

VIRGINIA:

IN THE CIRCUIT COURT OF RICHMOND CITY

The Democratic Party of Virginia,

Plaintiff,

v.

Christopher E. Piper, in his official capacity as the Commissioner of the Department of Elections; the Department of Elections; the Virginia State Board of Elections, James B. Alcorn in his official capacity as member of the State Board of Elections; Clara Belle Wheeler in her official capacity as member of the State Board of Elections; and Singleton B. McAllister, in his official capacity as member of the State Board of Elections,

Defendants.

**VERIFIED COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF AND
PETITION FOR WRIT OF
MANDAMUS**

At Law No. _____

Plaintiff the Democratic Party of Virginia (the "Party"), by and through the undersigned attorneys, for its Verified Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandamus, alleges as follows:

INTRODUCTION

1. Article 1, Section 6 of the Virginia Constitution provides that, in the Commonwealth, "all men . . . have the right of suffrage." The affirmative guarantee of the right to vote, however, means nothing if a candidate can qualify for the ballot based on fraud, and injured members of the electorate (and the political parties that they form and with which they associate) are denied any meaningful recourse. As the Supreme Court of Virginia has long recognized, "the perpetuity of our institutions and the preservation of the liberty of the people depend upon honest and fair elections; and the highest public policy requires that the laws should be so framed and administered as to secure fair elections." *Booker v. Donohoe*, 95 Va. 359, 367-68 (1897).

2. The Party brings this case to ensure that the promise of honest and fair elections in Virginia is properly enforced, and that the integrity of elections in the Commonwealth is maintained and voter trust in the system bolstered rather than seriously eroded. The Party seeks to protect its rights and the fundamental rights of its members and the voters who associate with it from the serious, irreparable harm that would occur if Defendants—the Commonwealth’s chief election authorities—do not immediately act to address evidence of serious fraud in the candidate qualification process for the upcoming election for the U.S. House of Representatives in Virginia’s Second Congressional District (“VA-2”).

3. This case involves the qualification of Shaun D. Brown as a candidate for VA-2 in the upcoming election, in which voters will have to decide whether to re-elect U.S. Representative Scott Taylor, a Republican, or one of his challengers. Under Virginia’s ballot qualification laws, before an independent candidate may be listed on the ballot, he or she must be qualified by the Virginia State Board of Elections (the “Board”). The Board’s decision to qualify Brown as a candidate was based on a nominating petition (the “Petition”) that was infected with fraud.

4. Defendants are gatekeepers of the Commonwealth’s democratic process, and have a plain duty to ensure that the only candidates who appear on Virginia’s ballots are those who have met minimum ballot access qualifications under Virginia law. Furthermore, in this case, they have a clear duty to revisit and reverse their decision to qualify Brown’s candidacy and to take all appropriate action to ensure that the fraud that permeates the Petition does not taint the election in November for VA-2. Because local jurisdictions are currently free to begin printing ballots for that election at any time, and because the deadline for printing ballots on September 21 is fast approaching, immediate injunctive relief is appropriate and necessary to protect the Party, its members, and the voters who associate with it from serious, irreparable harm.

5. To this end, the Party seeks declaratory and injunctive relief and a writ of mandamus. Specifically, the Party asks the Court to ensure the integrity of the democratic process and prevent serious and irreparable injury to the Party and the fundamental rights of its membership and voters by: (i) declaring that the notice of qualification issued by the Department of Elections to Brown on June 29, 2018 is contrary to Virginia law, and is therefore, invalid; (ii) declaring that the fraudulent and invalid signatures on the Petition may not be counted towards the statutorily required minimum to qualify the Petition; (iii) protecting the Party and its membership and voters from further irreparable harm and requiring Defendants to fulfill their duty of safeguarding the integrity of Virginia elections by (a) ordering Defendants to strike fraudulent and invalid signatures from the Petition to qualify Brown; (b) enjoining Defendants from qualifying Brown's Petition on the basis of any fraudulent or otherwise invalid signatures; (c) enjoining the Board and their agents, officers, and employees, and any person who acts in concert therewith, from printing Brown's name on ballots for the November 2018 general election unless and until a thorough investigation establishes that she has met minimum statutory requirements to appear on the ballot.

6. Furthermore, given that the evidence compiled in just a few days makes clear that the fraud was far from isolated and instead permeates the Petition, the Board should be directed, in this particular case, to only accept signatures the validity of which can be demonstrated by a preponderance of the evidence. Given the short time remaining before Virginia law requires ballots be printed, this is the only way to ensure that fraudulent entries do not form the basis for qualification.

