VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

MAKYA RENÉE LITTLE et al.	)	
	)	
Plaintiffs,	)	
	)	Case No.: CL23-3478-2
v.	)	
	)	
COMMONWEALTH OF VIRGINIA et al.	)	
	)	
Defendants,	)	

EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND ARGUMENTS IN SUPPORT

COME NOW, the Plaintiffs, Makya Renée Little (hereinafter "Plaintiff LITTLE"), Steven L. Jacobs, Ruby Bermudez Martinez, and Andrea Salgado (hereinafter "Plaintiffs"), pro se, to move this Honorable Court for a preliminary injunction against Defendants Virginia Department of Elections, Virginia State Board of Elections, and its Chairman, John O'BANNON.

This lawsuit was filed to seek a ruling on the constitutionality of Virginia Code § 24.2-813 as applied to the facts of this case, to enjoin the Virginia Department of Elections and Virginia Board of Elections from authorizing the printing of 2023 general election ballots for Virginia's 19th House of Delegates District pending the outcome of this civil action, and to transmit to the Attorney General of Virginia this Court's conclusion to potentially commence a civil action pursuant to Va. Code § 24.2-104.1, and for damages against the Democratic Party of Virginia for its actions and inactions in violation of the Constitution and statutory provisions, both federal and state. This emergency motion solely pertains to the Virginia Department of Elections and the Virginia State Board of Elections.

The Virginia Code dictates that "[n]o temporary injunction shall be awarded unless the court shall be satisfied of the plaintiff's equity." Va. Code § 8.01-628; *see also Democratic Party of Va. v. Piper*, 102 Va. Cir. 478, 486 (Richmond Cir. Ct. 2018). The Virginia Supreme Court has observed that "a party must establish the traditional prerequisites i.e., irreparable harm and lack of an adequate remedy at law before a request for injunctive relief will be sustained." *Levisa Coal Co. v. Consolidation Coal Co.*, 662 S.E.2d 44, 53 (Va. 2008). Because the Virginia Supreme Court has not applied a specific test for granting injunction, Virginia courts have applied the four-part federal test. *See, e.g., Democratic Party of Va.*, 102 Va. Cir. at 486; *CG Riverview, LLC v. 139 Riverview, LLC*, 98 Va. Cir. 59, 62 (Norfolk Cir. Ct. 2018). The federal test for a preliminary injunction includes the following: (1) likelihood of success on the merits; (2) irreparable harm if the injunction is not granted; (3) the balancing of equities; and (4) the public interest in granting the injunction. *CG Riverview, LLC v. 139 Riverview, LLC*, 98 Va. Cir. 59, 62 (Norfolk Cir. Ct. 2018) (citing *Winter v. Nat. Res. Def. Council Inc.*, 555 U.S. 7, 22 (2008)). Although Plaintiffs must prove more than possible success on the merits, courts have granted injunctions, especially in situations like this, where the court still maintained reservations that the plaintiffs would ultimately succeed. *See Ga. Coalition for the Peoples' Agenda, Inc. v. Deal*, 214 F. Supp. 3d 1344, 1345-46 (S.D. Ga. 2016) (granting injunction and extending time to register to vote despite the court harboring "significant reservations concerning the ultimate merits of Plaintiffs' claims."). For the following reasons, all four factors necessary for the court to grant the requested injunction favor Plaintiffs.

Absent the request relief, Plaintiffs will suffer irreparable injury, in particular, the loss of rights and freedoms guaranteed by the U.S. and Virginia Constitutions. Plaintiffs are likely to succeed on the merits, the balance of equities weighs in favor of granting an injunction to secure

these rights, and it is in the public interest to enjoin the enforcement of a Virginia Code Section that likely infringes constitutional rights.

