁵ See, e.g., Peter T. Calagno, "An institutional analysis of voter turnout: the role of primary type and the expressive and instrumental voting hypotheses," 19 *Constitutional Political Economy* 94-110 (2008); Matthew J. Geras & Michael H. Crespin, "The Effect of Open and Closed Primaries on Voter Turnout" in *ROUTLEDGE HANDBOOK OF PRIMARY ELECTIONS* (Routledge 2018).

who eschew formal identification with political parties. According to a January 2025 Gallup poll, roughly 43% of voters identify as independent, as compared to the 28% who identify as Democrats and 28% who identify as Republicans. The percentage of unaffiliated voters is far lower in Pennsylvania. In April 2025, only 1.4 million Pennsylvania voters were registered as independent voters (roughly 15.9% of the electorate). The lower percentage of unaffiliated voters in Pennsylvania suggests that the closed system forces independent voters to affiliate with a party so they can participate in primary elections. Even so, a large number of Pennsylvania voters do not affiliate with a political party despite the consequence that they are shut out of primary elections and have lesser ability to turn their support into representation by a given candidate.⁶ They refuse affiliation even though they pay taxes for the Commonwealth to administer and exclude them from these contests.⁷ Despite these impediments, independent voters

⁶ See Pennsylvania Department of State, Voting & Election Statistics, Voter registration statistics by county, <https://www.pa.gov/agencies/dos/resources/voting-and-elections-resources/voting-and-election-statistics.html> (last visited Jul. 9, 2025).

⁷ See Committee of Seventy, "Open Primaries PA to Press for Independents' Right to Vote," <https://seventy.org/press-testimony/open-primaries-pa-to-press-for-independents-right-to-vote> (Apr. 29, 2019) (last visited Jul. 9, 2025).

remain the fastest growing voter segment in Pennsylvania politics.⁸

Independent voters tend to be younger,⁹ more racially and ethnically diverse, and more likely to have served in the armed forces. In Pennsylvania, roughly 64% of independent voters are between 18 and 50, compared to 53% of the population at large.¹⁰ A quarter of Latino voters are independent voters.¹¹ Roughly 343,000 Pennsylvania veterans identify as independent voters.¹² None of them can support a candidate in a primary election.

⁸ See Ballot PA Action, “Who’s Shut Out? Independent Voters in PA” (2023) (“Who’s Shut Out”), attached hereto as Appendix A, at 4, 11; *see also* The Voter Project, “2022 Report: Independent Voters” *available at* https://assets.nationbuilder.com/openprimariespa/pages/13/attachments/original/1740671808/Independent_Voters_2022_The_Voter_Project.pdf?1740671808 (last visited Jul. 9, 2025).

⁹ See Jeffrey M. Jones, “Millennials, Gen X Clinging to Independent Party ID,” Gallup (Aug. 2022), *available at* <https://news.gallup.com/poll/397241/millennials-gen-clinging-independent-party.aspx> (last visited June 12, 2024).

¹⁰ Who’s Shut Out? at 8; *see also* Sarah Slobin, “Understanding Independents,” Reuters (Apr. 2024), *available at* <https://www.reuters.com/graphics/USA-ELECTION/INDEPENDENTS/lgpdnbxjzpo/> (last visited Jun. 12, 2024).

¹¹ Who’s Shut Out? at 8.

¹² See Shiva Maniam, “U.S. veterans are generally supportive of Trump,” Pew Research Center (May 26, 2017), *available at* <https://www.pewresearch.org/short-reads/2017/05/26/u-s-veterans-are-generally-supportive-of-trump/> (last visited June 12, 2024) (indicating that roughly half of veterans are independent voters); Commonwealth of Pennsylvania, Department of Human Services, Mental Health & Substance Use Disorder, Veterans/Military Families, <https://www.pa.gov/en/agencies/dhs/resources/mental-health-substance-use->

B. Section 2812 of the Election Code prevents Petitioners from participating in primary elections and dilutes their ability to translate support for a given candidate into representation by that candidate.

Section 2812 of the Election Code provides that only registered members of a political party may cast a vote on the ballot of that party in a primary election. Section 2812 provides:

§ 2812. Qualifications of electors at primaries.

The qualification of electors entitled to vote at primaries shall be the same as the qualifications of electors entitled to vote at elections within the election district where the primary is held, provided that no elector who is not registered and enrolled as a member of a political party, in accordance with the provisions of this act, shall be permitted to vote the ballot of such party or any other party ballot at any primary.

25 P.S. § 2812.

1. The history of Pennsylvania candidate nominations

Section 2812 is part of a constellation of provisions enacted by the General Assembly to impose order on the process of candidate nominations in the early 20th century. It must be read in the context of the broader history of how political parties and, later, Pennsylvania voters, nominated

[disorder/veterans-military-families.html](https://www.pennsylvania.gov/disorder/veterans-military-families.html) (last visited Jul. 9, 2025) (identifying that there are roughly 800,000 Pennsylvania veterans).

candidates for public office. By way of historical background, for much of Pennsylvania's early history, there were no state-run primary elections at all. From the founding to the early 19th century, the population was small and the political class was limited to a narrow elite. Candidate nominations were handled by public gatherings of influential citizens, factional leaders, or self-appointed committees. In many cases, prospective candidates nominated themselves.

As the Commonwealth's population grew and political life became more organized, informal nominating practices gave way to formal party structures and formal nominations at party caucuses or conventions conducted under party rules. *Accord League of Women Voters*, 178 A.3d at 804-809 (discussing the emergence of political parties during the Colonial period).¹³ Like earlier informal gatherings, these contests generally involved public votes counted by party leaders.

In these caucuses and conventions, delegates' individual interests, patronage, and horse-trading often carried the day. This often led to hotly

¹³ See also Peter McCaffery, "The Evolution of an Urban Political Machine: Republican Philadelphia, 1867-1933," available at <https://etheses.lse.ac.uk/1091/1/U040902.pdf> (last visited Apr. 8, 2025).

contested conventions and the emergence of nominees with little popular support who were doomed to fail in general elections. Frustration with closely-managed conventions and a national shift toward primary elections started in Pennsylvania. In 1842, Crawford County Democrats were incensed at a particularly corrupt convention in which more votes were cast than voters present to cast them. They demanded and got the first direct election for a party nomination in the United States.¹⁴ A contemporaneous editorial by a Democratic newspaper described the reform as designed to abandon party-leader dominance over democratic will:

[E]very man's vote will act directly on the result – there will be no intermediate channels through which bargain and trickery can flow to prevent the will of the people from being honestly carried out. There will be no such thing here as violating instructions – no “recruits” will be purchased to defeat the will of the majority. The people will now have the man of their choice nominated without the interference of the brawling meddlers in town, who have nothing at heart but the accomplishment of their own selfish and disorganizing ends.

Id. at 151. The so-called “Crawford County System” later spread throughout Pennsylvania, and ultimately the nation. *See id.* at 156-57.

¹⁴ See Paul H. Giddens, “The Origin of the Direct Primary: The Crawford County System” at 145-56 (1977), *available at* <https://journals.psu.edu/wph/article/view/3465/3296> (last visited Jul. 2, 2025).

Corruption still plagued the early system of primary elections. The issues ranged from outright violence to bribery and manipulation. “[T]here was no guaranty that participation in a party caucus or primary would be confined to the members of the party immediately concerned.” One concern, in particular, was that members of one political party would “invade” another political party’s primary in an effort to cause dissent or nominate a candidate who their own party could defeat. *See* Charles Edward Merriam & Louise Overacker, PRIMARY ELECTIONS 5 (Chicago 1928), *available at* <https://babel.hathitrust.org/cgi/pt?id=mdp.39015030799186&seq=6> (last visited Jul. 9, 2025). Such concerns led legislatures throughout the country, including Pennsylvania’s, to adopt statutes giving parties legal mechanisms to enforce their private rules on penalty of legal sanction. *Id.* at 5-18; *see, e.g.,* Act 181 of 1905. Nevertheless, most nomination contests remained public and administered by party leaders.

Eventually, the impulse to reform led to the adoption of secret ballots, and the wholesale government administration of primary elections. This change meant that the conduct of primary elections had gone from a private matter to one of electoral governance. It also meant that that political parties were no longer just private associations with their own membership rules.

Political parties now were recognized signifiers in a legally-mandated structure for nominating and electing public officials. *See* Merriam & Overacker at 24-25 (“The party ceased to be a purely voluntary association and became a recognized part of the nominating machinery.”). Stated differently, a political party was a private association yet simultaneously a legally-recognized category in which to confine a particular voter for purposes of a legally-mandated primary election.

In the early years of state-run primary elections, some states attempted to make sure that only those truly in the private association were permitted into the legal category of a given political party. For example, voters might be required to swear an oath of prior support of a party’s candidates, or of a present intention to support the party’s candidates in the upcoming general election. Other states did not. A voter could simply register as a member of a party. *See id.* at 30-31; 71. By way of illustration, in 1927, four states allowed voters to choose to vote in a party’s primary on the day of the primary. The rest required indicia of prior membership in the party. *Id.* at 31-32.

In this time-period, Pennsylvania required both substantive assurances of membership and registration. In 1913, the General Assembly passed a law under which voters registered their affiliation with a party. *See*

Act 472 of 1913. However, in cities of the first, second, and third class, the voter was subject to challenge with respect to party registration. If challenged, the voter was left unregistered as a member of the party unless the voter swore under oath that he had voted for a majority of the party's candidates at the last election. Elsewhere in the Commonwealth, a registry assessor was obliged to inquire into voters' preferences and affiliations personally to uncover Democrats trying to vote as Republicans, and vice-versa. *Id.* Over time, Pennsylvania abandoned the registry-assessment approach as part of a pure-registration model where prior registration was the benchmark for deciding in which primary a voter would vote. *Id.*

In 1937, the Legislature enacted sweeping changes in the electoral system. This was the first overhaul of its election system in roughly a century. The 1937 overhaul established the fundamentals of the Election Code as it exists today. *See generally* Act 320 of 1937.¹⁵ Apart from establishing the powers and duties of state and county officials in administering elections, the 1937 overhaul included provisions outlining

¹⁵ *See also* Stephen Caruso & Kate Huangpu, "Pennsylvania's voting law is filled with obsolete provisions, troublesome conflicts," <https://whyy.org/articles/pennsylvania-election-code-voting-rules-outdated-mail-voting/> (Nov. 1, 2023) (last visited Jul. 8, 2025).

voter qualifications such as Section 2812. It included provisions such as petition-signature requirements and anti-ticket-fusion provisions intended to undermine partisans' ability to use *ad hoc* third parties to undermine their opponents' fortunes at the polls. *See generally id.*; *Working Families Party v. Commonwealth*, 209 A.3d 270 (Pa. 2019) (evaluating a challenge to the anti-fusion provisions under the Free and Equal Election Clause). Contemporaneous newspaper accounts suggest the Legislature was specifically aiming to curb partisan manipulation of the electoral system, especially the use of these "mushroom parties" (so called because they sprung up like mushrooms after a Spring rain) to siphon votes from otherwise-stronger opponents. There is no indication that the General Assembly considered independent voters, who composed only 3% of the electorate at the time.

- 2. Section 2812 prevents Petitioners from participating in primary elections and dilutes their ability to translate support for a given candidate into representation by that candidate.**

By its plain language, Section 2812 prevents Petitioners from casting

ballots in favor of candidates seeking to win the primary election for a political party. This is because Petitioners are independent voters and Section 2812 operates to preclude voters from participating in any primary election of a party for which they have not registered membership. Petitioners have not registered for any party and therefore may not participate in any primary election.

By preventing Petitioners from participating in primary elections, Section 2812 deprives Petitioners of any role in the candidate nominating process for general elections. It reduces Petitioners' ability to translate their support for a given candidate into representation as compared to their Democratic and Republican counterparts. If a registered Democrat wants to support any candidate, she can.

First, she can support a candidate who has sought the Democratic nomination for an office. For example, she can sign a nominating petition for that candidate. She can vote for the candidate by selecting the candidate's name on the Democratic primary ballot.

Second, she can support a candidate who has sought *another* party's nomination (or no party's nomination) by writing the candidate's name on the primary ballot for the voter's registered party. *Accord Appeal of Magazzu,*

49 A.2d 411 (Pa. 1946). This is not a hypothetical ability. In 2023, incumbent Allegheny County District Attorney Stephen Zappala lost the Democratic primary to the county's public defender, Matt Dugan. Republicans conducted a write-in campaign to nominate Zappala as the Republican candidate. Zappala obtained the Republican nomination and defeated Dugan in the general election.¹⁶ Republicans had the ability to support a candidate of their choice in a primary election even though that candidate was a registered Democrat who sought the Democratic nomination.

By contrast, independent voters are denied any meaningful role in the nominating process. They cannot sign a nominating petition for a candidate seeking the nomination of a political party. They cannot nominate a candidate by an ordinary vote. They cannot nominate a candidate by a write-in vote. The only role independents can play in the nominating process is to sign the petition of an "independent" candidate. By virtue of Section 2812, independent voters have no ability to turn their support for any candidate except an independent candidate into an actual nomination. Under Section

¹⁶ See Julia Zenkevich & Kiley Koscinski, "Zappala wins 7th term in Allegheny County District Attorney race, defeating Dugan," <https://www.wesa.fm/politics-government/2023-11-07/allegheny-county-da-dugan-zappala> (Nov. 7, 2023) (last visited Jul. 3, 2025).

2812, independent voters' right to vote at the primary stage is not just diluted. It is evaporated.

The fact that Section 2812 precludes independent voters from voting in primary elections also dilutes their electoral power in the general election. This is because, 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. Sometimes there is only one candidate on the ballot. This is not uncommon in Pennsylvania, where general elections for state and local offices are often uncompetitive as between different political parties—*i.e.*, decided by margins over 5%. Between 2000 and 2025, only 268 of the 2,964 state legislative general elections in Pennsylvania involved competitive elections (roughly 9%). The remaining or 2,696 elections (roughly 91%) were effectively decided in the primary election because of the dominance of a single party in that legislative district. Of those 2,696 general elections, 1,161 of them were uncontested in that there was only one candidate on the ballot. The other 1,535 were landslides in that a given party's candidate won by ten or more points. Independent voters excluded from the primary round of

elections had much less opportunity to translate their vote into representation as compared to their partisan counterparts.¹⁷

While the last round of Congressional redistricting resulted in a partisan composition that reflects the overall partisan balance of Pennsylvania voters, most Congressional races in Pennsylvania are still decided in the primary election.¹⁸

At the local level, candidates are permitted to cross-file for positions like school director. They can win both the Democratic and Republican nominations for the position. That these candidates can appear on both primary ballots would suggest the intent that these races should be less subject to partisanship and party preference. But independent voters (who are by definition less partisan) cannot vote in these cross-filed primary elections either. By the time independent voters cast their votes in the fall, the election is frequently already over as a practical matter.

¹⁷ See Ballot PA Action Elections Report (2025), attached hereto as Appendix B.

¹⁸ See, e.g., Cook Political Report, 2026 CPR House Race Ratings, <https://www.cookpolitical.com/ratings/house-race-ratings> (Jun. 30, 2025) (last visited Jul. 13, 2025).

To place that point in context, there are approximately 4,500 local school board members in Pennsylvania. Most of these school board members are elected by local voters. (A few school districts appoint their members.) For all of those races, candidates can cross-file to run as both Republicans and Democrats. Independent voters are not able to vote for any of these candidates in a primary election. They can only vote in the general election when, in many localities, it is a foregone conclusion who will win either because one candidate has already sewn up both parties' nominations or one party's candidate will win because of the noncompetitive nature of the district.

III. QUESTIONS PRESENTED FOR REVIEW

Petitioners present the following questions for this Court's review:

1. Does Section 2812 as applied to independent voters violate the Free and Equal Elections Clause of the Pennsylvania Constitution by barring them from primaries and diluting their votes?

Suggested Answer: Yes.