JURISDICTION AND VENUE

7. This Court has jurisdiction to grant declaratory and injunctive relief under the Virginia Declaratory Judgment Act, Va. Code Ann. § 8.01-184, which authorizes the Court to declare rights, status, and other legal relations among the parties and to issue injunctive relief as necessary to effectuate the judgment. *See also* Va. Code Ann. § 8.01-

186 (authorizing further relief based on a declaratory judgment “whenever necessary or proper”). The Court has jurisdiction to hear the Petition for Writ of Mandamus under Va. Code Ann. § 17.1-131. The Court also has jurisdiction under Va. Code Ann. § 17.1-513.

8. Venue is appropriate under Va. Code § 8.01-261(2) because this is an action “against one or more officers of the Commonwealth in an official capacity,” each of whom has official offices in Richmond, Virginia.

PARTIES

9. Plaintiff the Democratic Party of Virginia (the “Party”) is a political party as defined by Va. Code Ann. § 24.2-101. Its mission is to elect Democratic candidates in local, county, state, and federal elections. If Brown—a candidate whose place on the ballot has been obtained by fraud, and who otherwise cannot meet the minimum standards for ballot qualification under Virginia law—is listed on the ballot for VA-2 in November, the Party will suffer concrete injury because it must divert funds and other resources to counter the candidacy of an additional person in the contest who, as a matter of law, should not be on the ballot, where those resources could have been used for other mission-central purposes, the diversion of which in an election cycle constitutes an irreparable loss, that cannot, after the fact, be fairly remediated with money damages. Affidavit of Lucas Munson (“Munson Aff.”) ¶ 3.

10. The Party also stands in the shoes of its members and the voters who associate with it, including those whose signatures have been fraudulently added to the Petition by circulators who conspired to ensure that Brown’s name would be placed on the ballot with the purpose and hope of sowing confusion among Democratic voters so as to diminish the prospect of the success of the Party’s candidate in the general election. Munson Aff. ¶3; Declaration of Aria Branch (“Branch Decl.”), Ex. 24.¹ Absent judicial

¹ All citations to Exhibit numbers herein refer to exhibits attached to the Declaration of Aria C. Branch in Support of Plaintiff’s Verified Complaint for Declaratory and Injunctive

action, the weight and impact of these voters' meaningfully and thoughtfully cast votes for the Democratic candidate in the 2018 General Election will be diluted by votes accruing to Brown due to her ill-gotten placement on the ballot.

11. Defendant Christopher E. Piper is named in his official capacity as the Commissioner of the Department of Elections. The Commissioner is appointed by the Governor and is responsible for employing and overseeing "the personnel required to carry out the duties imposed by the State Board of Elections," Va. Code Ann. § 24.2-102. The Office of the Commissioner is located in Richmond, Virginia.

12. Defendant Department of Elections is responsible for processing petitions for candidacy for independent candidates for federal office. Va. Dep't of Elections, GRE Handbook at 16.4.6. The Department of Elections maintains a master petition and forwards individual petition pages to the appropriate general registrars for verification of signatures. *Id.* After the locality verifies the petition signatures on the petition pages sent by the Department of Elections, the general registrars return the processed petition pages to the Department of Elections. *Id.* The Department of Elections is located in Richmond, Virginia.

13. Defendant Virginia State Board of Elections (the "Board"), is responsible for, among other things, "supervis[ing] and coordinat[ing] the work of the county and city electoral boards and of the registrars to obtain uniformity in their practices and proceedings and legality and purity in all elections." Va. Code Ann. § 24.2-103. The Board's duties include, *inter alia*, "approv[ing] uniform standards by which petitions filed by a candidate for office, other than a party nominee, are reviewed to determine if the petitions contain sufficient signatures of qualified voters," accepting declarations of candidacy filed by independent candidates for "any office to be elected by the qualified voters of the Commonwealth at large or of a congressional district," qualifying candidates, and

Relief and Petition for Writ of Mandamus and Motion for Temporary Injunction and in Support of the Petition for Writ of Mandamus.

“notify[ing] the respective secretaries of the appropriate electoral boards of the qualified candidates who have so filed.” Va. Code Ann. § 24.2-506(B); *id.* at § 24.2-505(A). The Board’s principal offices are in Richmond, Virginia.

14. Defendants James B. Alcorn, Clara Belle Wheeler, and Singleton B. McAllister, are named in their official capacities as members of the Board.