Plaintiff acknowledges that "sore loser" laws have been found constitutional. In *Storer v. Brown,* 415 U.S. 724, 94 S.Ct. 1274, 39 L.Ed.2d 714 (1974), the Supreme Court upheld a California statute forbidding ballot position to independent candidates who voted in other-party primaries or who were registered with a political party within one year of the primary election. The Court reasoned that the requirement "is expressive of a general state policy aimed at maintaining the integrity of the various routes to the ballot." *Id.* at 733, 94 S.Ct. at 1281. The constitutional issue concerning Va. Code § 24.2-813 is not its mere existence but the fact that it does not take into account providing a remedy for a "losing" party in a primary election where the political party administering that election has committed fraud or engaged in malfeasance. In this case, as will be explained in greater detail below, the Democratic Party of Virginia committed numerous acts of malfeasance, fraud, and disreputable conduct in administering the primary election which Plaintiffs contend resulted in Plaintiff LITTLE losing the primary by fewer than 50 votes. Plaintiffs contend that Va. Code § 24.2-813 is unconstitutional as failing to provide a remedy for a candidate who is victimized by actions on the part of the political party administering the primary election.

Furthermore, in a situation like that of VA HD-19 where no other political party submits a nominee and no Independent candidate declares candidacy, the DPVA essentially controls who becomes the actual legislator. In the case where the DPVA puts its fingers on the scale in a manner that gives the nomination to the legislator, the legislator is going to be beholden to the party vs. the people they become elected to serve. The last thing we want in a democracy is a person who is beholden to a political party instead of the people of their district.

Facts

1. Plaintiffs incorporate by reference paragraphs 1-70 of the Verified Complaint, including all exhibits, as if fully stated herein. The facts pertinent to this request for injunctive relief are more particularly stated herein.

2. In January 2022, Plaintiff LITTLE was encouraged to seek the nomination of the Democratic Party of Virginia (herein "DPVA") for the office of Delegate for the newly drawn 19th House District by a former elected official and the Chairwoman of a Democratic Party of Virginia local committee. (*See* EXHIBIT A to the Complaint, Paragraphs 2-3) The Chairwoman committed that, as Chair of the Prince William County Democratic Committee (hereinafter "PWCDC"), the committee would support Plaintiff LITTLE seeking the nomination going as far as to state that she was "all in." *Id.*

3. Plaintiff LITTLE then took steps to fulfill her responsibilities to officially pursue the Democratic Party nomination abiding by both The Hatch Act[1] (as a "Further Restricted Employee") and the Democratic Party Plan (herein "DPVA Policy"). Part of pursuing those responsibilities also required Plaintiff LITTLE agreeing to Va. Code § 24.2-813, which removes her rights to be listed on the ballot for the general election as an Independent candidate or a candidate of any another political party. *Id.* at Paragraph 3

4. After Plaintiff LITTLE filed paperwork to pursue the Democratic nomination with the Virginia Department of Elections, multiple DPVA officials—including the PWCDC Senior Vice Chairman[2] and current DPVA nominee for VA HD-19, Rozia Henson (herein "HENSON")—broke DPVA Policy in a manner that directly impacted the outcome of the VA

[1] The Hatch Act - https://osc.gov/Services/Pages/HatchAct-Federal.aspx
[2] HENSON resigned as PWCDC Senior Vice Chair after approximately one (1) year of openly campaigning against Plaintiff LITTLE; approximately between December 2022-January 2023.

HD-19 Primary. (*See* EXHIBIT W to the Complaint; *see also* EXHIBIT A to the Complaint, Paragraphs 11-15, 19-20). The particulars of the breaking of DPVA Policy were the following:

a) PWCDC Chairperson continued to operate in official committee role while also serving as Campaign Manager for a Democratic candidate with a primary challenger, allowed HENSON to maintain his role as Senior Vice Chair after filing to challenge Plaintiff LITTLE in a primary stating that it was "poor practice but not against policy," and blocked the membership of committee members with an expressed desire to challenge preferred candidates in other primary/nomination races. (See EXHIBIT A to the Complaint, Paragraphs 11, 13-14). This is a violation of DPVA Policy Sections 3.1[3] and PWCDC Policy 10.3.1[4], as all Democrats in Prince William County—inclusive of African Americans, Hispanics, and women—were not encouraged to participate or to challenge incumbents/establishment candidates, and HENSON was able to self-endorse while actively campaigning against Plaintiff LITTLE.

b) PWCDC leadership adjusted the ballot qualification filing time (from 12pm to 7pm) to accommodate HENSON. (See EXHIBIT A to the Complaint, Paragraph 15). This is a violation of DPVA Policy Section 7.2[5] and 13.1[6], as this was not in line with Virginia