2. Does Section 2812 as applied to independent voters violate Article I, Section 26 of the Pennsylvania Constitution by discriminating against them with respect to their right to vote in free and equal elections or their right to free speech or their right to free association?

Suggested Answer: Yes.

IV. GROUNDS FOR EXERCISING KING’S BENCH JURISDICTION

A. Petitioners have a claim that Section 2812 violates their constitutional rights.

1. Section 2812 violates Petitioners’ rights under the Free and Equal Elections Clause.

a. Legal framework

The Free and Equal Elections Clause of the Pennsylvania Constitution provides that “[e]lections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Pa. Const., art. I, § 5. This language evinces “the framers’ intent that all aspects of the electoral process, to the greatest degree possible, be kept open and unrestricted to the voters of our Commonwealth, and, also, conducted in a manner which guarantees, to the greatest degree possible, a voter’s right to equal participation in the electoral process for the selection of his or her representatives in government.” *League of Women Voters*, 178 A.3d at 804. These “aspects of the electoral process” include the state’s administration of primary elections. *Accord Working Families Party, supra* (evaluating restrictions on nominations under the Clause). “[T]he actual and plain language of [the Clause] mandates that all voters” in those elections

“have an equal opportunity to translate their votes into representation.”

League of Women Voters, 178 A.3d at 804.

As noted above, the Clause originated as a safeguard against the abuse of state power to entrench some voters’ political dominance and to suppress dissenting voices by diluting the political power of others. In *League of Women Voters*, the Court traced the history of the Clause to intense factionalism just before the Revolutionary War. At that time, Presbyterians and Anglicans largely centered in Bucks, Chester, and Philadelphia Counties, organized into what they called the “Proprietary Party.” Because of restrictions on the manner of representation and the franchise, the Proprietary Party had outsized power relative to its support. First, the manner of representation was county-by-county. Taking advantage of this approach, the Propriety Party-led government was loathe to recognize new Western counties where the opposition to the Propriety Party had greater support. Second, only landowners could vote such that much of the working population in Philadelphia had no political power at all. That population was largely un-landed and hostile to the Proprietary Party. *See id.* at 804-806.

As tensions with Britain gave rise to the Revolutionary War, the Proprietary Party remained loyal to the Crown. The Anti-Proprietary Party,

now joined by working-class Philadelphians and people from western Pennsylvania, strongly supported independence. After the Declaration of Independence, members of the Anti-Proprietary Party dominated the ensuing constitutional convention. In that convention, Pennsylvanians adopted reforms “intended to protect future individuals against the exclusion from the legislative process ‘by persons who gained power and intended to keep it.’” *Id.* at 806 (citing John L. Gedid, “*History of the Pennsylvania Constitution*,” as appearing in Ken Gormley, ed., *THE PENNSYLVANIA CONSTITUTION: A TREATISE ON RIGHTS AND LIBERTIES*, 48 (2004)). One of these reforms was the adoption of an early version of the Free and Equal Elections Clause. As this Court has explained, this Clause “established a critical ‘leveling’ protection in an effort to establish the uniform right of the people of this Commonwealth to select representatives in government” and “sought to ensure that this right of the people would forever remain equal.” *Id.* at 807.

Political factions realigned after the Revolutionary period. Quakers, Episcopalians, and Germans who had not fought in the war formed the “Anti-Constitutionalists,” later called Republicans and Federalists. Along with Philadelphia commercial interests that this community largely

controlled, the Anti-Constitutionalists opposed the “radicals” (also known as “Constitutionalists”) who had rallied for the 1776 Constitution. As other aspects of the new frame of government faltered, these various groups agreed to call a new constitutional convention. During that convention, factions rose to the occasion by adopting reforms that preserved a simpler version of the Clause. Pennsylvanians preserved the “principle cherished most by the Constitutionalists—namely, popular elections in which the people’s right to elect their representatives in government would be equally available to all, and would, hereinafter, not be intentionally diminished by laws that discriminated against a voter based on his social or economic status, geography of his residence, or his religious and political beliefs.” *Id.* at 808 (citing Joseph S. Foster, “The Politics of Ideology: The Pennsylvania Constitutional Convention of 1789-1790,” 59 *Pennsylvania J. of History* 137-38 (Apr. 1992)).

Given this text and history, this Court’s “view as to what constraints Article I, Section 5 places on the legislature . . . has been consistent over the years.” *Id.* at 809. As explained in Pennsylvania’s leading treatise on the Pennsylvania constitution:

[E]lections are free and equal within the meaning of the Constitution when they are public and open to all qualified electors alike; when every voter has the same right as every other voter; when each voter under the law has the right to cast his ballot and have it honestly counted; when the regulation of the right to exercise the franchise does not deny the franchise itself, or make it so difficult as to amount to a denial; and when no constitutional right of the qualified elector is subverted or denied him.

THE PENNSYLVANIA CONSTITUTION at 810 (citing *Winston v. Moore*, 244 Pa. 447, 523 (Pa. 1914)).

In *League of Women Voters*, this Court explained further that the precept that every voter has the same right as every other voter means that the Legislature may not enact laws that dilute votes. In a lengthy but illustrative passage, the Court wrote:

It is axiomatic that a diluted vote is not an equal vote, as all voters do not have an equal opportunity to translate their votes into representation. This is the antithesis of a healthy representative democracy. Indeed, for our form of government to operate as intended, each and every Pennsylvania voter must have the same free and equal *opportunity* to select his or her representatives. [O]ur Commonwealth's commitment to neutralizing factors was borne of our forebears' bitter personal experience suffering the pernicious effects resulting from previous electoral schemes that sanctioned such discrimination. Furthermore, adoption of a broad interpretation guards against the risk of unfairly rendering votes nugatory, artificially entrenching representative power, and discouraging voters from participating in the electoral process because they have come to

believe that the power of their individual vote has been diminished to the point that it ‘does not count.’

Id. at 813-14. Based on this analysis, the Court held that “the Clause should be given the broadest interpretation, one which governs all aspects of the electoral process, and which provides the people of this Commonwealth an equally effective power to select the representative of his or her choice, and bars the dilution of the people’s power to do so.” *Id.* at 814. The Clause therefore must be given its broadest interpretation relative to a Legislative enactment that dilutes citizen voting power, whether the Legislature has done so intentionally or “by inadvertence.” *Id.* at 812.

The Court considered a 2011 Congressional redistricting plan that subordinated all traditional criteria for redistricting to one party’s partisan advantage and diluted the opposing party’s voters’ votes. The Court held that the plan was not “free and equal” and hence unconstitutional. *See generally id.* at 818-821. When the Legislature could not arrive at a new redistricting plan in 2021, this Court adopted a remedial plan that emphasized the central importance of avoiding vote dilution. *See generally Carter v. Chapman*, 270 A.3d 444 (Pa. 2022).

In *Working Families Party*, third-party voters challenged a provision banning third-party nomination of candidates also seeking major-party nominations in primary elections. There, this Court explained that the anti-fusion rule did not violate the Clause. The Court explained that the challengers there “had the opportunity to support and vote for their candidate of choice” regardless of whether he appeared as their third-party’s candidate or a major party’s. “In no sense were their votes diluted by the fact that [he] appeared on the ballot only as the candidate of the Democratic Party.” *Working Families Party*, 209 A.3d at 282.

b. Section 2812 abridges Petitioners’ right to vote in primary elections and dilutes their votes.

Here, Section 2812 violates the Free and Equal Elections Clause by excluding independent voters from meaningful participation in the electoral process and diminishing the power of their vote. First, Section 2812 prevents Petitioners from participating in primary elections at all. This contradicts the intent of the framers of the Pennsylvania Constitution “that all aspects of the electoral process, to the greatest degree possible, be kept open and unrestricted to the voters of our Commonwealth.” *League of Women Voters*,

178 A.3d at 804. Indeed, Section 2812 categorically restricts independent voters from voting in primary elections.

Second, Section 2812 dilutes Petitioners' ability to translate their support into nominations for the general election. As detailed above, citizens who have registered with a political party have more potential choices than independent voters in nominating candidates to stand in the general election, a fact borne out by the overwhelming rarity of independent nominations. Independent voters do not have "an equal right, on par with every other citizen" to translate their support into nominations. *Id.* Indeed, they have no right whatsoever to participate in a primary election for a given candidate. In turn, by the time independent voters get to vote, most electoral races in Pennsylvania are already decided. The choice has been formally or functionally narrowed to two nominees whom independent voters never had a chance to select. In many districts, there won't even be two candidates. As such, Section 2812 makes independent voters' electoral power and support functionally irrelevant by denying them the opportunity to participate when electoral outcomes are most meaningfully shaped. This is precisely the type of vote dilution that the Free and Equal Elections Clause forbids. Indeed, in withholding participation until the electoral choice is

virtually empty, Section 2812 is conceptually similar to the extreme partisan gerrymandering that this Court struck down in *League of Women Voters* and sought to avoid in *Carter, i.e.*, the manipulation of district boundaries into districts that rendered the right to vote largely illusory.

Section 2812's abrogation and dilution of Petitioners' vote distinguishes them from the third-party voters in *Working Families Party*. In that case, third-party voters challenged a provision banning third-party nomination of candidates also seeking major-party nominations in primary elections, and this Court rejected the challenge on the ground that they were able to support their preferred candidate, albeit as the Democratic nominee. *Working Families Party*, 209 A.3d at 382. Here, Petitioners and other independent voters are entirely unable to support their preferred candidates in the electoral process.

For purposes of the Free and Equal Elections Clause, it does not matter that independent voters are unregistered with a political party. The Clause sets forth a broad guarantee in the Declaration of Rights that represents a frank limitation on governmental power. The Clause was over a century old when the General Assembly undertook to exercise sovereign authority over party primaries. See *Merriam & Overacker, supra*, at 8-13; Act 181 of 1905;

Act 472 of 1913; Act 320 of 1937. Nobody made the Commonwealth exercise control over primary elections. Once the Commonwealth did so, the Commonwealth undertook a corresponding obligation to exercise that authority in a manner consistent with the Constitution. Pursuant to the Free and Equal Election Clause, this obligation included adopting an electoral framework that did not give some voters more power and some voters less power to translate their support for candidates into electoral representation. Pennsylvania now has a government-mandated system in which the government shuts certain voters out of the process for nominating the candidates of political parties.

It might be suggested that Petitioners have brought exclusion on themselves by choosing to not identify as members of a political party. Such an argument would ignore that the Free and Equal Elections Clause is designed to equalize voters' power regardless of their faction (or lack thereof) and regardless of their individual political-viewpoints. As this Court explained in *League of Women Voters*, the Free and Equal Election Clause prevents the "dilution of the right of the people" to select their representatives based on the "political beliefs to which they adhere[.]" *League of Women Voters*, 178 A.3d at 808-09. Attempting to justify diluting

independent voters' power on the ground that they are independent disserves the language of the Clause. It also ignores the reasons Pennsylvanians enacted it in the first place. *See id.* at 804-809.

In sum, by excluding independent voters from the primary stage and denying them equal access to influence nominations, Section 2812 violates the Free and Equal Elections Clause. It creates a two-tiered electorate, giving party-affiliated voters more power than independents, whose participation often comes too late to matter. Section 2812 as applied to Petitioners as independent voters violates the Free and Equal Elections Clause.

2. Section 2812 violates Petitioners' rights under Article I, Section 26 of the Pennsylvania Constitution.

a. Legal framework

Article I, Section 26 of the Pennsylvania Constitution provides that “[n]either the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.” Pa. Const., art. I, § 26. This Court has explained that this provision is not redundant of the federal Equal Protection Clause. It establishes an independent state constitutional guarantee and requires the Commonwealth to “maintain neutrality” with

respect to one's constitutional rights. *Allegheny Reproductive Health Ctr. v. Dept. of Human Servs.*, 309 A.3d 808, 943 (Pa. 2024). If the Commonwealth has not maintained neutrality because it has "expressed a preference for" or otherwise burdened "a person's exercise of any civil right," the Commonwealth must justify its classification pursuant to means-end review. *Id.* That review applies the nomenclature of constitutional scrutiny under federal equal protection jurisprudence, but the terms have distinct meaning and applications under Pennsylvania law. In particular, where the government has violated its obligation of neutrality with respect to a "fundamental right," the discriminatory statute must fall unless it survives the prerequisites of "strict scrutiny" in that the government must demonstrate that its discrimination is "necessary to the achievement of a compelling state interest" and "narrowly tailored to effectuate that interest." *Id.* at 946 (citing *Commonwealth v. Bell*, 516 A.2d 1172, 1178 (Pa. 1986); *Hiller v. Fausey*, 904 A.2d 875, 885-86 (Pa. 2006)). "If there are other, reasonable ways to achieve [the state's] goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose 'less drastic means.'" *Id.* (citing *Dunn v. Blumstein*, 405 U.S. 330, 342-43 (2006)).

If the government has violated its obligation of neutrality with respect to a non-fundamental but nevertheless important right, the government must satisfy intermediate scrutiny: *i.e.*, the discrimination must be “closely related” to an “important” government interest, and the person excluded from the right must “be permitted to challenge his exclusion on the grounds that in his particular case, denial of the right or benefit would not promote the purpose of the classification.” *See Yanakos v. UPMC*, 218 A.3d 1214, 1222 (Pa. 2019).

If the discrimination does not implicate fundamental or important rights, the government’s discrimination must still be “reasonable rather than arbitrary” and “bear a reasonable relationship to the object of the legislation.” *Commonwealth v. Albert*, 758 A.2d 1149, 1151 (Pa. 2000). This Court determines whether the distinction offered “is founded on a real and genuine distinction rather than an artificial one.” *Id.* The Court may conceive of its own rational basis as well. *Id.*

- b. Section 2812 discriminates against Petitioners based on their exercise of multiple constitutional rights.**

Here, Section 2812 discriminates against Petitioners in the exercise of fundamental constitutional rights. First, Section 2812 bars Petitioners from participating in primary nomination processes based on their exercise of their right to free speech in declining to publicly declare that they are members of a political party. Second, Section 2812 bars Petitioners from participating in primary elections based on Petitioners' decision to decline association with a political party. Third, Section 2812 subjects Petitioners to vote dilution in general elections based on their exercise of their speech and assembly rights. Section 2812 effectuates this discrimination in simple terms. It gives voters who publicly associated themselves with a political party the right to participate in primary elections and a greater ability to translate support into representation. It gives independent voters no primary vote and a lesser ability to translate support into representation.

Petitioners are independents for a variety of reasons. Some are mindful of professional or community harm if they choose the "wrong" registration. As noted above, Petitioner Smerconish is an independent voter in part so his journalism cannot be assailed by accusations of political favoritism. Petitioner Thornburgh is an independent voter in part because registration as a member of a political party would have undermined his efforts at

pursuing non-partisan government reform. Petitioner Doty is an independent voter in part because Democratic registration could harm his grocery business in a predominantly Republican community.

Others are independent voters because they don't fit within the category of a given political party. Petitioner Shanok is an active member of Forward, a political organization committed to interjecting "new ideas and new debates" into our political discourse. Ms. Shanok has been registered as a Democrat but now is an independent voter in part because she believes that neither the Democratic nor Republican parties reflect her political views. She believes that corrosive partisanship is infecting our political discourse.

Each Petitioner has reasons for exercising their judgment to decline partisan affiliation. Each Petitioner has been deprived of the ability to participate in crucial primary elections. They have been denied an equal opportunity to translate their support for a candidate into representation. They have been discriminated against regarding their right to vote based on their exercise of their rights of speech and association.

c. Section 2812 cannot withstand strict scrutiny.

Section 2812 burdens the exercise of Petitioners' rights to free speech, to free association, and to vote. Implicating fundamental rights, Section 2812 must be evaluated pursuant to the constitutional strict scrutiny framework under Article I, Section 26. *See* Pa. Const., art. I, §§ 5, 7, 8; *League of Women Voters*, 178 A.3d at 793; *Bergdoll v. Kane*, 731 A.2d 1261, 1269 (Pa. 1999) (right to vote); *In re Nader*, 905 A.2d 450, 465 (Pa. 2006) (same); *Pap's A.M. v. City of Erie*, 812 A.2d 591 (Pa. 2002) (right to free speech); *Shelton v. Tucker*, 364 U.S. 479 (1960) (right to free association).