FACTUAL BACKGROUND

A. Submission and verification of signatures.

15. In 2016, Shaun Brown ran as the Democratic nominee for VA-2, but lost the election by a wide margin to Congressman Taylor, then the Republican nominee, who won 61% of the vote. Ex. 5.

16. The following year, in December 2017, federal prosecutors alleged Brown had defrauded the government of over \$439,000 in connection with a program to feed needy children, and she was subsequently indicted in federal district court on charges of wire fraud and theft of government property. Ex. 6.

17. Prosecutors also alleged that “Brown lied in Federal Election Commission filings about donating more than \$700,000 to her [first] campaign [to represent VA-2 in Congress], and then getting reimbursed for it.” *Id.*

18. Although Brown had previously announced her intention to again seek the Democratic nomination for VA-2 in 2018, she did not participate in the June 12, 2018 Democratic primary for VA-2. In that primary, Elaine Luria, a 20-year veteran of the U.S. Navy, won over 62% of the vote to become the Democratic nominee. Ex. 7; Ex. 8.

19. Under Virginia law, as a prospective independent candidate for a U.S. House of Representatives seat, Brown was required to submit at least 1,000 valid signatures to qualify to appear on the ballot. Va. Code Ann. §§ 24.2-505, 24.2-506(A)(2).²

² See also Candidate Bulletin, Va. Dept. of Elec., 5 (2018), <https://www.elections.virginia.gov/Files/BecomingACandidate/CandidateBulletins/2018-11-06%20Gen%20and%20Sp%20Bulletin%20US%20House%20rev%2003-02-18.pdf>.

20. On June 12, 2018—the last day upon which prospective candidates for the U.S. House of Representatives were permitted to file nominating petitions to be qualified for inclusion on the general election ballot, *see* Va. Code Ann. § 24.2-507(1)—Brown submitted her Petition, which was supported by 2,163 signatures. A full 998 of those signatures were collected in the span of a single week just prior to the filing deadline. *See* Exs. 9, 10.

21. The registrars, as directed by the Board and the Department of Elections, reviewed 2,163 of the 2,512 signatures that Brown submitted in support of her Petition and determined that 1,030 of the 2,163 signatures reviewed were valid. Ex. 10.

22. According to procedures set forth in GRE Handbook 16.4.6, the Department of Elections was required to delegate the review of all signatures on the petitions to local general registers to ensure their validity. To review the petitions, “[t]he Department of Elections will set up a master petition in VERIS and then forward the petition pages with a cover letter to the appropriate general registrar(s) for verification.” *Id.*³

23. Once the petition pages are received, “[a] locality must verify the petition signatures on the pages sent by Department of Elections irrespective of the jurisdictional origins of the petition signer.” *Id.*

24. Once the locality’s verification of the petition pages sent by the Department of Elections is complete, “the general registrar returns the processed petitions to the Department of Elections.” *Id.*

25. The petition may be classified as “Qualified” as soon as “the *minimum number of signatures* has been added to the master petition.” *Id.* at 16.5.3 (emphasis added).

³ “VERIS” is the Virginia Election & Registration Information System, which is a statewide voter registration and election management system for Virginia as required by the Help America Vote Act of 2002 (52 U.S.C. §§ 20901-21145). *See* Virginia Department of Elections, *VERIS: Virginia Election & Registration Information System* (Aug. 30, 2013), available at <https://www.elections.virginia.gov/Files/Media/Agendas/2016/2016-08-30-VERIS.pdf>.

26. Signatures can be invalidated for a number of reasons under Virginia law. Signatures are valid/invalid where: (i) the signer is “Registered but not Qualified” to sign the petition because she is registered at an address in another election district, registered after signing the petition, or is registered but is also the petition circulator; (ii) the elections official “Cannot Identify” the signer as a registered voter, or there is more than one registered voter with the same name and none are at the address indicated on the petition; (iii) all of the text written by the signer is “Illegible”; or (iv) the signer already signed the petition and the signature is a “Duplicate.” *Id.* at 16.5.1.2. In addition, when a signer’s address does not match the address in VERIS, a confirmation notice will be mailed to the voter and the signature must be marked as “Confirmation Notice Issued” and not counted until the address is verified. *Id.*

27. In addition to assessing the validity of each individual signature, the local registrars must also assesses whether the petition circulator met minimum qualifications. *See id.* at 16.5.2.2. On each petition sheet, a petition circulator must sign an affidavit attesting that they “witnessed the signature of each person who signed this page or its reverse side” and that they “understand that falsely signing this affidavit is a felony punishable by a maximum fine up to \$2,500 and/or imprisonment up to ten years.”⁴

28. As noted, the registrars, as directed by the Board and the Department of Elections, determined that 1,030 signatures on Brown’s petition were valid—just 31 signatures over the minimum statutory requirement. Accordingly, on June 29, 2018, the Board and the Department of Elections qualified Brown to appear on the General Election ballot as the only independent candidate for the House seat in VA-2. Ex. 12.