[3] DPVA Policy Section 3.1 states, "Every Democratic committee, as well as every member and officer thereof, shall make efforts to include young people, women, African Americans and other ethnic minorities, persons with disabilities and other constituent groups in all Democratic committees and delegations to Democratic conventions and other party affairs."
[4] PWCDC Policy Section 10.3.1 states, "Individuals who are not Magisterial District or County Committee elected officials may endorse any Democratic candidate they wish. However, they shall not imply, state or convey in print or media that their individual endorsement is also an endorsement by their MDDC or the County Committee."
[5] DPVA Policy Section 7.2 states, "Whenever any nominating committee determines that such nominations shall be by primary, then such primary shall be held in conformity with this Plan and applicable Virginia election laws."
[6] DPVA Policy Section 13.1states, "Primaries held under this Plan shall be governed by those provisions of the state's election laws, as detailed in the Code of Virginia, as to requirements, procedures, and notice applicable to Party primaries. The appropriate committee chair shall carry out the duties outlined in both this Plan and the law whenever a primary is selected as the method of nomination. Each nominating committee chair shall receive the required notice of candidacy, petitions and receipts for filing fees in a timely manner, and shall insure that all Democratic candidates know where such filings shall occur."

election laws as Va. Code § 24.2-103(A)[7] calls for "uniformity, legality, and purity," and all 2023 General Assembly candidates throughout the Commonwealth were able to qualify by 12pm on March 20, 2023, in accordance with the Virginia Department of Election's Candidate's Bulletin for the 2023 General Assembly. (*See* EXHIBIT 1 to this Motion). Furthermore the nominating committee chair did not receive the required notice of candidacy, petitions and receipts for filing fees in a timely manner.[6] Plaintiff LITTLE's opponents were granted seven (7) additional hours to collect signatures prior to ballot qualification beyond the time granted to other Virginia General Assembly candidates. This resulted in HENSON being listed first on the ballot for the Democratic VA HD-19 nomination although he was not first to arrive with his requirements completed. (*See* EXHIBIT 2 to this Motion; *see also* EXHIBIT W to the Complaint).

c) PWCDC leadership manipulated membership access to committees by way of broken/non-functioning website forms, and failed to ensure timely follow-up for residents desiring committee membership. (*See* EXHIBIT A to the Complaint, Paragraph 15). This is a violation of DPVA Policy Section 3.1[3], as all Democrats in Prince William County were not encouraged to participate.

d) FCDC leadership repeatedly allowed the deletion/removal of communications by Plaintiff LITTLE on committee district's social media group page and provided an erroneous meeting date during final primary campaign weeks. (*See* Verified Complaint, Paragraph 30; *see also* EXHIBIT A to the Complaint, Paragraphs 19-20). This is a

[7] Va. Code § 24.2-103(A) states, "The State Board, through the Department of Elections, 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. Its supervision shall ensure that major risks to election integrity are (i) identified and assessed and (ii) addressed as necessary to promote election uniformity, legality, and purity."

violation of DPVA Policy Sections 3.1[3], as efforts were intentionally taken to exclude Plaintiff LITTLE, an African American woman, from party affairs.

e) PWCDC leadership manipulated other candidates, elected officials, local business owners, organizations etc. into endorsing/supporting Henson and/or withholding support for Little. (*See* Verified Complaint, Paragraphs 20-21; *see also* EXHIBIT A to the Complaint, Paragraph 12; *see also* EXHIBIT 3 to this Motion).

On June 20, 2023, primary election day, DPVA committed the most egregious of violations and disreputable acts:

f) PWCDC leadership utilized misleading sample ballots distributed by official committee personnel/leaders in official committee gear resulting in a 49 vote Little primary loss (*See* EXHIBIT T to the Complaint; *see* also EXHIBIT A to the Complaint, Paragraph 24). This is a violation of DPVA Policy Section 10.11 and PWCDC Policy Section 10.3.1, as the definition of endorse is "to approve, support, or sustain."[8]

g) At a Fairfax County voting precinct within VA HD-19, Karen Corbett Sanders (hereinafter "CORBETT SANDERS"), DPVA/Fairfax County Democratic Committee-endorsed Fairfax County Public Schools' Mount Vernon School Board Representative, Plaintiff LITTLE witnessed CORBETT SANDERS tell a voter that HENSON was endorsed by the Mayor of Dumfries. Knowing first-hand that was false information, Plaintiff LITTLE questioned CORBETT SANDERS in the presence of the voter. CORBETT SANDERS retracted and corrected her statement only after Plaintiff LITTLE questioned her. (*See* EXHIBIT A to the Complaint, Paragraph 25).

