

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 in multiple affidavits and sworn declarations for inclusion in the Petition. Exhibits 26, 27, 28, and 29 contain this information 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 circulated. 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: 

Aria Branch, VA Bar No. 83682
Marc E. Elias, WDC Bar No. 442007*
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**Pro hac vice application to be filed*

Attorneys for Plaintiff

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.

**MOTION FOR TEMPORARY
INJUNCTION AND IN
SUPPORT OF THE PETITION
FOR WRIT OF MANDAMUS**

At Law No. _____

Introduction

Plaintiff the Democratic Party of Virginia (the “Party”) filed this action and brings this motion to ensure that Virginia’s elections are not tainted by fraud that corrupts the process, undermines public confidence, and irreparably harms the fundamental rights of the Party’s members and voters that voluntarily associate with it. The Virginia Constitution affirmatively guarantees “all men . . . the right of suffrage,” Va. Const. art. I, § 6, and the Supreme Court has long recognized that, “[u]nder our form of government, the perpetuity of our institutions and the preservation of the liberty of the people *depend upon* honest and fair elections.” *Booker v. Donohoe*, 95 Va. 359, 367 (1897) (emphasis added). These guarantees mean nothing, however, if a candidate may qualify for the ballot based on brazen fraud, and the state actors with the power to do so do not promptly act to stymie the

injuries caused by the criminal conduct of individuals who have sought to manipulate the process by falsifying.

But that is exactly what has happened here: over the past approximately nine days, it has become undeniably clear that the qualification of Shaun Brown to be listed as an independent candidate on the general election ballot in the race to represent Virginia's Second Congressional District ("VA-2") in the U.S. House of Representatives, is based on a nominating petition (the "Petition") that was positively riddled with fraud. Far from being an isolated incident or limited to one rouge circulator, the fraudulent conduct that contaminated the Petition was so far reaching that, in a matter of only ten days, investigations undertaken by the press and by the Party itself have determined that *at least* three *different* circulators who purported to "collect" signatures and submitted them in support of Brown's candidacy (which the circulators affirmed to have "witnesses" under affirmations of criminal penalty), in fact submitted multiple pages containing forged signatures.

In total, these tainted circulators "collected" at least 566 signatures—more than half the number of signatures necessary to qualify Brown for the ballot. Each of these circulators, moreover, is a current or former employee of the Republican incumbent in VA-2, U.S. Congressman Scott Taylor, *against* whom Brown will running in the general election, if Defendants' qualification of her candidacy is not revoked. And it is clear that this is just the tip of the iceberg. At least one more circulator who submitted signatures in support of Brown's Petition has apparent ties to Congressman Taylor. Ex. 22.¹

On August 7, the Circuit Court of Virginia Beach ordered that a special prosecutor be assigned to "investigate potential violations of the Code of Virginia including violations of election laws and forgery." Ex. 2. Independent investigations of the extent and breadth

¹ All 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 Relief and Petition for Writ of Mandamus and Memorandum in Support.

of the fraud—which already is more than sufficient to require the invalidation of Brown’s qualification for the ballot—remains ongoing, with news breaking on a nearly daily basis about evidence of additional individuals who have confirmed that their names were fraudulently added to the Petition.

Prior to filing this lawsuit, the Party’s counsel provided the Commissioner of the Department of Elections (the “Commissioner”) and the State Board of Elections (the “Board”) with 27 affidavits from voters who affirmed that, although their names, information, and purported signatures appear on the Petition, they did not sign it. This information was collected over the course of only seven days. Exs. 3, 4. Eight more affidavits have been collected since then, bringing the total up to 35. Ex. 21. Based upon this information and multiple press accounts reporting additional incidents of fraud, as well as substantial and significant disqualifying errors throughout the Petition, the Party’s counsel demanded that the Commissioner and the Board (together with the Department of Elections and members of the Board, “Defendants”) 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.

Local jurisdictions are currently free to begin printing ballots for the November election and, unless Defendants’ 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 21,² is fast approaching. Thus, immediate relief, whether in the form of a

² “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* Ex. 23. Similarly, under federal law, all validly requested ballots

temporary injunction or a writ of mandamus, is both necessary and appropriate. In support of their motion, the Party submits as follows:

Factual Background

A. Virginia's Nomination Petition Requirements

Virginia requires that candidates qualify for inclusion on the ballot by submitting nomination petitions that contain a minimum number of valid signatures from qualified voters. In this way, Virginia ensures that ballots are not overcrowded with frivolous candidacies, and that candidates whose names are listed on the ballots presented to voters have at least a “a modicum of voter support.” *Munro v. Socialist Workers Party*, 479 U.S. 189, 196 (1986). Where an individual seeks to be listed on the ballot as an independent in a race for a seat in the U.S. House of Representatives, they must collect and submit a nominating petition supported by at least 1,000 signatures of qualified voters in the relevant jurisdiction. Va. Code Ann. § 24.2-505; 24.2-506(A); *see also* Ex. 4. The deadline for candidate qualification for the general election was June 12, 2018. Prospective independent candidates seeking to represent the people of VA-2 in the U.S. House of Representatives had between January 2 and June 12, 2018 to gather and file at least 1,000 valid signatures of registered Virginia voters eligible to participate in that election in order to qualify to be listed on the general election ballot. *Id.*