⁴ Commonwealth of Virginia, *Petition of Qualified Voters* (Rev. 2013), available at https://www.elections.virginia.gov/Files/Forms/Candidates/Petition-of-Qualified-Voters-SBE-506_521_letter.pdf.

B. Allegations giving rise to this lawsuit.

29. It has recently become undeniably clear that Defendants' qualification of Brown is based on a nominating Petition that was positively riddled with fraud.

30. Beginning on or around August 1, 2018, the first in what would become a cascade of reports emerged about irregularities with the Petition, including that some of the signatures submitted in support of the Petition were forged and that Congressman Taylor's staff, and others associated with him, helped to circulate Brown's Petition. Ex. 14.

31. Congressman Taylor currently represents VA-2 and is running for re-election in November. His opponents will include the Democratic candidate and—if she is permitted to appear on the ballot—Brown herself.

32. Over the following week, additional stories emerged in the press about potentially fraudulent entries on the Petition. Several alleged signers came forward saying that they did not sign the Petition, or that family members who purportedly signed it were deceased at the time. Reports of forged signatures continue to emerge up to and including the present day. Exs. 13-19.

33. Several of the circulators whose petition sheets contain forged signatures were members of Congressman Taylor's staff. *Id.*

34. On August 7, the Virginia Circuit Court of Virginia Beach ordered the Roanoke Commonwealth Attorney to act as special prosecutor to further investigate these fraudulent activities. Ex. 1. The Board and Department of Elections, however, have thus far declined to revisit the decision to qualify Brown or otherwise exercise their power to prevent a statutorily ineligible and fraudulently qualified candidate from appearing on the November ballot.

C. The Party commences an investigation, which reveals that the Petition is riddled with invalid signatures.

35. As of Sunday, August 12, the Party's own investigation has resulted in 35 affidavits confirming that the signatures of those voters or their family members (in at least two cases, the signatures of deceased voters) were forged. A substantial number of other voters reached by the Party in the course of the investigation verbally confirmed that they did not sign the Petition but were unwilling to sign an affidavit citing concerns about unwanted public attention. Munson Aff. ¶¶ 8-9; Ex. 21.

36. In each of these instances, the petition circulator signed an affidavit on the petition sheet upon which the fraudulent signature appears attesting that they had personally witnessed each of the signatures listed on the sheet. As regarding the forged signatures, that attestation was plainly not true.

37. The forgeries were not limited to one sheet or one rogue circulator. Forged signatures appeared on petition sheets that were circulated by at least *three* different circulators. Together, those three circulators collected over 566 signatures. Many of the voters whose signatures were forged appear to be elderly.

38. A false circulator affidavit necessarily calls into question each of the signatures that the petition circulator purportedly collected, and thus invalidates every signature allegedly collected by that circulator. Because any sheets circulated by the circulators are permeated with fraud, all 566 signatures purportedly gathered by those circulators are invalid.

39. In addition to the growing number of sworn affidavits confirming that many of the signatures submitted in support of the Petition were fraudulent, the Party's review of the signatures on the Petition has revealed that the Petition on its face exhibits numerous other objective indicia of widespread forgery. For example, on Petition pages where fraudulent signatures have been confirmed, the handwriting between the known forgeries and other signatures is often strikingly similar. Other similarities, such as the omission of

the last four digits of the signatories' Social Security Numbers in the vast majority of signatures collected by certain staffers of Congressman Taylor, also point to far more pervasive fraud than what has already been shown through the Party's investigation. Finally, the mounting numbers of fraudulent signatures were largely submitted on each successive day during June 8, 9, and 10—the final days of signature gathering. *Id.* ¶ 9.

40. The Petition is also riddled with other disqualifying errors. In total, Brown submitted 2,512 signatures. However, even a cursory review of these signatures shows that over 1,600 are invalid for a host of reasons, beyond fraud. From invalid addresses and non-registered signatories to incorrect election dates and insufficient notary blocks, the Petition fails to meet the statutory minimum threshold of 1,000 valid signatures that would grant Brown access to the general election ballot.