[8] https://www.dictionary.com/browse/endorse

5. Prior to the June 20, 2023, Democratic Primary, Plaintiff LITTLE raised $222,962 in campaign contributions and led early voting/mailed absentee with 40.7%. An additional candidate, Natalie Shorter (herein "SHORTER") raised $66,749 and was essentially tied with HENSON who raised $82,981 with SHORTER claiming 29.3% and HENSON claiming 30% of early voting/mailed absentee. However, after the day-of violations of DPVA Policy, HENSON jumped to finish in first (1st) place claiming 38.7% to LITTLE's 37.4% while SHORTER ended with 23.9%. (*See* EXHIBIT 4 to this Motion). The actual precinct where Plaintiff LITTLE observed the PWCDC Woodbridge District Committee Chairwoman distributing HENSON's misleading sample ballots accounted for 108 election day votes for HENSON. (*See* EXHIBIT T to the Complaint; EXHIBIT A to the Complaint, Paragraph 24; *see also* EXHIBIT 5 to this Motion). HENSON achieved the DPVA VA HD-19 nomination by 49 votes. (*See* EXHIBIT 4 to this Motion). Plaintiffs contend HENSON's "victory" occurred as a result of multiple DPVA leaders committing multiple DPVA Policy violations as enumerated above.

Argument

6. Plaintiff LITTLE's contractual agreement to pursue the DPVA VA HD-19 nomination was based upon the assumption that DPVA would follow its own rules in administering the primary election. DPVA breached their own contract, denying Plaintiff LITTLE her constitutional right to pursue ballot access in any other capacity, as DPVA clearly had no intention of following or enforcing their own rules nor did they.

7. Party leadership knew in advance that they would put the full weight of DPVA behind a nominee it felt it could control. It turned out that candidate was HENSON. In so doing,

DPVA violated its own regulations as explained above, resulting in DPVA nomination "victory" for HENSON.

8. The United States' first "Sore Loser Law" was enacted in 1906 in Mississippi. Most were enacted after the Civil Rights Movement between 1970 and 1995. Virginia's "Sore Loser Law"—Va. Code § 24.2-813—was enacted in 1932 during a period of Democratic Party Control.[9]

According to a CRS Report (2006),[10] supporters of "Sore Loser" Laws say they:

a) Contribute to the integrity of the election process;

b) Prevent voter confusion;

c) Prevent voter disenfranchisement;

d) Make a solid effort to level the playing ground; and

e) Keep those running for office in line with the democratic principles and values.

9. However, when a political party breaks its own rules while administering a primary election, all intentions of a "Sore Loser" Law are nullified.

10. In this case, Plaintiff LITTLE promptly sought to file a complaint about what had occurred during the campaign period up to primary election day before the Virginia Department of Elections. They advised her that she would have to appeal to either the Democratic Party of Virginia or to this Court. On July 3, 2023, Plaintiff Little submitted a written appeal to the Democratic Party of Virginia and copied members of the Virginia Department of Elections. (*See* EXHIBIT W of the Complaint) The Democratic Party did not even acknowledge receipt of the appeal or respond to it. (*See* Paragraph 48 of the Complaint, *see also* EXHIBIT A of the Complaint; Paragraph 32).

[9] https://ballotpedia.org/When_states_adopted_sore_loser_laws
[10] https://ballotpedia.org/Congressional_Research_Service

11. Section 12.7 of the Democratic Party Plan states, "[I]f a nomination is set aside for any reason…then the committee having responsibility of determining method of nomination shall determine the manner by which a new candidate shall be nominated." Furthermore, Va. Code § 24.2-529 states, "Should the nominee of any party…have his nomination set aside for any reason, the party may nominate to fill the vacancy in accordance with its own rules." However, according to a July 25, 2023, Inside NoVA article,[11] "A state party official said the party lacks the ability under Virginia law to rescind a nomination and submit the loser of a primary election as its nominee." This is an untrue statement according to both the Virginia Department of Elections and Virginia law. Thus, how can Va. Code § 24.2-813 be constitutional where the political party that administered the election chooses to ignore a legitimate appeal of what occurred and Va. Code § 24.2-813 provides no recourse?