Under Pennsylvania's strict scrutiny framework, Section 2812 must be struck down as applied to Petitioners unless it is "necessary to the achievement of a compelling state interest" and "narrowly tailored to effectuate that interest." *Allegheny Reproductive Health Ctr.*, 309 A.3d at 946. "If there are other, reasonable ways to achieve [the state's] goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose 'less drastic means.'" *Id.*

Section 2812 is not necessary to accomplish a compelling government interest as applied to independent voters. As a starting point, the legislative record does not demonstrate the particular function that Section 2812's

disenfranchisement of independent voters was designed to accomplish. Contemporaneous accounts suggest that the 1937 Legislature sought primarily to prevent Democrats and Republicans from creating mushroom parties intended to confuse other party's voters. But one concern may have been preventing one party's members from "raiding" another party's primary to throw that party into flux. *See* Merriam & Overacker at 5. It is apparent from the legislative record the 1937 Legislature did not remotely consider independent voters (who comprised 3% of the electorate at the time) as potential "raiders" of nomination contests.

If preventing counter-partisans from raiding a party's primary represents a fundamental interest, that interest does not extend to independents who lack the partisan incentives to which the 1937 Legislature was responding when enacting Section 2812. The U.S. Supreme Court has recognized that a state's interest in preventing party raiding is "insubstantial" as pertains to independent voters. *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 225 (1986); *see id.* at 219 ("[A] raid . . . by independent voters [is] . . . a curious concept only distantly related to the type of raiding which motivated the adoption of closed-primary laws.") Empirically, there is meager potential for disruption by an independent-

voter “raid,” as evidenced by the extreme rarity of this practice in states with open primaries.¹⁹

Second, Section 2812 doesn’t do much to prevent a raid whether by counter-partisans or independents. Earlier iterations might have. As detailed above, earlier versions of Pennsylvania’s laws governing voter registration and participation in primary elections attempted to police the voter rolls for “true” party membership. They required more to register as a member of a political party: *e.g.*, an oath of prior candidate support or examination into one’s substantive allegiances and political preferences. *See, e.g.*, Act 472 of 1913. In some circumstances, a voter was obliged to remain registered as a member of one party and to vote for the other for one general election if he wished to switch allegiances in the next primary. *See id.* In other words, there was a substantive dimension to being a Democrat or a Republican beyond whether or not one had checked a box.

That isn’t so anymore. The requirement of registration evinces only that one has registered. Nothing prevents a counter-partisan’s desire to

¹⁹ *See, e.g.*, John Johnson, “Crossover voting is uncommon, even in Wisconsin’s wide-open primaries,” Marquette University Law School Faculty Blog, <https://law.marquette.edu/facultyblog/2023/11/crossover-voting-is-uncommon-even-in-wisconsins-wide-open-primaries/> (Nov. 22, 2023) (last visited Jul. 9, 2025).

register as a member of the opposing party and attempt to influence that party's primary election except perhaps his desire to participate in his "true" party's primary. Independent voters have no such primary and have been free to "raid" for roughly a century simply by registering. *Accord Tashjian*, 479 U.S. at 219 (explaining that "a raid on the Republican Party primary by independent voters . . . is not impeded" because "the independent raiders need only register as Republicans and vote in the primary"). A far smaller portion of Pennsylvanians identify as independent than the national average, suggesting there may already be millions of actual independents registered as members of parties just to have some say in their representation. Section 2812 perversely operates to exclude only those independents who are candid about their independence. In the end, Section 2812 is not *necessary* to prevent party raiding as applied to independents. It also doesn't prevent such raiding as applied to independents.

Even assuming restriction on who can vote in primary elections was necessary to prevent party raiding, Section 2812 is not narrowly tailored to achieve the goal. It is too broad in its sweep: it excludes from voting in primaries those voters who identify as members of parties but who cannot or do not wish to do so publicly for non-political reasons. It is also too

narrow: it does *not* exclude voters who identify as members of opposing parties but who are willing to register differently to conduct a raid. If Section 2812 is designed to ensure that only “true” members of a party participate in its primaries, it excludes true members and allows in false members.

Furthermore, there are other methods to prevent party raiding that do not burden voters’ constitutional rights. The Commonwealth could end the requirement that voters register by party, joining the nineteen states in this country that do not require party identification as a condition of voting in a primary election. The Commonwealth could require voters to certify that they are voting in good faith in a party primary and not for raiding purposes. It could punish party raiding more severely. It could adopt measures like top-two primaries, runoff elections, or instant-runoff ranked-choice voting, all of which curtail the ability to and incentives to engage in party raiding. Under Article I, Section 26 of the Pennsylvania Constitution, what the Commonwealth cannot do is subject independent voters to disparate treatment based on their exercise of fundamental constitutional rights to allay its fears about partisans’ bad-faith conduct. The Commonwealth cannot show that the exclusion of independent voters from primary elections is necessary to achieve a compelling interest. Alternatively, less burdensome

options are available to address concerns about partisan interference. Section 2812 violates Article I, Section 26 of the Pennsylvania Constitution.

d. Section 2812 cannot withstand intermediate scrutiny or rational basis review.

If the Commonwealth has violated its obligation of neutrality with respect to a non-fundamental but important right, it must satisfy intermediate scrutiny — *i.e.*, the discrimination must be “closely related” to an “important” government interest, and the person excluded from the right must “be permitted to challenge his exclusion on the grounds that in his particular case, denial of the right or benefit would not promote the purpose of the classification.” *See Yanakos*, 218 A.3d at 1222. If the rights at stake here are deemed only important, the burden imposed by Section 2812 still would fail this standard.

As a starting point, the apparent governmental interest of preventing “party raiding” does not justify the law’s exclusion of independent voters. The provision is not “closely related” to those interests because it both under- and over-includes the voters who the statutes seeks to restrict. Section 2812 excludes voters who are sincerely aligned with a party but cannot or will not register for good reasons. It includes voters who do not

support a party but register solely to influence its outcomes. In this regard, the classification does not serve its purported goal in a consistent manner. The classification also fails to account for voters like Petitioners who have chosen not to affiliate with a party based on personal, political, or professional reasons. The statute does not Petitioners to challenge their exclusion from primary elections on the ground that they are not “party raiders.” As applied to them, the exclusion is categorical yet advances no important purpose at all.

Even if Section 2812 were subject only to rational basis review, the statute must be “reasonable rather than arbitrary” and “bear a reasonable relationship to the object of the legislation.” *Albert*, 758 A.2d at 1151. This Court determines whether the distinction offered “is founded on a real and genuine distinction rather than an artificial one.” *Id.* Here, Section 2812 distinguishes between voters who register with a political party and those who do not. This distinction is not “real and genuine” when the act of registration requires no substantive demonstration of partisan belief, when registration is often compelled or deterred by professional or community pressure, and when the distinction at issue actually imbues counter-partisans with the ability to raid. At best, the distinction reflects an

administrative preference for categories that contain and control voters. It is not a legitimate basis for excluding a class of voters from a critical stage of the electoral process and thereby leaving them with a fraction of the power exercised by other voters.

In short, even if Section 2812 is not subject to strict scrutiny, it fails both intermediate scrutiny and rational basis review, and violates Article I, Section 26 of the Pennsylvania Constitution.

B. The issue is one of immediate public importance warranting this Court's exercise of King's Bench jurisdiction.

This Court has “the powers vested in it by the Constitution of Pennsylvania, including the power generally to minister justice to all persons and to exercise the powers of the court, as fully and amply, to all intents and purposes, as the justices of the Court of King's Bench, Common Pleas and Exchequer, at Westminster, or any of them, could or might do on May 22, 1722.” 42 Pa.C.S. § 502. The Court of King's Bench had original jurisdiction over public matters, including the lawfulness of official conduct, well before 1722. *See, e.g., The Case of Proclamations*, 77 Eng. Rep. 1352 (K.B. 1610). And it has exercised it to compel legislative compliance with constitutional commands implicating voting rights before. *See, e.g., Fagan v.*

Smith, 41 A.3d 816 (Pa. 2012). In determining whether to exercise King’s Bench jurisdiction, this Court considers whether a case presents an issue of immediate and public importance. *See In re Bruno*, 101 A.3d 635, 670 (Pa. 2014); *In re President Judge for 30th Judicial Dist.*, 216 A.2d 326 (Pa. 1966).

For example, in *Bd. of Revision of Taxes, City of Phila. v. City of Phila.*, 4 A.3d 610, 620 (Pa. 2010) (“BRT”), this Court exercised extraordinary jurisdiction, which is subject to the same consideration that the issue presented be one of immediate public importance, over a dispute concerning the validity of a Philadelphia ordinance reorganizing the City agency conducting property tax assessments. This Court explained that the challenge was of interest to the public and the judiciary, and that it would benefit both to provide a “clear final ruling” that would avoid piecemeal, duplicative, and lengthy litigation and promote confidence in the authority and integrity of statewide and local institutions. *See id.*; *see also Ieropoli v. AC & S Corp.*, 842 A.2d 919 (Pa. 2004) (involving challenge to constitutionality of statute retroactively extinguishing causes of action); *Silver v. Downs*, 425 A.2d 359 (Pa. 1981) (involving challenge to order disqualifying township solicitor from representing township officers).

Here, this Court's King's Bench jurisdiction is well-suited to adjudicate this matter. First, the issue is one of immediate public importance and a clear, final ruling would similarly avoid piecemeal, duplicative, and lengthy litigation and promote confidence in the authority and integrity of statewide and local institutions. The right of roughly 1.4 million, or about 16% of, Pennsylvanian voters as it pertains to their fundamental and bedrock right to vote is obviously of immediate importance. Indeed, if this petition is not addressed, they would continue to be denied their constitutionally protected right to vote, and their right to an equal opportunity to turn that support into representation, for numerous elections while the matter is litigated in ordinary course.

Second, this denial and diminution of their right to vote serves to unlawfully protect artificial partisanship and extremism in Pennsylvania government – the same partisanship that gave rise to the vote dilution declared unconstitutional in *League of Women Voters*.

Third, if this petition is not addressed, any number of independent voters may bring individual actions against the Commonwealth, leading to the same type of piecemeal, duplicative, and lengthy litigation that this

Court in *BRT* avoided. Thus, the issue is appropriate and well-suited to King's Bench review and resolution.

Petitioners do not ask this Court to commend a constitutionally-permissible primary system to the Legislature. Petitioners ask the Court to exercise its core constitutional function and declare the statutory exclusion of independent voters from any meaningful participation in the primary process and the dilution of their votes to be unconstitutional.

V. CONCLUSION

The Court should enter an order taking this matter up under the aegis of its King's Bench jurisdiction and, after briefing and argument, declare Section 2812 as applied to Petitioners violates the Pennsylvania Constitution.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require the treatment of confidential documents and information differently than non-confidential and documents and information.

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APPENDIX “A”

Ballot PA Action: “Who’s Shut Out? Independent Voters in PA”



REPEAL CLOSED PRIMARIES

Who's Shut Out?

Independent Voters in PA

Revised April 2023

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This white paper was written and edited by Louisa Hanson, Fellow, and David Thornburgh, Chair of Ballot PA, a campaign to repeal closed primary elections and allow PA's 1.1 million¹ independent voters² to vote in those elections.



Executive Summary

Since 1937, independent voters in Pennsylvania have been barred from voting in primary elections. We are one of only 9 states that completely excludes these voters. Over the last 86 years the number of such voters has grown substantially. Now that there are over [1.1 million](#)¹ independent voters² in Pennsylvania, it's important to learn more about those whom the law prohibits from participating. To our knowledge, this is the first comprehensive public research on independent voters in the Commonwealth.

Primary elections in Pennsylvania are incredibly important. Because of the way Pennsylvania's legislative districts are drawn and voters are distributed politically, they are often the only elections that count in legislative and local races. In 2022, for instance, almost 90% of state House and Senate elections were effectively decided in the primary, meaning there was either only one candidate in the general election or the general election was decided by 10% or more.³ The same holds true for local races in areas of the state where lopsided voter registration heavily favors one party or the other.

This analysis reveals that about [13%](#)⁴ of Pennsylvania voters are registered as independent. This is somewhat lower [than in](#) other states. But between 2012 and 2022 independent voters were the fastest-growing voter [segment](#)⁸ in the state. They [grew](#) 5% faster than Republican registrations and 23% faster than Democratic registrations.

(Note that there is no designation called "independent " on the PA voter registration form. Unless otherwise noted, independent voters are defined here as a combination of those who choose **No Affiliation** and those who write in **None** or **Independent** when they register to vote—see below for voter registration form from the Department of State website. This is the same definition used by legislation that has been drafted to end closed primaries. Also note that because of data issues, not all analyses in this white paper use the same definition of independent voters.)

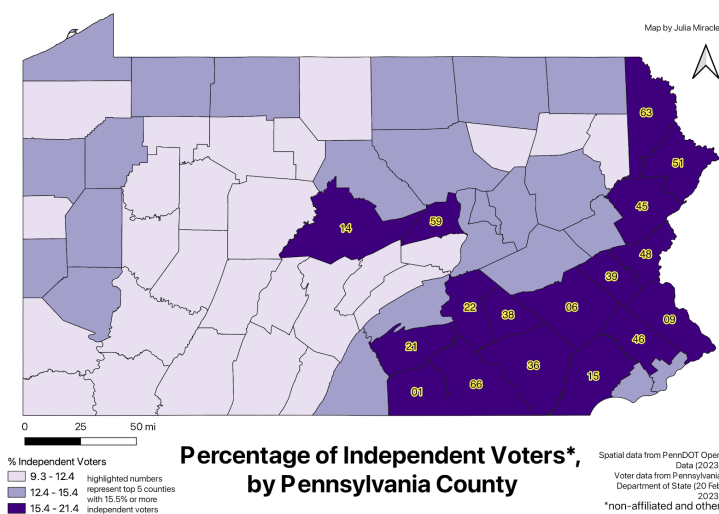
9	In which party do you wish to register?	
	<input type="checkbox"/> Democratic	<input type="checkbox"/> No affiliation
	<input type="checkbox"/> Republican	<input type="checkbox"/> Other (Please specify):
	<input type="checkbox"/> Libertarian	
	<input type="checkbox"/> Green	



Independent voters are also:

- More likely to be **veterans** (about half of all veterans nationwide identify as political independents)
- More **moderate**, although about a quarter of independent voters could be considered either liberal or conservative populists.
- More likely to be **young**—50% of PA independents are under the age of 40.
- More likely to **be voters of color**. In Pennsylvania, 27% of Asian American voters, 22% of Latino voters, and 8% of Black voters are independents. Asian American voters are more than twice as likely, Latino voters are almost twice as likely, and Black voters less likely to be independents than white voters.

Independent voters in Pennsylvania are [concentrated](#)⁹ in growing regions of the state: Central PA, Southeastern PA, the Lehigh Valley, the Poconos, Northeastern PA, and two “college towns” (State College and the Oakland area of Pittsburgh). These voters are also more concentrated in some cities—like Allentown, Reading, Lancaster, and York—that have seen rapid [growth](#)¹⁰ in Latino populations, which may reflect that Latino voters (and Asian voters) in PA are well-represented among independents.



Unaffiliated voter registration would likely grow in Pennsylvania if primary elections were opened to independent voters. Exactly how much would largely depend on how the two major parties would react to the change. We can learn only a little from other states, as most of the 41 states who find some way to include independent voters in primary elections have done so for decades.