41. In addition to being rife with signature error, Brown also failed to correctly state her own address on many of pages of the Petition and changed her address multiple times throughout the signature collection period. A complete list of deficiencies that have been discovered as of this date is attached as Exhibit 29 to Branch Declaration. At least one of the addresses that Brown listed on her Petition—5887 Campus Drive in Virginia Beach—appears not to exist at all. Further, the Party has recently obtained information indicating that Brown has never lived at another one of those addresses—5587 Campus Drive in Virginia Beach—which also appears to be the address at which she is registered to vote.

42. Because Brown has failed to meet the minimum statutory requirement of 1,000 valid signatures, she is not qualified to appear on the general election ballot as the independent House candidate for VA-2.

43. Prior to filing this lawsuit, on August 8, 2018, and then through a supplement provided on August 9, the Party's counsel provided to the Board and the Department of Elections this information and multiple affidavits stating that the signatures are forged on the Petition. Exs. 23, 27, 28, and significant disqualifying errors throughout the

Petition, the Party's counsel demanded that the Board and the Department of Elections act promptly to ensure that the fraud that was clearly intended to artificially (and criminally) prop up Brown's candidacy and make her "eligible" to be listed on the ballot, does not infect the general election. Because Defendants have thus far declined to do so, the Party has no choice but to seek judicial relief.

45. Local jurisdictions are currently free to begin printing ballots for the November election and, unless Brown's qualification is reversed or enjoined, those ballots will include Brown among the candidates for election to represent VA-2 in Congress, in clear violation of Virginia and federal law. Moreover, the final deadline for printing ballots, September 21, 2018 is fast approaching.⁵ Thus, immediate relief, whether in the form of a temporary injunction or a writ of mandamus or both, is necessary and appropriate.

COUNT ONE
Violation of the Right to Vote under
Article I, Section 6 of the Virginia Constitution

46. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Verified Complaint as though set forth fully herein.

47. The Virginia Constitution affirmatively decrees "[t]hat all elections ought to be free; and that all men... have the right of suffrage." Va. Const. art. I, § 6. "[T]he right to vote is the right to participate in an electoral process that is necessarily structured to maintain the integrity of the democratic system." *Burdick v. Takushi*, 504 U.S. 428, 441

⁵ "The general registrar shall make printed ballots available for absentee voting not later than 45 days prior to any election or within three business days of the receipt of a properly completed absentee ballot application, whichever is later." Va. Code § 24.2-612. The Virginia Department of Elections advises that ballots should be mailed by Friday, September 21, 2018. See *Calendars & Schedules*, Va. Dept. of Elect. <https://www.elections.virginia.gov/media/calendars-schedules/election-deadlines.html>. Similarly, under federal law, all validly requested ballots to UOCAVA voters must be transmitted to voters no later than 45 days before an election for federal office (September 22, 2018). See 52 U.S.C. § 20302(a)(8)(A).

(citing *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983); *Storer v. Brown*, 415 U.S. 724, 730 (1974)).

48. Indeed, as the Virginia Supreme Court has explained, “[h]owever fair the general election may be, if at that election men have no choice but to vote for candidates who have been nominated by fraudulent practices at primaries . . . the effect of the election must be the consummation of a fraud and the defeat of the will of the people.” *Commonwealth v. Willcox*, 111 Va. 849, 860 (1911).

49. Here, the Petition purporting to nominate Brown as an independent candidate for the public office of the United States House of Representatives in VA-2 is pervaded with fraud. Defendants’ qualification of that Petition, allowing Brown’s name to appear on the general election ballot, is “the consummation of a fraud and the defeat of the will of the people,” *id.*, in direct violation of the right of suffrage affirmatively set forth in Article I, Section 6 of the Virginia Constitution.

50. By allowing Brown—a candidate whose place on the ballot has been obtained through fraud, and who otherwise cannot meet the minimum standards for ballot qualification under Virginia law—to be listed on the general election ballot, Defendants will burden the right to vote of the Party’s members and the voters who associate with it in support of the Democratic candidate for VA-2, by diluting their vote, because the wrongful inclusion of Brown on the ballot will divert votes to an unqualified candidate. *See McLain v. Meier*, 637 F.2d 1159, 1163 (8th Cir. 1980) (describing system of listing first on the ballot candidates of party that received the most votes in the last North Dakota congressional election as “burden[ing] the fundamental right to vote possessed by supporters of the last-listed candidates” by providing an advantage, *i.e.* diverting votes, to the first-listed candidate); *Gould v. Grubb*, 536 P.2d 1337, 1343 (Cal. 1975) (describing statute that prioritized ballot order by incumbency as “inevitably dilut[ing] the weight of the vote of all those electors who cast their ballots for a candidate who is not included within the favored class”).

