

No. 17-1200

In The
Supreme Court of the United States

—◆—
INDEPENDENT PARTY, ET AL.,

Petitioners,

v.

ALEX PADILLA,
CALIFORNIA SECRETARY OF STATE,

Respondent.

—◆—
**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

—◆—
**BRIEF OF CITIZENS IN CHARGE
AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONERS**

—◆—
PAUL A. ROSSI
Counsel of Record
316 Hill Street
Mountville, PA 17554
(717) 961-8978
Paul-Rossi@comcast.net

Counsel for Amicus Curiae

QUESTION PRESENTED

Whether the party names INDEPENDENT PARTY and AMERICAN INDEPENDENT PARTY are so similar to each other that voters will be misled if both of them appeared on the same California ballot.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED.....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES.....	ii
STATEMENT OF INTEREST	1
INTRODUCTION AND SUMMARY OF ARGUMENT.....	2
ARGUMENT	3
CONCLUSION.....	9

TABLE OF AUTHORITIES

CASES

<i>Craig v. Brown</i> , 114 Cal. 480 (1896).....	4
--	---

STATUTES

Political Code Section 1188.....	4
----------------------------------	---

In The
Supreme Court of the United States

—◆—
No. 17-1200
—◆—

INDEPENDENT PARTY, ET AL.,

Petitioners,

v.

ALEX PADILLA,
CALIFORNIA SECRETARY OF STATE,

Respondent.

—◆—
**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**
—◆—

**BRIEF OF CITIZENS IN CHARGE
AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONERS**
—◆—

STATEMENT OF INTEREST¹

Citizens in Charge respectfully submits this brief as *amicus curiae* in support of Petitioners. Citizens in

¹ No party or counsel for a party authored or paid for this brief in whole or in part, or made a monetary contribution to fund the brief's preparation or submission. All parties have filed blanket *amicus* consent letters and have received notice of this filing.

Charge is a nationwide citizens powered advocacy organization seeking greater public participation in public policy debate and decision making. Citizens in Charge actively works for the growth of direct democracy through the expansion and use of the initiative and referendum process as well as the reform of antiquated ballot access laws in favor of facilitating greater opportunity for citizens to more freely elect those candidates who represent their interests.

◆

INTRODUCTION AND SUMMARY OF ARGUMENT

Ever since the beginning of government-printed ballots in the early 1890s, California and many other states have passed laws stating that two parties cannot appear on the ballot if their names are so similar that voters would be confused. Historically, however, California and other states have never interpreted these laws to mean that two political parties cannot share a common word in their name. Many U.S. political parties have, of necessity, shared a word in common, and they have been permitted to appear on the same ballot without any allegation of voter confusion.

In fact, voter confusion would be enhanced if states were empowered to scrub from their ballots political parties who share a common name. Certain common politically-charged words within the name of a political party provide the voter with a rudimentary

understanding as to the political philosophy of the candidate representing the political party on the ballot. Many voters and candidates who share general political views nevertheless see fit to associate in smaller party groupings necessitating that many of these political parties share a common name to accurately reflect their most basic political philosophy, with the additional party names telegraphing those differences setting them apart from sister factions occupying the same spectrum of political thought.

Accordingly, voter education is enhanced when political parties of similar political views utilize at least one common name to provide the voter general guidance of the underlying policy agenda espoused by the candidate nominated by each political party.



ARGUMENT

There is a long history of political parties that share at least one common name and appearing on the same state ballot without any indicia of voter confusion advanced by the lower courts in this case.

On July 10, 1896, the Democratic Party nominated William Jennings Bryan for president and adopted a platform in support of monetary silver as an alternative to gold. Many Democratic Party office-holders disagreed with this stance so much that they formed a new party, named the “National Democratic Party.” On September 2, the new party met in Indianapolis and nominated John M. Palmer for President. His

name appeared on the ballot in 36 states. His ballot label included the word “Democratic” (generally either “National Democratic” or “Gold Democratic”) in all but three states. In Pennsylvania the new party employed the name Jeffersonian; in Louisiana it was Independent; in Indiana it was Gold Standard. In California, where Political Code Section 1188 provided that the name of a new party could not be so similar to the name of an existing party as to mislead the voters, the state printed the name “National Democratic” on the ballot next to Palmer’s name. The California Supreme Court ruled in *Craig v. Brown*, 114 Cal. 480 (1896) that both the “Democratic Party” and the “National Democratic Party” should be listed on the same ballot.

In 1900, a coalition of state political parties named “Social Democratic” nominated Eugene V. Debs for president. At the time there was no formal national party organization as the Socialist Party was not formally constituted as a national political party until 1901. However, in 1900 Debs appeared on the ballot of 34 states. In some of them his label was Socialist. But in California, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, South Dakota, Tennessee, Vermont, Washington, West Virginia, and Wisconsin, it was Social Democratic, or Social-Democratic, or Social Democrat and appeared on the same ballots of these states alongside the Democratic Party, without any allegation of voter confusion.