However, **Colorado** and **North Carolina** are two states that within the last few decades that bear a resemblance to Pennsylvania and who have changed their primary systems to a system similar to that proposed here. (Maine has as well but only very recently.) In NC and NC independent registrations grew after the change was made. However, in NC and CO, this growth did not necessarily come at the expense of existing party registration, but rather was fueled by an overall [growth](#)¹² in population and voter registration caused by new voters moving to those states. Given PA's [slow growing population](#)¹³, it will likely share the experience of those two states; it's unlikely that there will be a surge in independent voters caused by voters moving to PA from other states.

Still, over time ending closed primary elections would introduce several hundred thousand new voters to the statewide primary electorate. National research suggests that those independent voters would likely participate equally in both primaries, depending on the nature of the election and the candidates fielded by the parties..



Who are Independent Voters?

Of the [8.6 million](#) voters in Pennsylvania, we estimate that about 1.1 million voters, or 13% of the voting population, are registered as **no affiliation** or who write in **none** or **independent** on their voter registration application—our working definition of independent¹⁶.

Figure 1. Party choices for voters registering in Pennsylvania, 2023.

9 In which party do you wish to register?

<input type="checkbox"/> Democratic	<input type="checkbox"/> No affiliation
<input type="checkbox"/> Republican	<input type="checkbox"/> Other (Please specify):
<input type="checkbox"/> Libertarian	_____
<input type="checkbox"/> Green	

This means that significantly fewer Pennsylvania voters are registered independent than in the 31 states that [require](#) voter registration by party¹⁷. In those states, an average of [29%](#)¹⁸ of voters are registered independent of a major party.

Who are these independent voters? This analysis draws on three sources:

- L2, a voter database used to map and analyze voter demographics
- Studies by Pew Research
- A November 2021 survey of a sample of 120 statewide independent voters conducted by Osage Research on behalf of Ballot PA

Taken together, these sources suggest that independent voters in PA skew younger, more male, are over-represented in some communities of color, and are politically and ideologically moderate.

Independent voters are more likely to be veterans

[Pew research](#)²⁰ from 2017 suggests that nationally 49% of veterans identify as independents (vs. 20% as Republicans and 20% as Democrats). Given that there are about 800,000 veterans in Pennsylvania, this could mean that some 400,000



Pennsylvania veterans who might register as independents are denied the right to vote in primary elections.

Independents voters tend to be younger

L2 voter data shows us that almost half (47%) of PA independents are under the age of 40, vs. 31% of all voters.

Concentration by Age of Independents (L2, 2020)	18-29	30-39	40-49	50-64	65+
Independents	24%	23%	18%	22%	14%
All Voters	15%	16%	15%	26%	28%

Independents are more likely to be voters of color

According to [research from the national Open Primaries organization](#)²⁸, nationally 40% of Asian American, 37% of Latino, 30% of African American, and 20% of Native American voters are independents. In Pennsylvania, according to L2 voter data, 27% of Asian Americans voters, 22% of Latino voters, and 8% of Black voters are independents. Asian American voters are more than twice as likely, Latino voters are almost twice as likely, and Black voters less likely to be independents than white voters.²⁹.

Again according to L2 voter data, independents in these communities are highly concentrated—50% of Latino independents live in just five counties: Philadelphia (18%), Lehigh (10%), Berks (9%), Lancaster (7%), and Northampton (6%). Asian American independents are even more concentrated – 64% live in 5 counties: Philadelphia (20%), Montgomery (15%), Allegheny (12%), Bucks (9%), and Chester (8%). Black independents are the most concentrated: 85% live in 5 counties: Philadelphia (54%), Allegheny (15%), Delaware (9%), Dauphin (4%), Montgomery (4%).



Independent voters “lean” moderate and towards both parties

[Nationally](#), 41% of voters identify as independents (which is different from **registering** as independents), 28% as Democrats, and 28% as Republicans. [Pew research](#)²⁴ shows that the majority of independents (81%) lean toward a major party—46% of independents lean Democrat while 35% lean Republican. Pennsylvania independents may lean more Republican. When the Osage survey asked Independent voters which 2022 party primary they would participate in if they could, 38% said Republican, 31% Democratic, and 31% were undecided.

[Nationally](#)²¹ and in [Pennsylvania](#)²², the clear plurality of independent voters identify as moderate. Results from the Osage survey suggest independents in PA could be more moderate and conservative than unaffiliated voters nationwide.

Ideological Self-Identification of Independents	Conservative	Moderate	Liberal
Osage (PA, 2021)	32%	52%	15%
Pew Research ²³ (Nationwide, 2019)	29%	43%	24%

Likewise, while their registration as independents suggest they are clearly less partisan than Republican or Democratic voters, most independents are likely to lean toward a political party. This should not be surprising in light of the fact that when independent voters vote in general elections they can generally only choose between Republican and Democratic candidates.

However, independents are far from a uniform voting bloc, and are often wrongly assumed to be simply indecisive voters or closet partisans. In fact, a recent analysis suggests that independent voters tend to fall into one of four subtypes: 1) moderate, 2) conservative populist, 3) liberal populist, and 4) disengaged.

The [“we need more moderates”](#) independent, around half of all independents, are put off by extreme ideologies on both sides of the aisle and desire more moderate candidates from both parties. They are independent in order to register their dissatisfaction with political parties that are increasingly drifting from the more moderate views of the



average voter, and likely could be convinced to support middle-of-the-road candidates of either party.

About a quarter of independents can be categorized as either [conservative populists or liberal populists](#). These voters have strong negative feelings towards “the other side” but focus their criticism on elites within the party with which they most align. Populist independents on both sides look at their communities and see struggling and suffering that they feel political elites are ignoring. They feel taken advantage of, whether by wealthy elites or by others receiving what they perceive as unearned handouts. Rather than moderation, they seek radical change, and view the parties as unable and unwilling to support that mission.

Finally, the remaining quarter of independents are [disengaged](#) voters who are repulsed by partisan squabbling and suspicious of political institutions. If they vote, they do so based directly on life experiences, intuition, or local concerns. They refuse to accept the ideological factions of both parties, reject forced labels, and tend to view politics as completely broken.

PA independent voters are concentrated geographically

Independent voters are more concentrated—[20 to 60% higher than the statewide average](#)²⁵—in the Lehigh Valley, the Poconos, and Chester County, and are generally more concentrated in the Southeast and South Central regions. The state House map also shows us that districts with high student populations (State College; Oakland, Pittsburgh) have concentrations of independent voters about 35% higher than the statewide average. This follows naturally from the fact that younger voters are more likely to identify as independents. Notably, most of these are places generally experiencing [population growth](#)²⁶, and have [larger Latino and Asian American](#)²⁷ populations.

Independent voters are more likely to be male

[National Pew research](#)¹⁹ finds that Independents are 56% male, 44% female, which is notably more male than either major party. In Pennsylvania, according to L2 voter data, the gender divide is consistent with national research - 53.4% male, 46% female. Independent voters are significantly more likely to be male.



Trends

Changes in Party Registration

According to the Department of State 2022 [voter registration report](#), independents were the fastest growing segment of voters in Pennsylvania over the last ten years. Those voters grew 5% faster than Republicans and 23% faster than Democrats.

PA Voter Registration by Party ³⁰	2022 Registrants	Growth since 2012	% Change since 2012
Democratic	4,032,051	-351,756	-8%
Republican	3,487,709	+300,173	+10%
Other/No Affiliation	1,322,960	+167,028	+15%
Total Registration	8,842,720	+115,445	+1%

The growth has come from a combination of first-time registrants (national Open Primaries research suggests that 50% of first-time young registrants are registering as independents) and registrants switching to independent from one party or another. Of the latter category, from 2012 to 2022, the Democratic Party has been [consistently](#) losing more registered voters than the Republican Party to the ranks of independents³¹. Over the course of ten years, Democrats have lost 226,285 registered voters to independent status, or 6% of their total voter base. In the same time period, Republicans have lost 166,439 voters to independent status, or 4.8% of their registered voters.

Why are voters registering as independents?

It's difficult to tell why Independent registration is increasing in Pennsylvania and nationwide. There appears to be no publicly-available research about Pennsylvania specifically that could shed light on that question.

We do seem to be living in an era where political parties are less popular with average voters, particularly younger ones. [A Pew study from December 2021](#)³² notes that “[o]verall, younger adults in the United States are less likely than older adults to identify with a party – and more likely to identify as independents who *lean* toward one of the two major parties. Still, even among those who identify with a party, younger Republicans are less likely than older Republicans to say the GOP represents the interests of people like them well, and younger Democrats are less likely than older Democrats to say this about the Democratic Party.”



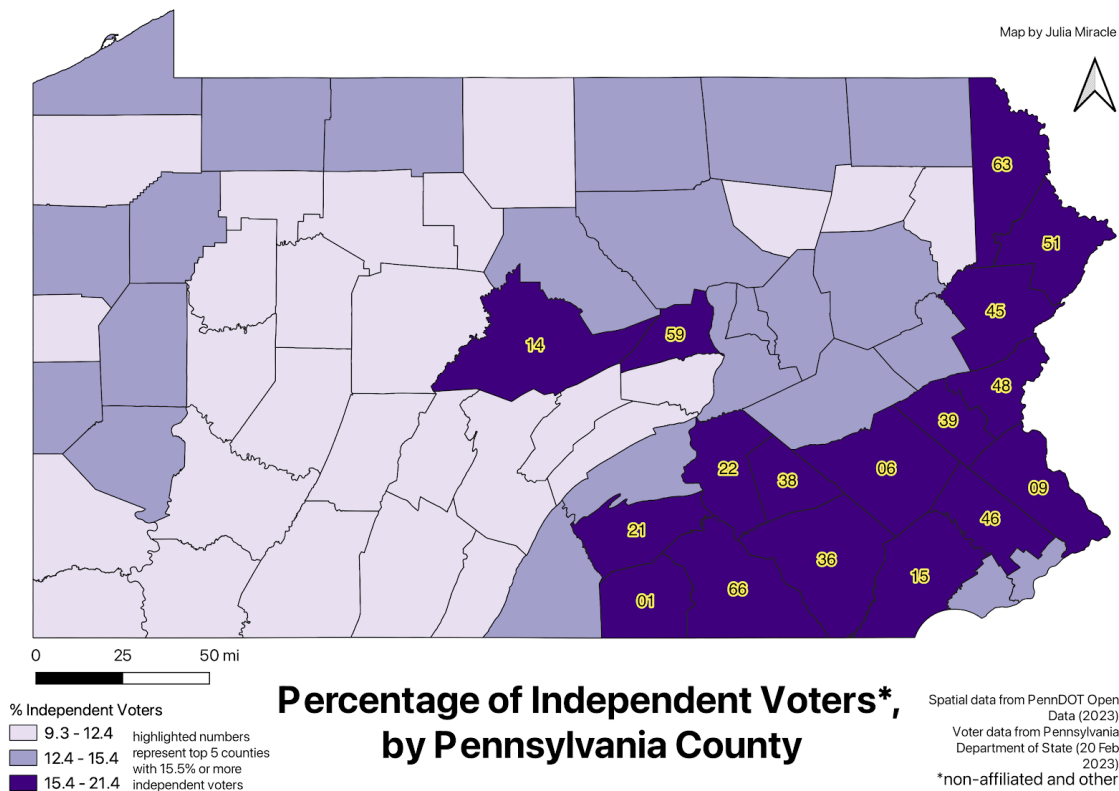
We can speculate that Pennsylvania's longtime movement from the Democratic Party to independent or third party may have to do with the gradual shift of more "traditional", rural, more conservative Democrats, particularly in Western PA, to the populist social and fiscal conservatism of today's Republican party. As the energy in the Democratic Party has increasingly come from its progressive wing, driven by an increasingly younger and more diverse voting base, many traditional Democrats may simply not support the new direction of the party.

Likewise, the more recent trend of Republicans leaving the party to register as independents could be a result of changes in the GOP, particularly in the Trump era. [Pew research](#)³³ early in the Trump Presidency suggests that he was particularly polarizing and had a lower approval rating among Independents as a whole than any of the previous three presidents. National Pew research also suggests that social issues like immigration and same-sex marriage have been key differentiating points for Republicans and independents—including Republican-leaning independents.

It stands to reason that more conservative Democrats and more liberal Republicans may feel more comfortable registering as independents when faced with the increasingly progressive policies of the left and populist conservative policies of the right. Registering as an independent may then act as a stepping stone between parties for moderate voters, or could become a permanent home outside of either party—although, until closed primaries are repealed, with the knowledge that such a choice shuts them out of primary elections in Pennsylvania and other states with closed primaries.



Concentration of independent voters by county



Top 15 Counties by percentage of independent voters (2023)³⁶

County	Region	Total Independents	% Independent
PIKE	NEPA	9,630	19%
MONROE	NEPA	23,001	18%
NORTHAMPTON	LV	44,011	18%
LEHIGH	LV	46,353	16%
CHESTER	SEPA	69,486	16%
BUCKS	SEPA	81,129	15%
UNION	CENTRAL	4,377	15%
LANCASTER	SCPA	58,772	15%
CUMBERLAND	SCPA	31,202	15%
YORK	SCPA	51,806	15%
CENTRE	CENTRAL	19,435	15%
WAYNE	NEPA	5,550	14%



BERKS	SCPA	43,876	14%
MONTGOMERY	SEPA	97,097	14%
ADAMS	SCPA	11,688	14%
DAUPHIN	SEPA	30,365	14%

Top 15 Counties by number of independent voters (2023)³⁷

County	Region	Total Independents	% Independent
ALLEGHENY	SWPA	131,718	13%
PHILADELPHIA	SEPA	126,097	11%
MONTGOMERY	SEPA	97,097	14%
BUCKS	SEPA	81,129	15%
CHESTER	SEPA	69,486	16%
LANCASTER	SCPA	58,772	15%
DELAWARE	SEPA	57,520	12%
YORK	SCPA	51,806	15%
LEHIGH	LV	46,353	16%
NORTHAMPTON	LV	44,011	18%
BERKS	SCPA	43,876	14%
CUMBERLAND	SCPA	31,202	15%
WESTMORELAND	SWPA	30,615	11%
DAUPHIN	SCPA	30,365	14%
LUZERNE	NEPA	27,106	11%

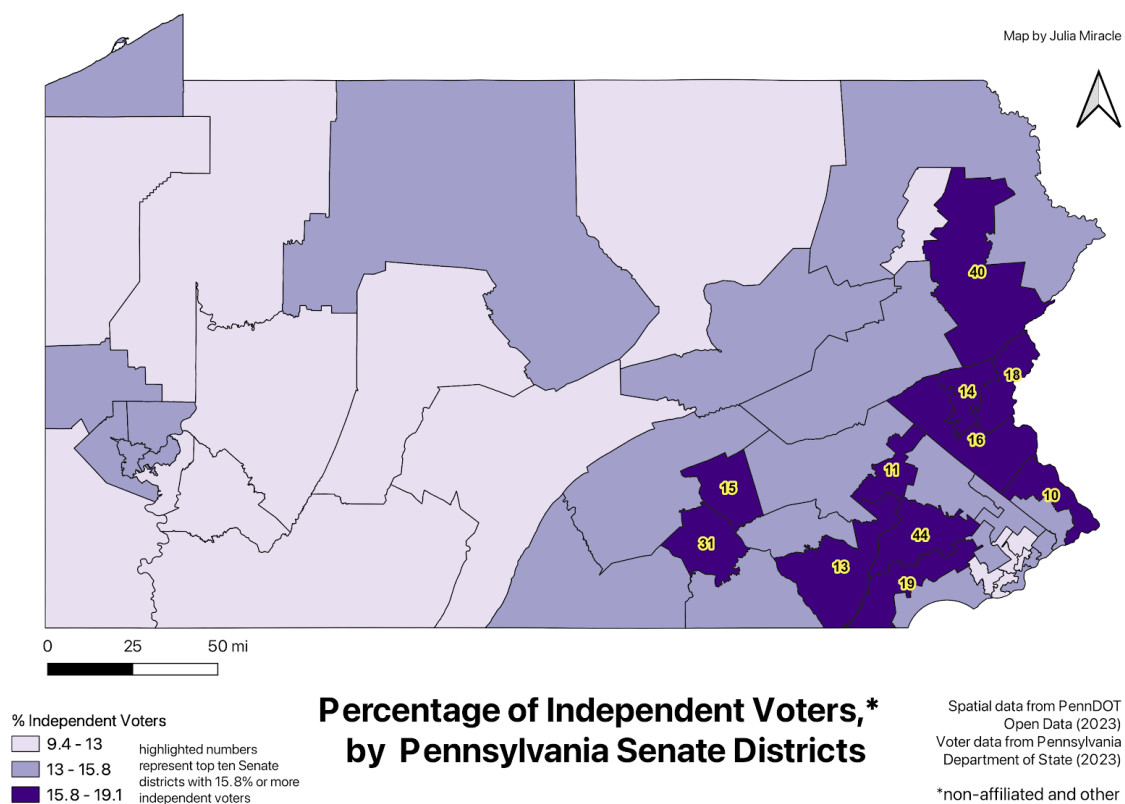
Top 15 counties³⁴ by growth in independent party registration from 2012-2023³⁵