51. Indeed, because Brown previously ran against Congressman Taylor in the last election to represent VA-2 as the Democratic nominee, voters who would otherwise support the Democratic nominee are likely to be deceived into casting their ballot for Brown, despite her being unqualified to appear on the ballot because she lacks even the minimum amount of support to qualify as an independent candidate. *See Jamerson v. Womack*, 26 Va. Cir. 145, 145 (1991), *aff'd* 244 Va. 506 (1992) (stating that voter suffers injury where a law “dilute[s] voting power and diminish[es] the effectiveness of representation”).

52. Defendants’ continued qualification of Brown’s nominating Petition, and imminent inclusion of her name on the general election ballot, in violation of Virginia law, furthers no compelling, or even legitimate, state interest that could justify the infringement on the fundamental right to vote. *See Pulliam v. Coastal Emergency Servs. of Richmond, Inc.*, 257 Va. 1, 20–21 (1999) (describing voting as a “fundamental right” that requires the application of “the ‘strict scrutiny’ test, i.e., the law must be necessary to promote a compelling or overriding governmental interest” (citing *Etheridge v. Med. Ctr. Hosps.*, 237 Va. 87, 97 (1989))).

COUNT TWO

Violation of the Rights of Freedom of Speech and Association under the First and Fourteenth Amendments to the United States Constitution

53. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Verified Complaint as though set forth fully herein.

54. The First Amendment to the U.S. Constitution guarantees the fundamental rights of freedom of speech and freedom of association. U.S. Const. amend. I. The First Amendment’s protections apply to the states through its incorporation into the due process clause of the Fourteenth Amendment. *Gitlow v. New York*, 268 U.S. 652, 666 (1925).

55. Signing a petition to nominate a candidate to appear on the general election ballot is an expressive act protected under the First Amendment. *See, e.g., John Doe No. 1*

v. Reed, 561 U.S. 186, 194-95 (2010) (“An individual expresses a view on a political matter when he signs a petition under Washington’s referendum procedure.”); *Nev. Comm’n on Ethics v. Carrigan*, 564 U.S. 117, 128 (2011) (“[A] citizen’s signing a petition [is] ‘core political speech.’” (quoting *Meyer v. Grant*, 486 U.S. 414, 421-22 (1988))).

56. It also implicates the freedom of association, because, as relevant here, petition signers join together to nominate a qualifying candidate to appear on the ballot. *Krislov v. Rednour*, 226 F.3d 851, 858 (7th Cir. 2000) (“Associating for the purpose of placing a candidate on the ballot is one of the actions protected by the First Amendment; indeed the circulation of petitions for ballot access involves the type of interactive communication concerning political change that is appropriately described as ‘core political speech.’”) (quoting *Meyer*, 486 U.S. at 421).

57. Just as the First Amendment protects the right to affirmatively express a political view and affirmatively associate with a group of like-minded citizens, it also protects against the compelled expression of a view that the person does not endorse and compelled association in promotion of a position or candidate that the person does not support. See *Kusper v. Pontikes*, 414 U.S. 51, 58 (1973) (finding state statute that limited voter’s ability to change party registration “substantially abridged her ability to associate effectively with the party of her choice”); *Galda v. Rutgers*, 772 F.2d 1060, 1066 (3d Cir. 1985) (holding public university violated the First Amendment by requiring students to contribute to a third-party organization promoting “social change”); *N.Y. Cty. Bd. of Ancient Order of Hibernians v. Dinkins*, 814 F. Supp. 358 (S.D.N.Y. 1983) (holding city government could not compel private parade sponsor to include certain entities as “[i]mplicit in the right to engage in activities protected by the First Amendment is a corresponding right to associate with whomever one chooses”).

58. Defendants’ qualification of the Petition to nominate Brown despite the pervasive fraud that infects that Petition thereby infringes on the First Amendment rights of the Party’s members and the voters who associate with it whose signatures were

fraudulently added to the Petition to nominate Brown, because they are being forced to associate with a candidate whose petition that they never signed, and in fact do not support, and are being forced to have their signatures count as an expression of support for qualification for Brown to appear on the general election ballot. That alone is sufficient injury to state a claim, but in this case that forced association was meant to, and unless remedied, will actually work to the detriment of the political party with whom those voters actually associate. In other words, that forced speech and association—itsself a violation of constitutional rights—works a further violation of the right to vote, as described in Count One above.