12. Furthermore, in a situation like that of VA HD-19 where no other political party submits a nominee and no Independent candidate declares candidacy, the DPVA essentially controls who becomes the actual legislator. In the case where the DPVA put its fingers on the scale in a manner that gave the nomination to the legislator, the legislator is going to be beholden to the party vs. the people they become elected to serve. The last thing we want in a democracy is a person who is beholden to a political party instead of the people of their district.

13. Thus, Va. Code § 24.2-813 is not unconstitutional for its existence as a "Sore Loser Law" per se, but is unconstitutional as applied because where the political party fails to comply with its own policies, it can just ignore an appeal by a "losing" candidate without adverse ramification. This court provides the sole remedy.

[11] https://www.insidenova.com/headlines/woodbridge-candidate-calls-for-overturning-narrow-primary-loss-state-democrats-push-back/article_d441fe46-2283-11ee-ba8a-a357ba71d5f5.html

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS

A. The Right to Associate is One of Our Most Precious Freedoms

14. Starting from the premise that the First Amendment, as applied to the states through the Fourteenth Amendment, prohibits the enactment of laws that abridge the freedom of speech and association, *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015), the First Amendment protects the "freedom to associate with others for the common advancement of political beliefs and ideas…" *Buckley v. Valeo* 424 U.S. 1, 15 (1976); *see also Anderson v. Celebrezze*, 460 U.S. 780, 787 (1983) ("[T]he right of individuals to associate for the advancement of political beliefs … rank[s] among our most precious freedoms."). Because the right to free speech and association is at its zenith during the final days and months of an election campaign, *Citizens United v. FEC*, 558 U.S. 310, 334 (2010), states must act with precision when enacting and administering their election codes. *See Kusper v. Pontikes*, 414 U.S. 51, 59 (1973) ("Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms.").

15. This is especially important true when enacting and administering ballot access statutes. "[Ballot] [a]ccess restrictions also implicate the right to vote because, absent recourse to referendums, voters can assert their preferences only through candidates or parties or both." *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979). "By limiting the choices available to voters, the State impairs the voters' ability to express their political preferences." *Id.* Accordingly, when courts conduct their constitutional analysis of ballot access restrictions, their primary concern is "with the tendency of ballot access restrictions to limit the field of candidates from which voters might choose." *Anderson v. Celebrezze*, 460 U.S. 780, 786 (1983). This is because "voters can assert their preferences only through

candidates or parties or both." *Id.* at 787. Therefore, ballot restrictions that severely burden the right to vote and associate violate the First Amendment to the U.S. Constitution. *See Storer v. Brown*, 415 U.S. 724, 728-29 (1974).

B. Courts Utilize a Flexible Standard When Evaluating Ballot Access Laws

16. Balanced against Plaintiff's First Amendment rights, the State has a duty to enact election codes for orderly, fair, and honest elections. Courts reviewing challenges to ballot access cases impose a flexible standard. *See Burdick v. Takushi*, 504 U.S. 428, 433-34 (1992). If the ballot access regulation imposes a severe burden, then the regulation must survive strict scrutiny. *Id.*, at 434. By contrast, if the election regulation imposes a light burden, rational basis or intermediate scrutiny applies. *Id.* Ultimately, when reviewing a ballot access statute, "[t]he ultimate question is said to be whether in the context of [Virginia's politics], a reasonably diligent candidate could be expected to be able to meet the requirements and gain a place on the ballot." *See Bowe v. Board of Election Comm'rs*, 614 F.2d 1147, 1152 (7th Cir. 1980) (citing *Storer*, 415 U.S. at 742).