In 1948, Strom Thurmond organized the “States Rights Democratic Party” and ran as its nominee for president. He appeared on the ballot in 12 states. He was the nominee of the Democratic Parties of Alabama, Louisiana, Mississippi, and South Carolina, so in those states his label was “Democratic.” In Kentucky, Texas, and Virginia, his party label was “States Rights.” However, he appeared under the party label of “States Rights Democratic” in Arkansas, Florida, North Carolina, North Dakota, and Tennessee and was included on the same state ballot with the nominee of the national Democratic Party.

Thus, the tradition, and political necessity in the United States is that it is acceptable for two parties to share a common word in their names. If this were not established, the various parties that use the word “Socialist” in their names could never have existed with their chosen name. The Socialist Labor Party, the original party of socialism in the United States, contested elections from 1888 through 1976. The much larger Socialist Party began running candidates in 1898 and still does so. The Socialist Workers Party started running candidates in 1940 and still does so. If states forbade two parties from using a common word in their names, that would have severely disrupted the ability of these parties to contest elections.

At one time or another, 47 of the 50 states have printed two party names on the ballot in the same election, in which a common word was used by both parties. In 1994, Utah printed the names of three parties that used common words in their names: the

Independent Party, the Independent American Party, and the American Party. The following provides a survey of the instances in each state in which each state has, in at least one election year, printed two party names on the same ballot in which a common word was employed by one or more political parties:

PARTIES SHARING ONE OR MORE NAME
ON SAME STATE BALLOT

<u>State</u>	<u>Year</u>	<u>First Party on Ballot</u>	<u>Second Party on Ballot</u>
Alabama	1982	Alabama Democratic	The National Democratic of Alabama Governor
Alaska	2002	Republican	Republican Moderate
Arizona	1968	Socialist Labor	Socialist Workers
Arkansas	1992	Take Back America	America First
California	2014	Americans Elect	American Independent
Colorado	2012	American Constitution	American Third Position
Connecticut	1952	Socialist	Socialist Labor
Delaware	1976	Socialist Labor	U.S. Labor
Florida	2008	Socialist	Socialist Workers
Georgia	1948	Democratic	States Rights Democratic
Hawaii	1982	Democratic	Independent Democratic

Idaho	1898	Republican	Silver Republican
Illinois	1976	Socialist Labor	Socialist Workers
Indiana	1972	Socialist Labor	Socialist Workers
Iowa	2008	Socialist Workers	Socialist
Kansas	1896	Democratic	Socialist- Democrat
Kentucky	1976	American	American Independent
Louisiana	2012	Socialist Workers	Socialist Equality
Maine	1952	Socialist	Socialist Labor
Maryland	1900	Democratic	Social Democratic
Mass.	1942	Socialist	Socialist Labor
Michigan	1984	Workers World	Workers League
Minn.	2000	Reform	Reform Party Minnesota
Mississippi	1948	Democratic	National Democratic
Missouri	1952	Socialist	Socialist Labor
Montana	1900	Democratic	Social Democratic
Nebraska	1896	Democratic	National Democratic
Nevada	—	—	—
N.H.	1980	Socialist Workers	Worker's World
New Jersey	2014	American Labor	For Americans

New Mexico	1992	Socialist Workers	Worker's World
New York	2010	Taxpayers	Tax Revolt
N.C.	1948	Democratic	States Rights Democratic
N.D.	1976	American	American Independent
Ohio	1932	Socialist	Socialist Labor
Oklahoma	—	—	—
Oregon	2004	Socialist	Freedom Socialist
P.A.	1984	Socialist Workers	Worker's League
R.I.	2000	Socialist Workers	Worker's World
S.C.	1940	Democratic	Jeffersonian Democratic
S.D.	1900	Democratic	Social Democratic
Tennessee	1948	Democratic	States Rights Democratic
Texas	1948	Democratic	States Rights Democratic
Utah	1994	Independent Party	Independent American
Vermont	1900	Democratic	Social Democratic
Virginia	1956	Democratic	Virginia- Social- Democratic
Washington	2004	Socialist Workers	Socialist Equality

W.V.	1900	Democratic	Social Democratic
Wisconsin	2000	Socialist Workers	Worker's World
Wyoming	—	—	—

California's Secretary of State ruled that "Independent Party" and "American Independent Party" are too similar to both be on the ballot, but he did not explain why he came to that conclusion. If the basis for his conclusion was that both parties could not be on the ballot because they had a common word in their names, his conclusion violated precedent and tradition from California and almost all other states in the nation.



CONCLUSION

History instructs that the decisions of the lower courts are contrary to the established political tradition of this country. History, and the record, also demonstrates a lack of any evidence that the use of a common name by two or more political parties appearing on the same state ballot has triggered the alleged evil of voter confusion upon which the lower courts tethered their opinions. In fact, the lower court decisions threaten the ability of voters across the country to both accurately ascertain those candidates which most closely align with their own political views while still enjoying a wider array of candidates for whom they may effectively cast their ballots.

Accordingly, Citizens in Charge strongly encourages this Honorable Court to grant the pending petition for a *Writ of Certiorari* to the United States Court of Appeals for the Ninth Circuit in this case.

Respectfully submitted,

PAUL A. ROSSI

Counsel of Record

316 Hill Street

Mountville, PA 17554

(717) 961-8978

Paul-Rossi@comcast.net

Counsel for Amicus Curiae