County	Total Voters	Total Independents	Change from 2012	Percentage Increase from 2012
FOREST	3,343	381	126	49%
LUZERNE	204,559	27,106	7,822	41%
SULLIVAN	4,409	499	136	37%
NORTHUMBERLAND	58,633	8,451	2,226	36%
CARBON	44,306	6,932	1,693	32%
DAUPHIN	189,133	30,365	7,334	32%
SCHUYLKILL	88,705	11,667	2,691	30%



ADAMS	72,688	11,688	2,683	30%
PHILADELPHIA	1,072,133	126,097	32,798	30%
LEBANON	91,508	14,341	3,278	30%
CUMBERLAND	186,518	31,202	7,017	29%
BEAVER	113,916	15,651	3,347	27%
MIFFLIN	26,674	3,007	620	26%
LEHIGH	246,245	46,353	9,341	25%
POTTER	10,993	1,253	249	25%
LANCASTER	353,395	58,772	11,324	24%

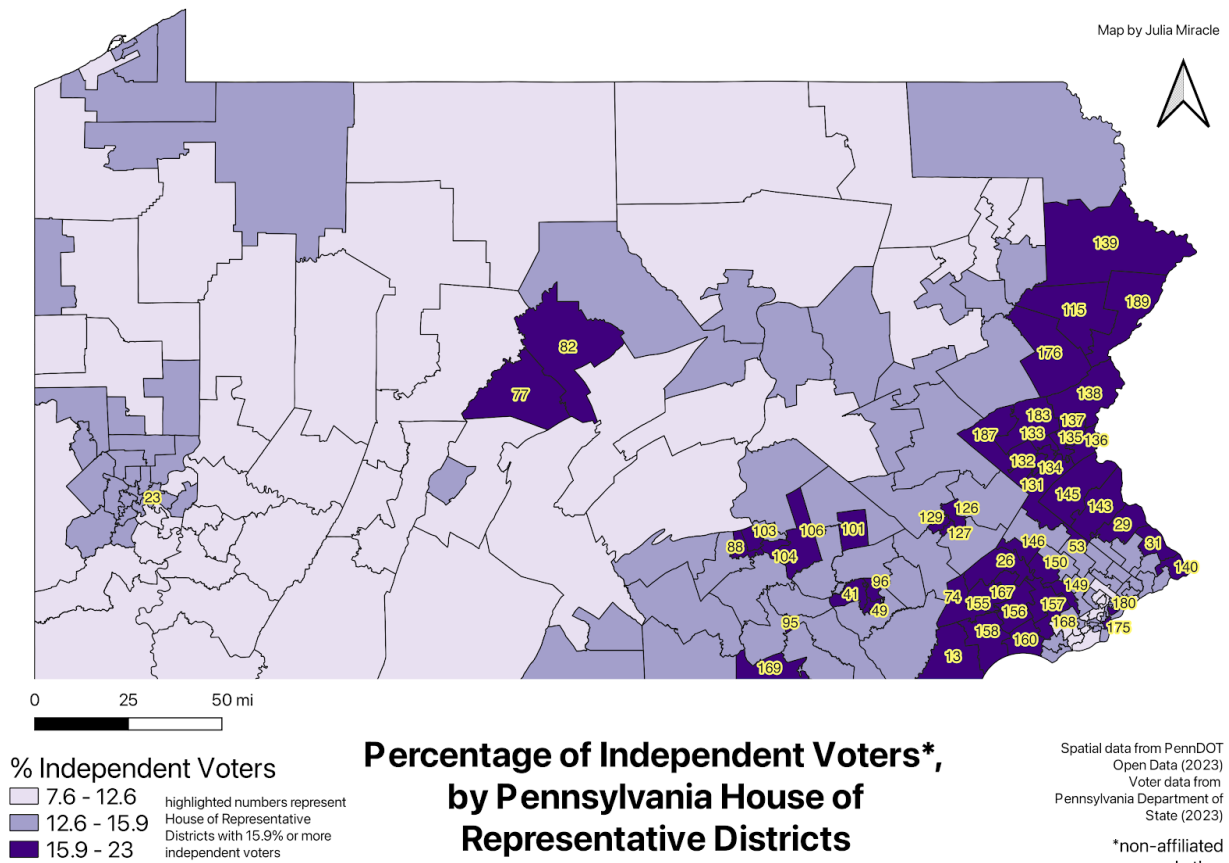
Concentration of independent voters by state Senate district



Top 10 Senate districts by percentage independent (2023)³⁸

	2022 Incumbent	Party	Independents	Ind. %	% > AVG
SD - 18	Lisa Boscola	D	37,790	20%	34%
SD - 14	Nick Miller	D	32,386	19%	28%
SD - 44	Katie Muth	D	34,111	18%	22%
SD - 10	Steven J. Santarsiero	D	37,281	18%	21%
SD - 19	Carolyn T. Comitta	D	32,462	18%	20%
SD - 40	Rosemary Brown	D	30,444	17%	16%
SD - 16	Jarrett Coleman	R	33,600	17%	16%
SD - 11	Judy Schwank	D	26,932	17%	16%
SD - 13	Scott Martin	R	27,284	17%	14%
SD - 31	Mike Regan	R	29,944	17%	14%

Concentration of independent voters by state House district



Top 20 State House Districts by percentage independent (2023)³⁹

	2022 Incumbent	Party	Independents	Ind. %	& > AVG
HD-22	Joshua Siegel	D	7,418	24%	57%
HD-95	Carol Hill-Evans	D	8,504	22%	46%
HD-50	Pam Snyder	D	8,037	22%	44%
HD-48	Timothy O'Neal	R	8,296	21%	42%
HD-51	Charity Grimm Krupa	R	8,296	21%	42%
HD-189	Tarah Probst	R	8,776	21%	40%
HD-136	Robert Freeman	D	8,781	21%	39%
HD-127	Manuel Guzman	D	6,373	21%	38%
HD-135	Steve Samuelson	D	9,568	20%	36%
HD-115	Maureen Madden	D	8,537	20%	36%
HD-134	Ryan Mackenzie	R	7,616	20%	34%
HD-176	Jack Rader	R	8,784	20%	32%
HD-31	Perry Warren	D	11,189	20%	32%
HD-139	Joseph Adams	R	9,485	20%	30%
HD-137	Joe Emrick	R	9,430	19%	30%
HD-138	Ann Flood	R	9,655	19%	29%
HD-82	Paul Takac	D	8,351	19%	27%
HD-155	Danielle Friel Otten	D	8,985	19%	27%
HD-167	Kristine Howard	D	8,858	19%	26%
HD-77	H. Scott Conklin	D	7,886	19%	25%
HD-23	Dan Frankel	D	9,898	19%	25%

Registration and voting

Given the chance, how many independent voters might vote in a primary?

In a public opinion survey conducted on behalf of Ballot PA by Osage Research in November 2021, independents showed clear enthusiasm for participating in primary elections. But how many independent voters might actually turn out to vote in a primary?



Even when given the chance, not all independent voters would vote in primary elections. How much less than 100% would depend on the election “season” (local, mid-term or Presidential) as well as other factors that come into play. This turnout will also depend on the scope of any legislation to open primaries, and whether it includes registered minor party voters (Green or Libertarian) or only registered unaffiliated voters. Furthermore, changes in the law to include independent voters would take time to take effect. (It’s worth noting that only [35%](#) of women voted in the first Presidential election immediately following the passage of the 19th Amendment that secured their right to vote. Just over one hundred years later, female voter turnout stands at [68%](#), consistently higher than male turnout.)

A reasonable estimate is that over time the repeal of closed primaries would bring about 9% more voters to the polls in any given primary. For example, in the 2022 PA primary election, a so-called “mid-term” or “gubernatorial” election year, almost [2.7 million](#)⁴⁰ voters (or about 36% of registered D’s and R’s) cast votes to determine party nominees at the top of the ticket. Using data extrapolated from other sources, we would [estimate](#) that (again not immediately but over time) opening primaries to independent voters would bring an additional 249,000 statewide independent voters to the polls in a mid-term primary, or an increase in the total electorate of 9%. Assuming these voters were split equally between the Republican and Democratic primary, this would mean an average of 614 new voters in each party primary election in each of the 203 state House districts and 2,495 additional voters for each party primary in each of the 50 state Senate districts.

Independent voters voting in primary elections would also be more likely to vote in general elections than they do now. Depending on the cycle, independent voters now vote in general elections at a [rate about \$\frac{2}{3}\$](#) ⁴¹ that of major party registered voters. That percentage would likely increase over time as independent voters were welcomed into the voting process through the gateway of the primary election.

Given the hotly contested nature of recent elections in Pennsylvania, higher turnout from independent voters will be crucial for both parties’ electoral success in competitive general elections. According to [CNN](#) exit polls following the 2016 and 2020 general elections, a 15-point swing of self-identified independent voters from Trump in 2016 (+7) to Biden (+8) in 2020 likely enabled Biden to win Pennsylvania. Independent voters are persuadable and electorally significant, meaning that bringing more independent voters into the general electorate has the potential to swing close elections.



Even now, Independent voters are exerting an important influence over close elections in Pennsylvania. In 2022, [Pennsylvania independents voted for Democratic gubernatorial candidate Josh Shapiro by almost a 2:1 margin \(64 to 33\)](#) and [for Democratic senatorial candidate John Fetterman by 58 to 38](#). And while exit polling doesn't offer much insight on state legislative races, it's likely that independent voters swung tight races in those chambers as well (an incumbent GOP state House member, Todd Stephens, lost in the 2022 general election by 68 votes).

Granted, because of redistricting and population sorting, there weren't that many tight legislative races: in 2022 87% were effectively decided in the primary, meaning that those races had an uncontested general election, or it was decided by more than 10 points. But that fact makes the competition for Independent voters even more interesting, given that the Democrats flipped 13 seats, and hold a majority in the state House, 102-101, for the first time in a dozen years.

What trends in voter registration have other states seen when they opened their primaries to independents?

This is a challenging question to answer, given that [41 of the 50 states](#)⁴² have long allowed some level of access to primary elections for independent voters, and that few states have changed their primary election system in the way that Pennsylvania is contemplating. Of those that have undertaken such a change, North Carolina (1987) and Colorado (2016) are the most instructive examples of states that switched to primary systems similar to that proposed for Pennsylvania.

North Carolina

North Carolina opened its primaries 36 years ago, in 1987, in response to the US Supreme Court decision in [Tashjian v. Republican Party of Connecticut](#), when it became evident to North Carolina party leaders that their laws regarding primary elections were similar to those overturned in that case.

In 1984, North Carolina party registration was 73% Democrat, 23% Republican, and 4% Unaffiliated. By 2020, 33 years after the change, the share of independent voters in NC had grown substantially, from 4% to 33%, while the share of Democratic voters had decreased from 73% to 36% and the share of Republican voters had increased from 23%



to 30%. An extensive 2020 study of independent voters in North Carolina produced by a team at UNC-Chapel Hill can be found [here](#)⁴³.

In North Carolina, party identification of voters changed as much because of in-migration to North Carolina as by changing political preferences among existing residents. In the 33 year period from 1987 to 2020 the population of NC grew significantly, and voter registration in North Carolina grew from 2.7 to 7.4 million registered voters, an increase of 174%. (By comparison, in the same thirty-year period the population of PA [grew](#) by only 9%, with an increase in registered voters of 46%)⁴⁴.

Colorado

In 2016, Colorado adopted a primary model similar to that which Pennsylvania is considering, and its experience may be instructive for Pennsylvania. According to the [Colorado Secretary of State](#), in 2010, 31% of Colorado voters (more than twice the percentage of PA voters) were registered as unaffiliated; by 2015 that had grown slightly to 35% and in 2020, four years after the law allowed unaffiliated voters to vote in primaries, to 40% of the electorate.

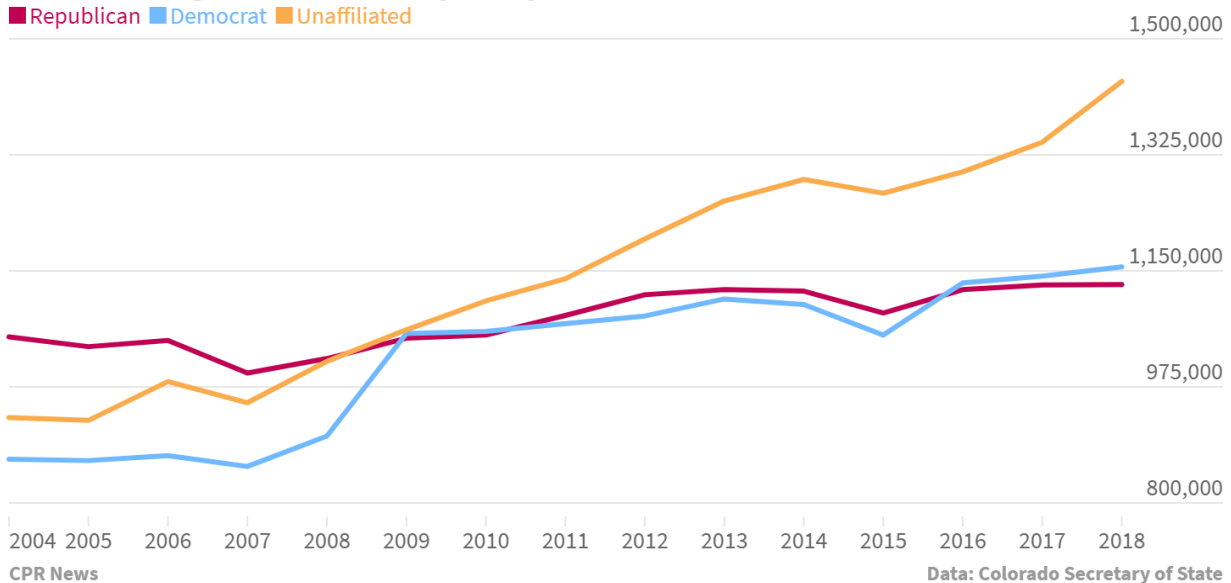
Once again, though, the denominator changed. Jeremy Gruber at the national Open Primaries group explains, and argues that Colorado is a good example of what Pennsylvania might expect:

It is a purple state with similar party breakdowns as PA that adopted the same model of primary that PA is considering...Since adopting an open primary, voter registration itself has surged which is the biggest factor in the surge of independents—**rather than leave the parties in response to an open primary it's the growth of new voters in response to a more open system** where much of the surge of independents come from.

The chart below shows the accelerated growth of independent registrations—not at the expense of the major parties—following 2016.



Colorado Registered Voters By Party



Would ending closed primaries create better incentives for bipartisan governing?

One of the difficult questions to answer about the effects of opening primaries in Pennsylvania is whether it would result in more moderate candidates. [Research in 2020 done by Christian Grose](#), Associate Professor of Political Science and Public Policy at the University of Southern California, suggests that in fact it would.