C. Virginia's "Sore Loser Law," Va. Code § 24.2-813, as applied, conflicts with Va. Code § 24.2-103(A)

17. According to Va. Code § 24.2-103(A), "The State Board, through the Department of Elections, 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. Its supervision shall ensure that major risks to election integrity are (i) identified and assessed and (ii) addressed as necessary to promote election uniformity, legality, and purity." Section 13.1 of DPVA Policy states that primaries shall be, "governed by those provisions of the state's election laws, as detailed in the Code of Virginia, as to requirements, procedures, and

notice applicable to Party primaries. The appropriate committee chair shall carry out the duties outlined in both this Plan and the law whenever a primary is selected as the method of nomination." Although the DPVA Policy makes the political party beholden to the Code of Virginia, there is no statute in the Code of Virginia making the political party beholden to the Code, thereby there is no remedy for relief when a political party breaks its own policy absent actions taken by the courts.

D. Virginia law outweighs policies of political parties

18. DPVA has seemingly developed a pattern and practice of breaking its own rules—DPVA Policy—in an attempt to control which candidates appear on the ballot for both primary and general elections. *See* EXHIBIT P to the Complaint. Although "[a] political party has a First Amendment right to limit its membership as it wishes, and to choose a candidate-selection process that will in its view produce the nominee who best represents its political platform" *N.Y. Bd. Of Elections v. Lopez Torres,* 552 U.S. 196, 128 S.Ct. 791, 797, 169 L.Ed.2d 665 (2008), as the Supreme Court has noted, "[t]hese rights are circumscribed … when the State gives the party a role in the election process," such as "by giving certain parties the right to have their candidates appear with party endorsement on the general-election ballot." *Id.* at 797-98. Where, as in Virginia, the state assumes this role, "then also the State acquires a legitimate governmental interest in assuring the fairness of the party's nominating process, enabling it to prescribe what that process must be." *Id.* at 798. The validity of an election law "depends on the severity of the burden it imposes on the exercise of constitutional rights and the strength of the state interests it serves." *Nader v. Brewer,* 531 F.3d 1028, 1034 (9th Cir.2008). "[I]n considering a constitutional challenge to an election law, a court must weigh 'the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments' against 'the

precise interests put forward by the State as justifications for the burden imposed by its rule.' " *Id.* (quoting *Anderson v. Celebrezze,* 460 U.S. 780, 789, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983)). The Supreme Court has held that "the severity of the burden the election law imposes on the plaintiff's rights dictates the level of scrutiny and will be upheld only if it is narrowly tailored to serve a compelling state interest," whereas regulations that impose lesser burdens will be upheld as long as they are justified by "a state's 'important regulatory interests.' " *Id.* at 1035 (quoting and citing *Burdick v. Takushi,* 504 U.S. 428, 434, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992)); see also *Clingman v. Beaver,* 544 U.S. 581, 592, 125 S.Ct. 2029, 161 L.Ed.2d 920 (2005) ("[N]ot every election law that burdens associational rights is subject to strict scrutiny; … [i]nstead, … strict scrutiny is appropriate only if the burden is severe." Like most states, Virginia seeks to remove party nominating decisions from the infamous "smoke-filled rooms" and place them instead in the hands of the rank-and-file, thereby destroying " 'the corrupt alliance' between wealthy special interest and the political machine." *See Lightfoot v. Eu,* 964 F.2d 865, 872 (9th Cir.1992) (quoting Richard Hofstadter, *The Age of Reform* 257 (1955)). This advances the state's interest in limiting opportunities for fraud and corruption by preventing party leadership from controlling nominating decisions, while promoting democratic decision-making. The state's goals would clearly be impeded if party leaders could either opt out of the primary altogether or interfere with the democratic process by exercising veto power over the candidates that might seek the nomination, which is exactly what DPVA did when it disregarded its own policy as outlined in the Verified Complaint and restated in the Facts section above. The benefits of primaries are the reason why, "[n]early every State in the Nation now mandates that political parties select their candidates for national or statewide office by means of primary elections." *See Clingman,* 544 U.S. at 599, 125 S.Ct. 2029 (O'Conner, J., concurring). Furthermore, "the

State's interest in enhancing the democratic character of the election process overrides whatever interest the Party has in designing its own rules for nominating candidates," such as its desire to nominate through party-run conventions. *Lightfoot,* 964 F.2d at 873; *see Tashijian v. Republican Party of Conn.,* 479 U.S. 208, 237, 107 S.Ct. 544, 93 L.Ed.2d 514 (1986) (Scalia, J. dissenting) (noting that "[a state] may lawfully require that significant elements of the democratic election process be democratic—whether the Party wants that or not"). For these reasons, Plaintiffs assert that they are likely to prevail on the merits.