59. Plaintiff’s First Amendment claim is properly evaluated under the *Anderson-Burdick* test, which requires a court to “weigh ‘the character and magnitude of the asserted injury to the rights . . . that the plaintiff seeks to vindicate’ against ‘the precise interests put forward by the State as justifications for the burden imposed by its rule,’ taking into consideration ‘the extent to which those interests make it necessary to burden the plaintiff’s rights.’” *Burdick*, 504 U.S. 428, 434 (1992) (quoting *Anderson*, 460 U.S. at 789). Here, as described above, the burden on the First Amendment rights of the Party’s members and the voters who associate with it are severe and ongoing, while the continued qualification of Brown’s nominating Petition, and imminent inclusion of her name on the general election ballot, in violation of Virginia law, cannot be justified any legitimate state interest.

COUNT THREE

Violation of the Rights to Freedom of Speech and Association under Article I, Section 12 of the Virginia Constitution

60. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Verified Complaint as though set forth fully herein.

61. Article I, Section 12 of the Virginia Constitution guarantees the freedom of speech and freedom of association. The Virginia Supreme Court has noted on multiple occasions that “Article I, § 12 of the Constitution of Virginia is coextensive with the free

speech provisions of the federal First Amendment.” *Elliott v. Commonwealth*, 267 Va. 464, 473-74 (2004); *see also Black v. Commonwealth*, 262 Va. 764, 787 (2001) (same); *Tharpe v. Saunders*, 285 Va. 476, 480 (2013) (“The First Amendment to the Federal Constitution and article 1, section 12 of the Constitution of Virginia protect the right of the people to teach, preach, write, or speak any such opinion”) (citation and quotation marks omitted).

62. Accordingly, as explained above, signing a petition to nominate a candidate to appear on the ballot constitutes protected political speech under Article I, Section 12 of the Virginia Constitution and implicates the freedom of association “for the purpose of placing a candidate on the ballot.” *Krislov*, 226 F.3d at 858. Further, like the First Amendment, Article I, Section 12 protects against the compelled expression of a view that the person does not endorse and compelled association in promotion of a position or candidate that the person does not support. *See Kusper*, 414 U.S. at 57 (finding state statute that limited voter’s ability to change party registration “substantially abridged her ability to associate effectively with the party of her choice”); *Galda*, 772 F.2d at 1066 (holding public university violated the First Amendment by requiring students to contribute to a third-party organization promoting “social change”); *N.Y. Cty. Bd. of Ancient Order of Hibernians*, 814 F. Supp. at 368 (holding city government could not compel private parade sponsor to include certain entities as “[i]mplicit in the right to engage in activities protected by the First Amendment is a corresponding right to associate with whomever one chooses”).

63. Defendants’ qualification of the Petition to nominate Brown despite the pervasive fraud that infects that Petition thereby infringes on the First Amendment rights of the Party’s members and the voters who associate with it whose signatures were fraudulently added to the Petition to nominate Brown, because they are being forced to associate with a candidate whose petition that they never signed, and in fact do not support, and are being forced to have their signatures count as an expression of support for

qualification for Brown to appear on the general election ballot. That alone is sufficient injury to state a claim, but in this case that forced association was meant to and unless remedied will actually work to the detriment of the political party with whom those voters voluntarily associate. In other words, that forced speech and association—itsself a violation of constitutional rights—works a further violation of the right to vote, as described in Count One above.

64. Defendants’ continued qualification of Brown’s nominating Petition, and imminent inclusion of her name on the general election ballot, in violation of Virginia law, furthers no compelling, or even legitimate, state interest that could justify the infringement on the fundamental right to free speech. *See Pulliam*, 257 Va. at 20–21 (describing free speech as a “fundamental right” that requires application of “the ‘strict scrutiny’ test, i.e., the law must be necessary to promote a compelling or overriding governmental interest” (citing *Etheridge.*, 237 Va. at 97)).

COUNT FOUR
Violation of Va. Code Ann. §§ 24.2-504 – 24.2-507

65. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Verified Complaint as though set forth fully herein.

66. Virginia law clearly provides that for an independent candidate for the U.S. House of Representatives to appear on the ballot for a general election, at least 1,000 qualified voters might sign the prospective candidate’s nominating petition. Va. Code. Ann. § 24.2-506(A)(2). Va. Code. Ann. § 24.2-504 further specifies that “[o]nly a person fulfilling all the requirements of a candidate shall have his name printed on the ballot for the election.”