Grose examined members of Congress between 2003 and 2018 and concluded that opening primaries, or even switching to semi-closed primaries, would have a significant impact on legislators voting in a more moderate manner. This is particularly true for newly elected legislators (about 9% more moderate), who are not otherwise constrained by past votes and statements, but also holds true for incumbents (about 4% more moderate). In states with top-two primary systems, these effects were amplified even further - 6 to 18% more moderate depending on incumbency.

Conclusion

Independents account for 1.1 million of Pennsylvania's registered voters. Repealing closed primaries and giving all Pennsylvania voters a ballot for every election can enfranchise a significant portion of the electorate. Given that all voters help pay for



primaries, it seems only fair that voters should be allowed to participate. In addition, bringing these voters to primary elections would also increase voter choice and healthy competition in primary elections, where about 90% of all legislative elections are now decided. [Research](#) suggests that bringing 1.1 million less-partisan voters to primary elections could also help moderate the candidate selection process and make it more difficult for extreme candidates to clear the primary hurdle.

Independent voters are concentrated in areas experiencing population growth—the Southeast, South Central, Lehigh Valley, and Northeast—some of which also either already have higher Hispanic and Asian populations or are seeing growth in these populations. Independent registration is also notably higher in some urban areas and college towns. Independent voters are not exclusively represented by a particular race, age range, or gender, but they are younger, more male, concentrated among communities of color, and are politically and ideologically moderate than partisan voters.

We can speculate as to why the ranks of independent voters are growing based on our understanding of Pennsylvania's demographics and national political trends. This is an area that could be emphasized in future focus groups and conversations with independent voters. Collecting the stories of “why” Pennsylvanians choose to register as independent would also be insightful.

Looking at what has happened in other states that have changed their primary systems, we can project that total voter registration would grow in Pennsylvania if primary elections were to be open to independent voters. It’s difficult to say what effect or how fast this would have on Republican and Democratic registrations as much depends on how either party embraces the change.

Ending closed primary elections would almost certainly introduce several hundred thousand new voters to the statewide primary electorate, and based on survey results both parties should expect to gain equally. Doing so would likely increase voter participation in Latino communities and other communities of color – some of the [fastest growing](#)⁴⁸ and [most under-represented communities](#)⁴⁹ in Pennsylvania. It would also likely have a moderating effect on elections in Pennsylvania.



Appendix

**Table 1: Voter Registration by County as of 1/2023, Pennsylvania Department of State
Voter Registration Report**

County	Total Voters	Count of Republican Voters		Count of Democratic Voters		Count of Independent Voters	
ADAMS	72,688	41,411	57%	19,589	27%	11,688	16%
ALLEGHENY	939,521	264,239	28%	534,277	57%	131,718	13%
ARMSTRONG	42,985	24,512	60%	11,844	28%	4,187	10%
BEAVER	113,916	48,027	42%	50,238	44%	15,651	14%
BEDFORD	33,035	23,769	72%	6,178	19%	3,088	9%
BERKS	267,304	110,705	41%	112,723	42%	43,876	14%
BLAIR	78,264	47,874	61%	20,554	26%	9,836	13%
BRADFORD	37,752	24,100	64%	8,631	23%	5,021	13%
BUCKS	481,781	196,486	41%	204,166	42%	81,129	15%
BUTLER	137,353	77,651	57%	40,374	29%	19,328	14%
CAMBRIA	86,221	42,613	49%	34,247	40%	9,361	11%
CAMERON	3,004	1,812	60%	818	27%	374	12%
CARBON	44,306	21,820	49%	15,554	35%	6,932	16%
CENTRE	107,542	42,676	40%	45,431	42%	19,435	18%
CHESTER	382,322	152,506	40%	160,330	42%	69,486	16%
CLARION	23,629	14,842	63%	6,084	26%	2,703	11%
CLEARFIELD	47,399	28,749	61%	13,351	28%	5,299	11%
CLINTON	21,993	12,171	55%	6,942	32%	2,880	13%
COLUMBIA	39,251	20,510	52%	12,743	32%	5,998	15%
CRAWFORD	52,923	30,310	57%	16,089	30%	6,524	12%
CUMBERLAND	186,518	90,980	49%	64,336	34%	31,202	15%
DAUPHIN	189,133	73,490	39%	85,278	45%	30,365	14%
DELAWARE	415,311	150,544	36%	207,247	50%	57,520	12%
ELK	20,257	11,159	55%	6,751	33%	2,347	12%
ERIE	178,776	68,479	38%	84,397	47%	25,900	14%
FAYETTE	79,539	36,200	46%	35,238	44%	8,101	10%



FOREST	3,343	1,981	59%	981	29%	381	11%
FRANKLIN	99,947	61,314	61%	23,981	24%	14,652	15%
FULTON	9,144	6,662	73%	1,595	17%	887	10%
GREENE	22,099	11,017	50%	8,888	40%	2,194	10%
HUNTINGDON	28,435	18,427	65%	7,056	25%	2,952	10%
INDIANA	43,907	25,088	57%	14,043	32%	4,776	11%
JEFFERSON	28,148	18,738	67%	6,338	23%	3,072	11%
JUNIATA	13,798	9,543	69%	2,868	21%	1,387	10%
LACKAWANNA	141,607	46,370	33%	78,964	56%	16,273	11%
LANCASTER	353,395	179,587	51%	115,036	33%	58,772	15%
LAWRENCE	56,512	27,584	49%	22,118	39%	6,810	12%
LEBANON	91,508	50,471	55%	26,696	29%	14,341	16%
LEHIGH	246,245	84,541	34%	115,351	47%	46,353	16%
LUZERNE	204,559	84,249	41%	93,204	46%	27,106	11%
LYCOMING	70,025	41,858	60%	18,894	27%	9,273	13%
MCKEAN	25,119	15,568	62%	5,960	24%	3,591	14%
MERCER	72,344	35,988	50%	26,597	37%	9,759	13%
MIFFLIN	26,674	17,667	66%	6,000	22%	3,007	11%
MONROE	114,318	39,896	35%	51,421	45%	23,001	20%
MONTGOMERY	607,742	205,607	34%	305,038	50%	97,097	14%
MONTOUR	12,338	6,391	52%	4,038	33%	1,909	15%
NORTHAMPTON	225,434	81,922	36%	99,501	44%	44,011	18%
NORTHUMBERLAND	58,633	31,699	54%	18,483	32%	8,451	14%
PERRY	29,908	19,877	66%	6,261	21%	3,770	13%
PHILADELPHIA	1,072,133	120,937	11%	807,916	75%	126,097	11%
PIKE	44,698	20,777	46%	14,291	32%	9,630	22%
POTTER	10,993	7,697	70%	2,043	19%	1253	11%
SCHUYLKILL	88,705	48,981	55%	28,057	32%	11,667	13%
SNYDER	22,735	15,070	66%	4,911	22%	2,754	12%
SOMERSET	48,789	31,452	64%	12,418	25%	4,919	10%
SULLIVAN	4,409	2,692	61%	1,218	28%	499	11%



SUSQUEHANNA	26,931	16,460	61%	6,856	25%	3,615	13%
TIOGA	26,264	17,318	66%	5,500	21%	3,446	13%
UNION	26,272	13,999	53%	7,896	30%	4,377	17%
VENANGO	32,592	19,242	59%	9,038	28%	4,312	13%
WARREN	26,600	15,044	57%	7,489	28%	4,067	15%
WASHINGTON	144,560	67,900	47%	58,627	41%	18,033	12%
WAYNE	34,629	19,883	57%	9,196	27%	5,550	16%
WESTMORELAND	248,460	122,519	49%	95,326	38%	30,615	11%
WYOMING	17,627	10,607	60%	4,957	28%	2,063	12%
YORK	311,946	160,914	52%	99,226	32%	51,806	15%

Table 2: Change in Voter Registration from Major Party to Other in PA 2012-2022, Pennsylvania Department of State Voter Registration Report

	Cumulative Total Nov 2012 - Nov 2022			Party losing most voters '12-'22
COUNTY	Dem to Other	Rep to Other	% of total voters to Other	
ADAMS	1,198	1,431	3.62%	Reps
ALLEGHENY	27,106	16,473	4.64%	Dems
ARMSTRONG	770	718	3.46%	Dems
BEAVER	3,024	2,028	4.43%	Dems
BEDFORD	346	480	2.50%	Reps
BERKS	8,802	5,551	5.37%	Dems
BLAIR	1,448	1,448	3.70%	Both
BRADFORD	575	772	3.57%	Dems
BUCKS	12,347	11,588	4.97%	Dems
BUTLER	2,363	2,855	3.80%	Reps
CAMBRIA	1,937	1,181	3.62%	Dems
CAMERON	72	67	4.63%	Dems
CARBON	1,084	775	4.20%	Dems
CENTRE	2,519	2,453	4.62%	Dems
CHESTER	8,795	10,417	5.03%	Reps
CLARION	424	420	3.57%	Dems



CLEARFIELD	961	793	3.70%	Dems
CLINTON	402	347	3.41%	Dems
COLUMBIA	835	693	3.89%	Dems
CRAWFORD	999	930	3.64%	Dems
CUMBERLAND	3,723	4,639	4.48%	Reps
DAUPHIN	5,363	4,036	4.97%	Dems
DELAWARE	9,505	7,650	4.13%	Dems
ELK	378	231	3.01%	Dems
ERIE	5,003	3,518	4.77%	Dems
FAYETTE	2,102	1,028	3.94%	Dems
FOREST	63	49	3.35%	Dems
FRANKLIN	1,575	2,104	3.68%	Reps
FULTON	99	130	2.50%	Reps
GREENE	433	269	3.18%	Dems
HUNTINGDON	320	363	2.40%	Reps
INDIANA	887	790	3.82%	Dems
JEFFERSON	428	445	3.10%	Reps
JUNIATA	189	208	2.88%	Reps
LACKAWANNA	3,649	2,006	3.99%	Dems
LANCASTER	7,986	9,008	4.81%	Reps
LAWRENCE	1,181	841	3.58%	Dems
LEBANON	2,056	1,976	4.41%	Dems
LEHIGH	8,732	5,133	5.63%	Dems
LUZERNE	4,998	3,010	3.91%	Dems
LYCOMING	1,577	1,605	4.54%	Reps
MCKEAN	424	453	3.49%	Reps
MERCER	1,961	1,456	4.72%	Dems
MIFFLIN	389	393	2.93%	Reps
MONROE	3,440	2,441	5.14%	Dems
MONTGOMERY	14,740	13,690	4.68%	Dems
MONTOUR	176	151	2.65%	Dems
NORTHAMPTON	6,046	4,412	4.64%	Dems
NORTH- UMBERLAND	905	871	3.03%	Dems



PERRY	498	675	3.92%	Reps
PHILADELPHIA	38,933	9,818	4.55%	Dems
PIKE	842	949	4.01%	Reps
POTTER	172	209	3.47%	Reps
SCHUYLKILL	1,790	1,734	3.97%	Dems
SNYDER	311	381	3.04%	Reps
SOMERSET	759	691	2.97%	Dems
SULLIVAN	66	75	3.20%	Reps
SUSQUEHANNA	381	413	2.95%	Reps
TIOGA	367	496	3.29%	Reps
UNION	443	539	3.74%	Reps
VENANGO	703	668	4.21%	Dems
WARREN	564	566	4.25%	Reps
WASHINGTON	2,540	2,161	3.25%	Dems
WAYNE	592	721	3.79%	Reps
WESTMORELAND	5,604	4,575	4.10%	Dems
WYOMING	315	316	3.58%	Reps
YORK	7,070	7,126	4.55%	Reps
Totals:	226,285	166,439	4.43%	Dems

Table 3: All PA State Senate Districts by Party Registration 2023, Pennsylvania
Department of State Voter Registration Report

District Number	Incumbent	P	# of Dem voters	# of Rep voters	# of Other voters	# of Total Voters	% Dem voters	% Rep voters	% None and Other voters
SD-1	Nikil Saval	D	135684	24388	30328	190400	71%	13%	16%
SD-2	Christine Tartaglione	D	101356	18714	21505	141575	72%	13%	15%
SD-3	Sharif Street	D	141917	9399	22020	173336	82%	5%	13%
SD-4	Art Haywood	D	153156	25066	22102	200324	76%	13%	11%
SD-5	Jimmy Dillon	D	86674	42285	20686	149645	58%	28%	14%
SD-6	Frank Farry	R	82157	84154	30410	196721	42%	43%	15%
SD-7	Vincent Hughes	D	148473	19476	25233	193182	77%	10%	13%
SD-8	Anthony Williams	D	140178	19793	21923	181894	77%	11%	12%
SD-9	John Kane	D	80786	75479	29358	185623	44%	41%	16%



SD-10	Steve Santarsiero	D	94907	73862	37281	206050	46%	36%	18%
SD-11	Judy Schwank	D	76398	51544	26932	154874	49%	33%	17%
SD-12	Maria Collett	D	88088	71052	30771	189911	46%	37%	16%
SD-13	Scott Martin	R	56882	74922	27284	159088	36%	47%	17%
SD-14	Nick Miller	D	83078	53785	32386	169249	49%	32%	19%
SD-15	John DiSanto	R	81929	62468	28461	172858	47%	36%	16%
SD-16	Jarrett Coleman	R	70766	88457	33600	192823	37%	46%	17%
SD-17	Amanda Cappelletti	D	102159	50741	29450	182350	56%	28%	16%
SD-18	Lisa Boscola	D	88049	62669	37790	188508	47%	33%	20%
SD-19	Carolyn Comitta	D	79007	69477	32462	180946	44%	38%	18%
SD-20	Lisa Baker	R	67314	93222	28653	189189	36%	49%	15%
SD-21	Scott Hutchinson	R	47780	99032	22567	169379	28%	58%	13%
SD-22	Martin Flynn	D	88921	49038	19328	157287	57%	31%	12%
SD-23	Gene Yaw	R	42138	99963	22615	164716	26%	61%	14%
SD-24	Tracy Pennycuick	R	72124	80138	30274	182536	40%	44%	17%
SD-25	Cris Dush	R	57353	90301	26027	173681	33%	52%	15%
SD-26	Timothy Kearney	D	88813	68851	23978	181642	49%	38%	13%
SD-27	Linda Schlegel Culver	R	51395	92436	23467	167298	31%	55%	14%
SD-28	Kristin Phillips-Hill	R	52994	99798	29504	182296	29%	55%	16%
SD-29	David Argall	R	56554	82377	23054	161985	35%	51%	14%
SD-30	Judith Ward	R	38071	100173	18067	156311	24%	64%	12%
SD-31	Mike Regan	R	62992	82817	29944	175753	36%	47%	17%
SD-32	Patrick Stefano	R	54938	92816	16435	164189	33%	57%	10%
SD-33	Doug Mastriano	R	43570	102725	26340	172635	25%	60%	15%
SD-34	Greg Rothman	R	57177	100175	29229	186581	31%	54%	16%
SD-35	Wayne Langerholc	R	62086	83799	20463	166348	37%	50%	12%
SD-36	Ryan Aument	R	56617	96838	29827	183282	31%	53%	16%
SD-37	Devlin Robinson	R	80655	76022	28130	184807	44%	41%	15%
SD-38	Lindsey Williams	D	96406	67098	27996	191500	50%	35%	15%
SD-39	Kim Ward	R	70583	92961	22636	186180	38%	50%	12%
SD-40	Rosemary Brown	R	78471	65635	30444	174550	45%	38%	17%
SD-41	Joe Pittman	R	52263	86212	18492	156967	33%	55%	12%
SD-42	Wayne Fontana	D	115404	41143	29050	185597	62%	22%	16%
SD-43	Jay Costa	D	141378	28709	32058	202145	70%	14%	16%
SD-44	Katie Muth	D	76530	76134	34111	186775	41%	41%	18%
SD-45	James Brewster	D	100430	51267	23770	175467	57%	29%	14%