II. PLAINTIFFS WILL SUFFER IRREPARABLE HARM IF THE INJUNCTION IS DENIED

17. Although Plaintiff LITTLE initially filed her signature requirement and qualified for ballot access as a candidate for the Democratic nomination on March 20, 2023, the last day for a non-party affiliated candidate to file their signature requirement for ballot access is June 20, 2023—the same day as the Democratic primary election. (*See* EXHIBIT 1 to this Motion). The Virginia Supreme Court "has long said that to secure an injunction, a party must show irreparable harm and the lack of an adequate remedy at law." *Preferred System Solutions, Inc. v. GP Consulting, LLC,* 284 Va. 382, 401 (2012) (quoting *Black & White Cars, Inc. v. Groome Transp., Inc.,* 247 Va. 426, 431 (1994)). In this instance, denying fair access to the ballot is not the type of harm money, or any other remedy at law, could fix.

18. Irreparable harm here flows because "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Perry v. Judd,* 840 F. Supp. 2d 945, 960 (4th Cir. 2012) (mem. op.) (quoting *Newsom v. Albemarle Cnty. Sch. Bb.,* 354 F.3d 249, 261 (4th Cir. 2003)). The Virginia Supreme Court has likewise stated that "discussion of public issues and debate on the qualifications of candidates for public office are

integral to the operation of our system of government and are entitled to the broadest protection the First Amendment can afford." *Mahan v. National Conservative Political Action Committee,* 227 Va. 330, 336 1984). Depriving the candidates of a fair opportunity to seek public office and denying the public of the robust debate of ideas Plaintiff will add to the election is a quintessential irreparable harm. *Cf. Reynolds v. Sims,* 377 U.S. 533, 555 (1964) ("The right to vote freely for the candidate of one's choice is the essence of a democratic society."); *see also Perry,* 840 F. Supp. at 960. As such, Plaintiffs will suffer irreparable harm in the absence of grant of the requested injunction.

III. THE BALANCE OF THE EQUITIES FAVORS AN INJUNCTION

19. Although nothing in the Code of Virginia precludes Plaintiff LITTLE from running as a write-in candidate for VA HD-19, the Supreme Court has recognized that "(t)he realities of the electoral process, however, strongly suggest that 'access' via write-in votes falls short far short of access in terms of having the name of the candidate on the ballot." Lubin v. Panish, 415 U.S. 709, 719 n.5, 94 S.Ct. 1315, 1321 n.5, 39 L.Ed.2d 702 (1974). Thus the ability to write in Plaintiff LITTLE's name does not fully remedy the injury resulting from the malfeasance of DPVA during the 2023 campaign period and Democratic nomination process for the newly drawn VA HD-19.

20. The balancing of the equities certainly tips in favor of Plaintiffs. When balancing the equities, Virginia Courts often look to the likelihood of success on the merits. *See Democratic Party of Va.,* 102 Va. Cir., at 489. The success of two similar lawsuits[12] in this Court, as well as some in other circuit courts in Virginia, indicate a high likelihood of success for Plaintiffs' claim. Courts also note that "[a]n injunction enjoining the Commonwealth from

[12] *See Democratic Party of Va. v. Piper* (2018); *see also Richmond for All, et al. v. Va. Dept. of Elections, et al.* (2020)

enforcing a regulation that the Court has determined is likely to be found unconstitutional cannot qualify as harm." *Perry,* 840 F. Supp. at 960. The burden placed on Plaintiffs by not allowing Plaintiff LITTLE an extension to file her signature requirement for ballot access as an Independent candidate for VA HD-19 greatly exceeds any harm that could befall Defendants. No delay or other hardship will result to Defendants for extending the deadline due to DPVA malfeasance in the primary election process. The exact opposite is true for Plaintiff LITTLE as they will be unreasonably denied equitable access to a place on the ballot due to factors far outside her control. The same is true for all Plaintiffs and voters of VA HD-19, who will be denied equitable awareness of their options for representation in Virginia's House of Delegates. VA HD-19 is a newly drawn District with no incumbent representative. Therefore, the balance of equities favors Plaintiffs.