67. Here, however, despite having been deemed qualified by the Board, Brown’s Petition does not contain at least 1,000 valid signatures as required by Virginia law. At least 35 signatures are invalid because they were forged—despite the Petition circulators having signed an affidavit, under criminal penalty, attesting that they had personally

witnessed each of the signatures listed on the sheet. Moreover, those forged signatures appear on petition sheets circulated by *at least three* different circulators, calling into question *over 500 signatures* purportedly gathered by these circulators. Indeed, the Party's own investigation has turned up a substantial additional number of instances where voters have orally confirmed that their signatures were fraudulently added to the Petition, but have been unwilling to sign affidavits citing privacy concerns. Thus, it is clear that fraud infested the "signature-gathering" process and there is likely no way to know for certain whether many of the signatures on the Petition were in fact legitimately added to the Petition by the voters to whom they are attributed.

68. Moreover, and in addition to the blatantly fraudulent signatures, the Petition is fraught with other disqualifying errors. The Party's review has determined that, of the 2,512 signatures submitted by Brown, over 1,600 signatures are invalid for a host of reasons, including invalid addresses, signatures from non-registered voters, incorrect election dates, and invalid notary blocks. Ex. 29. These errors are material and render the signatures, and Brown's candidate Petition, invalid. *See* Va. Admin. Code 20-50-20 (specifying requirements for a valid petition sheet and signature, including material omissions rendering signatures invalid).

69. Because Brown's Petition does not meet the statutory requirements to qualify her for the ballot, the Board's notice of sufficiency sent to Brown on June 29, 2018 is contrary to Virginia law. Instead, the Petition must be declared legally insufficient and she must be disqualified from appearing on the General Election ballot.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court hear this action pursuant to Va. Code Ann. §§ 8.01-186, 17.1-131, and 17.1-513, and issue preliminary and permanent declaratory and injunctive relief:

- a. declaring that the notice of qualification issued by the Department of Elections to Brown on June 29, 2018 is contrary to Virginia law, and is therefore, invalid;

- b. declaring that the fraudulent and invalid signatures on the Petition may not be counted towards the statutorily required minimum to qualify the Petition;
- c. ordering Defendants to strike fraudulent and invalid signatures from the Petition to qualify Brown;
- d. enjoining Defendants from qualifying Brown's Petition on the basis of any fraudulent or otherwise invalid signatures;
- e. enjoining Defendants and their agents, officers, and employees, and any person who acts in concert therewith, from printing Brown's name on ballots for the November 2018 general election unless and until a thorough investigation establishes that she has met minimum statutory requirements to appear on the ballot.

PETITION FOR WRIT OF MANDAMUS

In addition, the Party, by and through the undersigned attorneys, and pursuant to the authority detailed at ¶¶ 7-8, hereby petition this Court for the issuance of a writ of mandamus directed to Defendants, and in support thereof state:

70. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Verified Complaint as though set forth fully herein.

71. Plaintiff has a clear right to the relief it seeks.

72. Defendants have a legal duty to ensure that only the names of candidates who meet the requirements under Virginia law are placed on ballots in the state of Virginia. This duty flows both generally from their oath as officers of the Commonwealth of Virginia to obey the Constitution of the United States and the Constitution of the Commonwealth of Virginia, Va. Code. Ann. § 49-1 (2018), and from their position as the state elections officials who "shall supervise and coordinate the work of the county and city electoral boards and of the registrars to obtain uniformity in their practices and proceedings and legality and purity in all elections," Va Code Ann. § 24.2-103 (2018), and who "shall . . . promote the proper administration of election laws." *Id.*

73. Among those elections laws which Defendants are charged with enforcing are Va. Code Ann. § 24.2-504 (2018), which states that “[o]nly a person fulfilling all the requirements of a candidate shall have his name printed on the ballot for the election,” and Va. Code Ann. § 24.2-506 (2018), which states that the name of an independent candidate for the House of Representatives such as Ms. Brown “shall not be printed upon any official ballots provided for the election” unless her declaration of candidacy includes a petition signed by a minimum of 1000 qualified voters. *Id.*

74. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court hear this action pursuant to Va. Code Ann. §17.1-131 and grant a writ of mandamus ordering Defendants to, in compliance with their duties under Va. Code Ann. § 24.2-103 and Va. Code Ann. § 24.2-504, not permit Brown’s name to appear on the ballot until she has been properly determined to “fulfill all the requirements of a candidate.” *Id.*

VERIFICATION

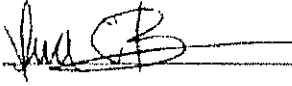
Pursuant to VA. CODE §8.01-4.3, I verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

8-13-18

Date

Chris Bolling

Dated: August 13, 2018

By: 
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**Pro hac vice application to be filed*

Attorneys for Plaintiff