SD-46	Camera Bartolotta	R	68728	81177	20755	170660	40%	48%	12%
SD-47	Elder Vogel	R	70810	83684	25523	180017	39%	46%	14%
SD-48	Chris Gebhard	R	50063	96045	26103	172211	29%	56%	15%
SD-49	Daniel Laughlin	R	82697	65487	25081	173265	48%	38%	14%
SD-50	Michele Brooks	R	60890	88681	21729	171300	36%	52%	13%

Table 4: All PA House Districts by Party Registration 2023, Pennsylvania Department of State Voter Registration Report

District Number	Incumbent	P	# of Dem voters	# of Rep voters	# of Other voters	# of Total Voters	% Dem voters	% Rep voters	% Other voters
HD-1	Patrick Harkins	D	22,790	9,346	6,330	38,466	59%	24%	16%
HD-2	Robert Merski	D	22,625	14,509	6,114	43,248	52%	34%	14%
HD-3	Ryan Bizzarro	D	21,853	20,077	6,271	48,201	45%	42%	13%
HD-4	Jake Banta	R	15,085	21,653	6,340	43,078	35%	50%	15%
HD-5	Barry Jozwiak	R	14,312	22,703	6,172	43,187	33%	53%	14%
HD-6	Bradley Roae	R	13,675	22,714	5,315	41,704	33%	54%	13%
HD-7	Parke Wentling	R	19,764	18,393	6,105	44,262	45%	42%	14%
HD-8	Aaron Bernstine	R	13,544	27,781	5,890	47,215	29%	59%	12%
HD-9	Marla Gallo Brown	R	17,063	19,214	4,907	41,184	41%	47%	12%
HD-10	Amen Brown	D	34,177	2,348	5,874	42,399	81%	6%	14%
HD-11	Marci Mustello	R	13,224	24,261	5,810	43,295	31%	56%	13%
HD-12	Stephenie Scialabba	R	15,109	26,689	7,719	49,517	31%	54%	16%
HD-13	John Lawrence	R	16,285	19,907	7,895	44,087	37%	45%	18%
HD-14	Jim Marshall	R	17,628	20,673	6,200	44,501	40%	46%	14%
HD-15	Joshua Kail	R	17,464	22,376	5,850	45,690	38%	49%	13%
HD-16	Robert Matzie	D	22,801	14,623	6,034	43,458	52%	34%	14%
HD-17	Timothy Bonner	R	10,383	24,883	5,463	40,729	25%	61%	13%
HD-18	K.C. Tomlinson	R	20,046	16,359	6,746	43,151	46%	38%	16%
HD-19	Aerion Abney	D	32,254	5,200	7,426	44,880	72%	12%	17%
HD-20	Emily Kinkoad	D	24,716	13,790	6,808	45,314	55%	30%	15%
HD-21	Sara Innamorato	D	29,373	12,861	7,561	49,795	59%	26%	15%
HD-22	Joshua Siegel	D	18,494	5,620	7,418	31,532	59%	18%	24%
HD-23	Dan Frankel	D	36,961	5,927	9,898	52,786	70%	11%	19%
HD-24	Latasha Mayes	D	39,715	3,847	7,641	51,203	78%	8%	15%
HD-25	Brandon Markosek	D	25,489	14,412	6,504	46,405	55%	31%	14%
HD-26	Paul Friel	D	19,301	18,222	8,133	45,656	42%	40%	18%
HD-27	Daniel Deasy Jr.	D	25,193	11,741	6,723	43,657	58%	27%	15%
HD-28	Rob Mercuri	R	17,814	22,328	7,594	47,736	37%	47%	16%



HD-29	Tim Brennan	D	22,798	21,246	9,900	53,944	42%	39%	18%
HD-30	Arvind Venkat	D	20,615	19,824	7,863	48,302	43%	41%	16%
HD-31	Perry Warren	D	23,954	21,453	11,189	56,596	42%	38%	20%
HD-32	Joe McAndrew	D	29,132	12,717	6,262	48,111	61%	26%	13%
HD-33	Mandy Steele	D	22,209	16,214	6,652	45,075	49%	36%	15%
HD-34	Abigail Salisbury	D	37,725	6,593	7,048	51,366	73%	13%	14%
HD-35	Matthew Gergely	D	28,765	10,074	5,836	44,675	64%	23%	13%
HD-36	Jessica Benham	D	27,451	8,958	7,251	43,660	63%	21%	17%
HD-37	Mindy Fee	R	11,869	27,041	7,047	45,957	26%	59%	15%
HD-38	Nick Pisciotto Jr.	D	25,804	13,233	5,964	45,001	57%	29%	13%
HD-39	Andrew Kuzma	R	21,055	20,264	5,839	47,158	45%	43%	12%
HD-40	Natalie Mihalek	R	20,039	24,262	7,060	51,361	39%	47%	14%
HD-41	Brett Miller	R	16,145	20,179	7,690	44,014	37%	46%	17%
HD-42	Dan Miller	D	26,671	15,773	7,865	50,309	53%	31%	16%
HD-43	Keith Greiner	R	8,823	21,934	5,918	36,675	24%	60%	16%
HD-44	Valerie Gaydos	R	20,454	20,073	7,684	48,211	42%	42%	16%
HD-45	Anita Astorino Kulik	D	26,365	14,764	6,812	47,941	55%	31%	14%
HD-46	Jason Ortitay	R	20,007	21,242	6,585	47,834	42%	44%	14%
HD-47	Joe D'Orsie	R	14,637	22,398	7,016	44,051	33%	51%	16%
HD-48	Timothy O'Neal	R	20,993	9,702	8,296	38,991	54%	25%	21%
HD-49	Ismail Smith-Wade-El	D	17,855	20,678	5,518	44,663	40%	46%	12%
HD-50	Bud Cook	R	20,482	8,619	8,037	37,138	55%	23%	22%
HD-51	Charity Grimm Krupa	R	20,993	9,702	8,296	38,991	54%	25%	21%
HD-52	Ryan Warner	R	17,855	18,734	4,402	40,991	44%	46%	11%
HD-53	Steven Malagari	D	18,734	17,556	4,302	40,592	46%	43%	11%
HD-54	Greg Scott	D	16,504	18,644	3,799	38,947	42%	48%	10%
HD-55	Jill Cooper	R	19,472	15,431	7,403	42,306	46%	36%	17%
HD-56	George Dunbar	R	21,587	9,081	5,829	36,497	59%	25%	16%
HD-57	Eric Nelson	R	18,163	22,991	6,176	47,330	38%	49%	13%
HD-58	Eric Davanzo	R	17,799	23,298	5,792	46,889	38%	50%	12%
HD-59	Leslie Baum Rossi	R	18,129	22,467	5,969	46,565	39%	48%	13%
HD-60	Abby Major	R	18,052	20,954	4,895	43,901	41%	48%	11%
HD-61	Liz Hanbidge	D	16,074	24,893	5,519	46,486	35%	54%	12%
HD-62	James Struzzi II	R	15,107	22,264	5,274	42,645	35%	52%	12%
HD-63	Donna Oberlander	R	22,334	18,324	7,696	48,354	46%	38%	16%
HD-64	R. Lee James	R	12,059	18,880	3,984	34,923	35%	54%	11%
HD-65	Kathy Rapp	R	10,231	26,377	4,636	41,244	25%	64%	11%
HD-66	Brian Smith	R	10,712	23,267	5,149	39,128	27%	59%	13%
HD-67	Martin Causer	R	8,819	25,076	5,218	39,113	23%	64%	13%



HD-68	Clint Owlett	R	8,290	26,972	5,144	40,406	21%	67%	13%
HD-69	Carl Metzgar	R	10,367	28,398	4,264	43,029	24%	66%	10%
HD-70	Matthew Bradford	D	21,275	18,959	7,865	48,099	44%	39%	16%
HD-71	James Rigby	R	14,468	21,816	4,317	40,601	36%	54%	11%
HD-72	Frank Burns	D	18,192	18,807	4,728	41,727	44%	45%	11%
HD-73	Dallas Kephart	R	11,482	21,280	3,983	36,745	31%	58%	11%
HD-74	Dan Williams	D	18,799	14,901	6,849	40,549	46%	37%	17%
HD-75	Mike Armanini	R	12,257	23,671	4,634	40,562	30%	58%	11%
HD-76	Stephanie Borowicz	R	11,246	20,965	5,545	37,756	30%	56%	15%
HD-77	H. Scott Conklin	D	19,576	14,528	7,886	41,990	47%	35%	19%
HD-78	Jesse Topper	R	7,771	30,430	3,975	42,176	18%	72%	9%
HD-79	Louis Schmitt Jr.	R	12,182	20,882	5,462	38,526	32%	54%	14%
HD-80	James Gregory	R	8,716	28,283	4,587	41,586	21%	68%	11%
HD-81	Richard Irvin	R	9,779	26,996	4,550	41,325	24%	65%	11%
HD-82	Paul Takac	D	18,795	16,674	8,351	43,820	43%	38%	19%
HD-83	Jamie Flick	R	11,411	18,314	5,153	34,878	33%	53%	15%
HD-84	Joe Hamm	R	9,362	28,500	5,069	42,931	22%	66%	12%
HD-85	David Rowe	R	10,248	25,576	5,211	41,035	25%	62%	13%
HD-86	Perry Stambaugh	R	8,572	27,046	4,834	40,452	21%	67%	12%
HD-87	Thomas Kutz	R	15,351	25,384	7,853	48,588	32%	52%	16%
HD-88	Sheryl Delozier	R	17,228	22,206	8,141	47,575	36%	47%	17%
HD-89	Rob Kauffman	R	11,820	24,388	6,389	42,597	28%	57%	15%
HD-90	Paul Schemel	R	9,092	27,066	6,451	42,609	21%	64%	15%
HD-91	Dan Moul	R	13,424	25,769	7,942	47,135	28%	55%	17%
HD-92	Dawn Keefer	R	12,087	28,329	7,137	47,553	25%	60%	15%
HD-93	Mike Jones	R	14,262	25,892	7,779	47,933	30%	54%	16%
HD-94	Wendy Flnk	R	11,933	24,080	6,737	42,750	28%	56%	16%
HD-95	Carol Hill-Evans	D	20,849	9,402	8,504	38,755	54%	24%	22%
HD-96	P. Michael Sturla	D	22,028	16,099	8,436	46,563	47%	35%	18%
HD-97	Steven Mentzer	R	14,116	24,885	7,458	46,459	30%	54%	16%
HD-98	Tom Jones	R	12,753	26,106	6,973	45,832	28%	57%	15%
HD-99	David H. Zimmerman	R	9,004	23,545	5,469	38,018	24%	62%	14%
HD-100	Bryan Cutler	R	6,169	22,263	4,826	33,258	19%	67%	15%
HD-101	John Schlegel	R	14,554	19,300	7,317	41,171	35%	47%	18%
HD-102	Russell Diamond	R	9,705	25,966	5,707	41,378	23%	63%	14%
HD-103	Patty Kim	D	23,795	13,916	7,866	45,577	52%	31%	17%
HD-104	Dave Madsen	D	21,309	9,604	6,610	37,523	57%	26%	18%
HD-105	Justin Fleming	D	22,016	13,681	6,742	42,439	52%	32%	16%



HD-106	Thomas Mehaffie	R	15,903	22,470	7,747	46,120	34%	49%	17%
HD-107	Joanne Stehr	R	12,970	23,597	5,356	41,923	31%	56%	13%
HD-108	Vacant		12,608	23,916	6,642	43,166	29%	55%	15%
HD-109	Robert Leadbeter	R	12,743	20,510	5,998	39,251	32%	52%	15%
HD-110	Tina Pickett	R	10,798	25,049	5,386	41,233	26%	61%	13%
HD-111	Jonathan Fritz	R	11,372	26,645	6,214	44,231	26%	60%	14%
HD-112	Kyle Mullins	D	25,904	13,015	4,304	43,223	60%	30%	10%
HD-113	Kyle Donahue	D	20,089	11,342	4,997	36,428	55%	31%	14%
HD-114	Bridget Malloy Kosierowski	D	22,795	14,116	4,828	41,739	55%	34%	12%
HD-115	Maureen Madden	D	20,221	13,063	8,537	41,821	48%	31%	20%
HD-116	Dane Watro	R	13,514	12,636	4,670	30,820	44%	41%	15%
HD-117	Mike Cabell	R	13,494	24,515	5,480	43,489	31%	56%	13%
HD-118	Jim Haddock	D	23,281	16,208	4,624	44,113	53%	37%	10%
HD-119	Alec Ryncavage	R	18,902	15,379	5,364	39,645	48%	39%	14%
HD-120	Aaron Kaufer	R	19,141	18,640	5,456	43,237	44%	43%	13%
HD-121	Eddie Day Pashinski	D	18,817	10,022	5,108	33,947	55%	30%	15%
HD-122	Doyle Heffley	R	15,554	21,820	6,932	44,306	35%	49%	16%
HD-123	Tim Twardzik	R	15,243	20,502	5,464	41,209	37%	50%	13%
HD-124	Jamie Barton	R	12,172	23,485	5,980	41,637	29%	56%	14%
HD-125	Joe Kerwin	R	12,963	25,499	5,934	44,396	29%	57%	13%
HD-126	Mark Rozzi	D	19,351	10,587	6,336	36,274	53%	29%	17%
HD-127	Manuel Guzman	D	18,229	6,122	6,373	30,724	59%	20%	21%
HD-128	Mark Gillen	R	15,754	21,641	7,027	44,422	35%	49%	16%
HD-129	Johanny Cepeda-Freytiz	D	19,808	11,350	6,509	37,667	53%	30%	17%
HD-130	David Maloney	R	15,142	22,727	6,816	44,685	34%	51%	15%
HD-131	Milou Mackenzie	R	17,162	22,486	8,205	47,853	36%	47%	17%
HD-132	Michael Schlossberg	D	22,356	15,307	8,570	46,233	48%	33%	19%
HD-133	Jeanne McNeill	D	22,286	12,763	7,527	42,576	52%	30%	18%
HD-134	Peter Schweyer	D	20,424	9,788	7,616	37,828	54%	26%	20%
HD-135	Steve Samuelson	D	25,751	11,552	9,568	46,871	55%	25%	20%
HD-136	Robert Freeman	D	21,279	12,129	8,781	42,189	50%	29%	21%
HD-137	Joe Emrick	R	20,545	18,553	9,430	48,528	42%	38%	19%
HD-138	Ann Flood	R	17,397	22,838	9,655	49,890	35%	46%	19%
HD-139	Joseph Adams	R	13,640	25,335	9,485	48,460	28%	52%	20%
HD-140	John Galloway	D	21,451	13,483	7,285	42,219	51%	32%	17%
HD-141	Tina Davis	D	23,878	12,646	6,993	43,517	55%	29%	16%
HD-142	Joseph Hogan	R	20,323	19,860	7,637	47,820	42%	42%	16%