IV. THE PUBLIC INTEREST FAVORS THE GRANTING OF AN INJUNCTION

21. The public interest unequivocally supports the granting of an injunction in this case. "The public has an undeniable interest in fair and transparent elections." *Democratic Party of Va.,* 102 Va. Cir., at 489. While the public does have an interest in a stable electoral process, "the public interest more closely lies with the voter's ability to cast a ballot for the candidate of her choice." *Perry,* 840 F. Supp at 960. As previously stated, "[t]he right to vote freely for the candidate of one's choice is the essence of a democratic society." *Reynold,* 377 U.S. at 555. That right cannot be denied because a political party put its thumb on the scale. To allow otherwise would be to forfeit our democratic ideals writ large. *See generally, e.g., Ga. Coalition for the Peoples' Agenda, Inc. v. Deal,* 214 F. Supp. 3d 1344 (S.D. Ga. 2016) (granting a preliminary injunction extending the voter registration deadline less than thirty (30) days before the 2016

administrative difficulty.") In-person early voting in Virginia for the general election begins September 22, 2023, and both Fairfax and Prince William Counties utilize ballots printed on-demand.[13] However, ballots will be produced and mailed during the second week in September 2023. As such, the public interest favors the granting of this injunction.

Conclusion

For all these reasons, Plaintiffs urge this Court to enter a preliminary injunction enjoining Defendants Virginia Department of Elections, Virginia Board of Elections, and its Chairman, John O'Bannon, from printing ballots for precincts within VA HD-19 that do not include the name of Plaintiff LITTLE pending the outcome of this civil action.

Respectfully submitted this:

Makya Renée Little
15000 Potomac Town Place, Suite 100-801
Woodbridge, VA 22191
(703) 786-7987; info@makyalittle.com
Pro Se Plaintiff

[13] https://www.fairfaxcounty.gov/elections/early-voting; https://www.pwcvotes.org/earlyvoting

Verification Pursuant to the Code of Virginia, Section 8.01-4.3

I, Makya Renée Little, have reviewed the factual allegations in the Emergency Motion for Preliminary Injunction and I swear under penalty of perjury that those statements are true and correct to the best of my knowledge.

Makya Renée Little
Pro Se Plaintiff

Verification Pursuant to the Code of Virginia, Section 8.01-4.3

I, Steven L. Jacobs, have reviewed the factual allegations in the Emergency Motion for Preliminary Injunction and I swear under penalty of perjury that those statements are true and correct to the best of my knowledge.

Steven L. Jacobs
Pro Se Plaintiff

Verification Pursuant to the Code of Virginia, Section 8.01-4.3

I, Ruby Bermudez Martinez, have reviewed the factual allegations in the Emergency Motion for Preliminary Injunction and I swear under penalty of perjury that those statements are true and correct to the best of my knowledge.

Ruby Bermudez Martinez

Ruby Bermudez Martinez
Pro Se Plaintiff

Verification Pursuant to the Code of Virginia, Section 8.01-4.3

I, Andrea Salgado, have reviewed the factual allegations in the Emergency Motion for Preliminary Injunction and I swear under penalty of perjury that those statements are true and correct to the best of my knowledge.

ASalgado

Andrea Salgado
Pro Se Plaintiff

Certificate of Service

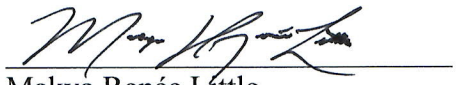
I HEREBY CERTIFY that a copy of the Emergency Motion for Preliminary Injunction and Arguments in Support was this 21st day of August, 2023 served, by email and by first class mail, postage prepaid, upon the following:

Virginia Department of Elections
Washington Building, First Floor
1100 Bank Street, Richmond 23219
Telephone: (804) 864-8901
FAX: (804) 371-0194
info@elections.virginia.gov
ea@elections.virginia.gov
Paul.Saunders@elections.virginia.gov

Virginia State Board of Elections
Washington Building, First Floor
1100 Bank Street, Richmond 23219
Telephone: (804) 864-8901
FAX: (804) 371-0194
info@elections.virginia.gov

John O'Bannon, Chairman
Virginia State Board of Elections
Washington Building, First Floor
1100 Bank Street, Richmond 23219
Telephone: (804) 864-8901
FAX: (804) 371-0194
info@elections.virginia.gov

By Pro Se Plaintiff:



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