HD-143	Shelby Labs	R	17,819	23,740	8,657	50,216	35%	47%	17%
HD-144	Brian Munroe	D	19,636	20,644	7,295	47,575	41%	43%	15%
HD-145	Craig Staats	R	15,413	22,244	7,739	45,396	34%	49%	17%
HD-146	Joseph Ciresi	D	20,050	15,835	7,701	43,586	46%	36%	18%
HD-147	Donna Scheuren	R	16,399	23,000	7,620	47,019	35%	49%	16%
HD-148	Mary Jo Daley	D	30,158	11,829	7,176	49,163	61%	24%	15%
HD-149	Tim Briggs	D	25,509	12,757	8,110	46,376	55%	28%	17%
HD-150	Joseph Webster	D	19,452	17,244	7,954	44,650	44%	39%	18%
HD-151	Melissa Cerrato	D	23,003	17,212	7,782	47,997	48%	36%	16%
HD-152	Nancy Guenst	D	21,506	15,007	6,646	43,159	50%	35%	15%
HD-153	Ben Sanchez	D	25,613	14,027	6,485	46,125	56%	30%	14%
HD-154	Napoleon Nelson	D	32,922	8,499	6,025	47,446	69%	18%	13%
HD-155	Danielle Friel Otten	D	19,461	18,703	8,985	47,149	41%	40%	19%
HD-156	Christopher Pielli	D	20,264	18,259	8,074	46,597	43%	39%	17%
HD-157	Melissa Shusterman	D	20,763	18,614	9,058	48,435	43%	38%	19%
HD-158	Christina Sappey	D	18,874	17,789	8,444	45,107	42%	39%	19%
HD-159	Carol Kazeem	D	24,164	12,921	5,801	42,886	56%	30%	14%
HD-160	Craig Williams	R	18,150	24,025	8,500	50,675	36%	47%	17%
HD-161	Leanne Krueger-Braneky	D	20,228	20,466	6,632	47,326	43%	43%	14%
HD-162	David Delloso	D	21,164	18,795	5,671	45,630	46%	41%	12%
HD-163	Vacant		23,323	15,435	5,777	44,535	52%	35%	13%
HD-164	Gina Curry	D	26,829	6,035	5,080	37,944	71%	16%	13%
HD-165	Jennifer O'Mara	D	22,036	20,947	6,503	49,486	45%	42%	13%
HD-166	Gregory Vitali	D	23,651	18,394	6,632	48,677	49%	38%	14%
HD-167	Kristine Howard	D	19,838	18,020	8,858	46,716	42%	39%	19%
HD-168	Lisa Borowski	D	19,764	18,932	8,109	46,805	42%	40%	17%
HD-169	Kate Klunk	R	12,157	25,703	7,827	45,687	27%	56%	17%
HD-170	Martina White	R	19,372	12,894	5,156	37,422	52%	34%	14%
HD-171	Kerry Benninghoff	R	11,205	23,949	5,330	40,484	28%	59%	13%
HD-172	Kevin Boyle	D	20,333	10,382	5,081	35,796	57%	29%	14%
HD-173	Patrick Gallagher	D	20,593	8,592	4,227	33,412	62%	26%	13%
HD-174	Ed Neilson	D	20,945	9,286	5,055	35,286	59%	26%	14%
HD-175	Mary Isaacson	D	34,602	5,967	8,518	49,087	70%	12%	17%
HD-176	Jack Rader	R	16,664	18,953	8,784	44,401	38%	43%	20%
HD-177	Joseph Hohenstein	D	25,482	8,245	5,511	39,238	65%	21%	14%
HD-178	Kristin Marcell	R	18,837	24,807	7,686	51,330	37%	48%	15%
HD-179	Jason Dawkins	D	26,518	2,777	5,021	34,316	77%	8%	15%
HD-180	Jose Giral	D	26,708	3,522	6,217	36,447	73%	10%	17%



HD-181	Malcolm Kenyatta	D	31,936	2,686	6,199	40,821	78%	7%	15%
HD-182	Benjamin Waxman	D	41,090	5,631	9,254	55,975	73%	10%	17%
HD-183	Zachary Mako	R	17,347	21,975	8,099	47,421	37%	46%	17%
HD-184	Elizabeth Fiedler	D	28,360	6,640	5,473	40,473	70%	16%	14%
HD-185	Regina Young	D	29,068	7,739	4,631	41,438	70%	19%	11%
HD-186	Jordan Harris	D	37,502	3,638	6,417	47,557	79%	8%	13%
HD-187	Ryan Mackenzie	R	17,503	21,832	8,270	47,605	37%	46%	17%
HD-188	Rick Krajewski	D	38,547	2,277	7,340	48,164	80%	5%	15%
HD-189	Tarah Probst	R	19,863	13,020	8,776	41,659	48%	31%	21%
HD-190	G. Roni Green	D	40,469	1,942	4,911	47,322	86%	4%	10%
HD-191	Joanna McClinton	D	36,203	1,889	4,244	42,336	86%	4%	10%
HD-192	Morgan Cephas	D	37,736	1,736	4,536	44,008	86%	4%	10%
HD-193	Torren Ecker	R	10,924	24,886	6,570	42,380	26%	59%	16%
HD-194	Tarik Khan	D	32,804	7,467	7,364	47,635	69%	16%	15%
HD-195	Donna Bullock	D	37,596	2,625	5,864	46,085	82%	6%	13%
HD-196	Seth Grove	R	13,298	25,110	6,805	45,213	29%	56%	15%
HD-197	Danilo Burgos	D	32,217	2,581	6,023	40,821	79%	6%	15%
HD-198	Darisha Parker	D	37,254	1,801	4,466	43,521	86%	4%	10%
HD-199	Barbara Gleim	R	16,284	22,463	7,846	46,593	35%	48%	17%
HD-200	Christopher Rabb	D	46,191	1,452	4,175	51,818	89%	3%	8%
HD-201	Stephen Kinsey	D	40,906	1,607	4,734	47,247	87%	3%	10%
HD-202	Jared Solomon	D	18,607	4,243	4,329	27,179	68%	16%	16%
HD-203	Anthony Bellmon	D	27,333	3,652	4,654	35,639	77%	10%	13%

Table 5: Historic Other Party Registration as a Percentage of PA Voters, All Counties, Pennsylvania Department of State Voter Registration Statistics

	2000	2012	2016	2022	Increase, 2000-2022
ADAMS	12%	15%	16%	16%	34%
ALLEGHENY	9%	13%	14%	14%	67%
ARMSTRONG	8%	10%	11%	12%	22%
BEAVER	9%	11%	12%	13%	53%
BEDFORD	7%	9%	10%	10%	34%
BERKS	13%	15%	15%	16%	26%
BLAIR	10%	12%	12%	12%	26%
BRADFORD	10%	13%	13%	13%	33%
BUCKS	14%	16%	16%	17%	20%
BUTLER	11%	13%	14%	14%	28%
CAMBRIA	6%	9%	10%	11%	81%



CAMERON	7%	11%	11%	13%	78%
CARBON	10%	13%	15%	16%	56%
CENTRE	17%	21%	20%	18%	6%
CHESTER	16%	17%	18%	18%	14%
CLARION	7%	10%	11%	11%	63%
CLEARFIELD	8%	11%	12%	12%	40%
CLINTON	9%	13%	13%	13%	46%
COLUMBIA	11%	15%	15%	15%	39%
CRAWFORD	8%	11%	12%	12%	54%
CUMBERLAND	12%	15%	16%	16%	39%
DAUPHIN	11%	13%	14%	15%	46%
DELAWARE	10%	12%	13%	13%	38%
ELK	9%	10%	11%	12%	29%
ERIE	9%	12%	13%	14%	61%
FAYETTE	6%	8%	9%	10%	70%
FOREST	6%	8%	9%	11%	90%
FRANKLIN	11%	14%	14%	15%	33%
FULTON	6%	10%	10%	10%	62%
GREENE	5%	8%	9%	10%	99%
HUNTINGDON	9%	10%	10%	10%	15%
INDIANA	11%	15%	14%	13%	-1%
JEFFERSON	7%	10%	11%	11%	56%
JUNIATA	7%	9%	10%	10%	44%
LACKAWANNA	6%	9%	10%	11%	92%
LANCASTER	13%	15%	16%	16%	28%
LAWRENCE	7%	10%	11%	12%	72%
LEBANON	11%	14%	14%	15%	42%
LEHIGH	13%	16%	17%	18%	45%
LUZERNE	6%	10%	11%	13%	121%
LYCOMING	9%	13%	13%	13%	47%
MCKEAN	10%	13%	14%	14%	43%
MERCER	9%	12%	13%	13%	50%
MIFFLIN	8%	10%	11%	11%	41%
MONROE	18%	20%	19%	20%	12%
MONTGOMERY	13%	15%	16%	16%	23%
MONTOUR	10%	15%	16%	16%	55%
NORTHAMPTON	14%	18%	18%	19%	39%
NORTHUMBERLAND	7%	11%	13%	14%	106%
PERRY	10%	12%	12%	13%	26%



PHILADELPHIA	7%	10%	11%	13%	91%
PIKE	17%	21%	21%	21%	27%
POTTER	7%	9%	10%	11%	63%
SCHUYLKILL	7%	10%	12%	13%	88%
SNYDER	9%	12%	13%	12%	35%
SOMERSET	6%	9%	10%	10%	68%
SULLIVAN	7%	9%	10%	11%	62%
SUSQUEHANNA	9%	12%	13%	13%	49%
TIOGA	8%	13%	13%	13%	64%
UNION	12%	17%	17%	16%	39%
VENANGO	9%	11%	12%	13%	47%
WARREN	11%	14%	15%	16%	39%
WASHINGTON	8%	11%	11%	12%	56%
WAYNE	11%	15%	16%	16%	46%
WESTMORELAND	9%	11%	12%	12%	37%
WYOMING	9%	11%	11%	12%	30%
YORK	13%	15%	16%	16%	28%



Endnotes

1. Pennsylvania Department of State (2023). Voter Registration Report. Report to the General Assembly, The Administration of Voter Registration in Pennsylvania.
2. Voter registration terminology in Pennsylvania is tricky. In this report, unless otherwise noted, the term “independent” voter refers to a registered voter who chooses “no affiliation”, “none” or “independent” when they register to vote. We estimate this total to be about 100,000 less than the 1.2 million voters DoS reports as No Affiliation and Other.
3. Pennsylvania Department of State (2020). Election Results.
4. Pennsylvania Department of State (2023). Voter Registration Report. Report to the General Assembly, The Administration of Voter Registration in Pennsylvania.
5. Pew Research Center (2020). Party Affiliation by State.
6. Pennsylvania Department of State (2023). Voter Registration Report. Report to the General Assembly, The Administration of Voter Registration in Pennsylvania.
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9. Pennsylvania Department of State (2023). Voting and Election Statistics.
10. Kelly, C. (2022). "2022 Census: Racial and Ethnic Diversity in Pennsylvania." [Pennsylvania State Data Center](#).
11. Pew Research Center (2022). Party Affiliation Among Adults in Pennsylvania.
12. Biernacka-Lievstro, J. (2022). "A Third of States Lost Population in 2021." [Pew Research Center](#)(State Fiscal Health).
13. Biernacka-Lievstro, J. (2022). "A Third of States Lost Population in 2021." [Pew Research Center](#)(State Fiscal Health).
14. Osage Research (2021). Open Primaries in PA Polling Data, conducted on behalf of the Committee of Seventy.
15. The data used to create the charts and maps is from the Pennsylvania Department of State. The Osage survey is a 2021 survey of a random sample of 120 independent voters statewide. Pew research is based on the totals of several surveys of US adults in 2018.
16. Pennsylvania Department of State (2021). Voter Registration Report. Report to the General Assembly, The Administration of Voter Registration in Pennsylvania.
17. National Conference of State Legislatures (2021). State Primary Election Types.
18. Pew Research Center (2020). Party Affiliation by State.
19. Pew Research Center (2019). Political Independents: Who They Are, What They Think.
20. Maniam, S. (2017). "US Veterans are generally supportive of Trump." [Pew Research Center](#).
21. Pew Research Center (2019). Political Independents: Who They Are, What They Think.
22. Pew Research Center (2022). Party Affiliation Among Adults in Pennsylvania.
23. Pew Research Center (2019). Political Independents: Who They Are, What They Think.
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APPENDIX “B”

Ballot PA Action Elections Report

Ballot PA Elections Report July 2025

This report represents findings researched by freelance journalist Nick Field related to Pennsylvania's state legislative races over the period of 2000 to 2025. This research concerns the competitiveness of primary and general elections, as well as partisan trends in the state's legislative districts.

This paper was commissioned by Ballot PA Action.

Findings

Only 5% (472 out of 8,992) of all state legislative elections (general elections and primary elections) in Pennsylvania from 2000 to 2025 were competitive. A 54% majority of these races (4,901 out of 8,992) were uncontested, while an additional 16% saw no candidates filing at all in a primary (1,410 out of 8,992). Another 25% of elections (2,209 out of 8,992) were landslides, classified as races where a candidate won by ten or more points.

Competitive contests were a bit more likely to occur in State Senate races than State House races. For instance, only 6% (65 out of 1,003) of Senate contests were competitive while just over 5% (407 out of 7,989) of House contests were.

Primary contests were particularly unlikely to be competitive. For instance, of the 5,928 House and Senate primaries over this period, only 191 – or a bit over 3% – of these races were competitive. Instead, most primaries were either uncontested or featured no candidate filings. 3,737, or just over 63%, of primaries were uncontested while an additional 1,410, or almost 24%, featured no filings at all.

Of the 253 State Legislative Districts in the Commonwealth of Pennsylvania, only 100 of these districts (39.53%) voted for both Democratic and Republican nominees in the general elections held from 2000 to 2025. 80 districts (31.62%) only supported Republican nominees, while 73 districts (28.85%) only supported Democratic nominees.

Conclusion

The numbers are clear: the vast majority of state legislative contests in Pennsylvania are noncompetitive, and primary elections are the least likely to be competitive. In fact, most primary and general election races are not even contested, to say nothing of those primaries where no candidate bothers to file at all.

Furthermore, 6 in 10 legislative districts have remained exclusively in the hands of either the Democratic or Republican Party throughout the 21st Century so far. As a result, most races in most districts are practically decided before voters even have their say.

Links and Appendix

If you wish to examine how a specific contest was categorized, you can consult my spreadsheets on the [State House races](#) and [State Senate elections](#) through these links.

I also compiled spreadsheets for the partisan breakdown of the [State House](#) and [State Senate](#) districts as well.

The full catalog of statistics is included as an appendix below:

State Legislative Contest Statistics

1,003 Total State Senate Contests

527 Uncontested (52.54%)

290 Landslides (28.91%)

65 Competitive (6.48%)

121 No Filings (12.06%)

650 State Senate Primary Contests

438 Uncontested (67.38%)

71 Landslides (10.92%)

20 Competitive (3.08%)

121 Primaries With No Filings (18.62%)

325 General Election Senate Contests

89 Uncontested (27.38%)

195 Landslides (60%)

41 Competitive (12.62%)

28 Special Senate Contests

24 Landslides (85.71%)

4 Competitive (14.29%)

7,989 Total State House Contests

4,374 Uncontested (54.75%)

1,919 Landslides (24.02%)

407 Competitive (5.09%)

1,289 No Filings (16.13%)

5,278 State House Primary Contests

3,299 Uncontested (62.50%)

519 Landslides (9.83%)

171 Competitive (3.24%)

1,289 Primaries With No Filings (24.42%)

2,639 General Election House Contests

1,072 Uncontested (40.62%)

1,340 Landslides (50.78%)

227 Competitive (8.60%)

72 Special House Contests

3 Uncontested (4.17%)

60 Landslides (83.33%)

9 Competitive (12.50%)

8,992 Total State Senate and House Contests

4,901 Uncontested (54.50%)

2,209 Landslides (24.57%)

472 Competitive (5.25%)

1,410 No Filings (15.68%)

5,928 Total State Senate and House Primaries

3,737 Uncontested (63.04%)

590 Landslides (9.95%)

191 Competitive (3.22%)

1,410 No Filings (23.79%)

2,964 Total State Senate and House General Elections

1,161 Uncontested (39.17%)

1,535 Landslides (51.79%)

268 Competitive (9.04%)

100 Total State Senate and House Special Elections

3 Uncontested (3%)

84 Landslides (84%)

13 Competitive (13%)

State Legislative District Partisanship

50 State Senate Districts

16 Held By Both Parties (32%)

20 Held By Only Republicans (40%)

14 Held By Only Democrats (28%)

203 State House Districts

84 Held By Both Parties (41.38%)

60 Held By Only Republicans (29.56%)

59 Held By Only Democrats (29.06%)

253 Total State Legislative Districts

100 Held By Both Parties (39.53%)

80 Held By Only Republicans (31.62%)

73 Held By Only Democrats (28.85%)