To ensure that a prospective candidate has met this minimum statutory requirement of voter support, the Board reviews the signatures to determine their validity. Signatures are rejected for a variety of reasons, including if the voter was not qualified to sign the petition where, for example, the voter was not a Virginia registered voter at the time that she signed the petition, or she did not live in the relevant jurisdiction. *See* Va. Admin. Code 1VA20-50-20(C) (enumerating the grounds for invalidating a signature). Additionally, the Board may reject entire sheets of signatures if the petition circulators failed to sign or

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).

notarize the required circulator affidavit, which contains an attestation that the petition circulator is qualified and has “personally witnessed” each of the signatures on the petition sheet. *See* Va. Admin. Code 1VA20-50-20(B) (enumerating the grounds for invalidating a petition). A petition may also be rejected where the petition circulator failed to meet minimum qualifications. *See* GRE Handbook at 16.5.2.2. Circulators who falsely sign individual petition affidavits face “a felony [charge that is] punishable by a maximum fine up to \$2,500 and/or imprisonment up to ten years.” *See* Va. Code Ann. § 24.2-1016 (“Any willfully false material statement or entry made by any person in any statement, form, or report required” by Virginia election law “shall constitute the crime of election fraud and be punishable as a Class 5 felony.”). All of these safeguards are meant to ensure that only those candidates who are adequately supported by registered voters within the relevant district will be placed on the ballot, and to further ensure the validity, legality, and fundamental fairness of Virginia elections.

B. Brown’s Attempts to Access the Ballot

In 2016, Brown was the Democratic nominee for VA-2. Now-Congressman Taylor was the Republican nominee, and won the seat with 61% of the vote. Ex. 5. The following year, in December 2017, Brown was indicted in federal district court on charges of wire fraud and theft of government property, with prosecutors alleging that she lied to the state about feeding needy children and defrauded the government of over \$439,000. Ex. 6. Prosecutors also alleged that “Brown lied in Federal Election Commission filings about donating more than \$700,000 to her [first] campaign [to represent VA-02 in Congress], and then getting reimbursed for it.” Ex. 7. 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. 8.

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 considered for inclusion on the general election ballot, *see supra* at 4—Brown submitted her Petition, which was supported by 2,512 signatures. A full 998 of those signatures were collected in the span of the final week just prior to the filing deadline. *See* Ex. 9. Brown needed the Board to validate least 1,000 of the signatures submitted in support of her Petition to secure a place on the ballot. Va. Code Ann. § 24.2-505; 24.2-506(A); *see also* Ex. 4. The Board reviewed 2,163 of the signatures submitted and determined that 1,030 of those were valid signatures. Ex. 10. The Board and Department of Elections formally qualified Brown for inclusion on the general election ballot as the independent candidate in VA-2. Ex. 11. incumbent Congressman Taylor. Ex. 12. While jurisdictions may begin printing ballots at any time after candidates are certified, they must have ballots printed by no later than September 21, when absentee ballots must be mailed. *Supra* at 4 n.2.

C. Fraudulent “Signature Gathering” In Support of the Petition

On August 1, 2018, the first of what would soon be a cascade of media reports about irregularities about the Petition broke. Following a public records request, WHRO-FM radio was the first to report that four paid campaign staffers of Congressman Taylor gathered *more than half* of the signatures required to qualify Brown for a slot on the November ballot in the race *against* Taylor. Ex. 13. Four days later, following an investigation prompted by an anonymous tip, Paul Bibeau at WHRV broke the news that he had uncovered evidence of fraudulent activity related to the efforts of Congressman Taylor’s staffers to marshal signatures in support of the Petition. Ex. 14. Several persons whose names and purported signatures appear on the Petition have now come forward affirming that they did not, in fact, fill out or sign the Petition. Ex. 15. In one widely reported instance, Elizabeth Cake confirmed that her husband, Richard Cake, whose name and purported signature appears on the Petition, could not possibly have signed it because he was, at the time that he purportedly signed, deceased. Ex. 17. In another widely reported

instance, three members of the same family—all of whom are listed on the Petition as signatories—stated that *none* of them signed the Petition.³ And additional people continue to come forward to attest that, although their names appear on the Petition in purported support of Brown’s candidacy, they did not sign the Petition. *See* Exs. 18, 19, 25, 26.

Shortly after first learning about these reports, the Party began its own investigation into the Petition. These efforts are ongoing, but as of the time of filing, the Party has obtained 35 affidavits from individuals whose signatures or whose family members’ signatures were fraudulently added to the Petition. Affidavit of Lucas Munson (“Munson Aff.”) ¶ 8. These affidavits are attached to the Branch Affidavit as Exhibit 21 and are summarized in the chart below.

	<u>Nam of Affiant</u>	<u>Name of Voter</u>	<u>Page Signature Appears</u>	<u>Date Purportedly Signed</u>	<u>Name of Circulator</u>	<u>Included in State Count to Qualify for Ballot (Y/N)?</u>	<u>Circulator Known Taylor Associate (Y/N)?</u>	<u>Last Four Digits of SSN Listed (Y/N)?</u>
1.	Ann Kolantis	Ann Kolantis	124A	6/9/18	Heather Guillot	Y	Y	N
2.	Anthony (Tony) Flores	Anthony (Tony) Flores	72A	6/8/18	Lauren Creekmore	Y	Y	N
3.	Anthony Flores	Anthony Flores	72A	6/8/18	Lauren Creekmore	Y	Y	N
4.	Clifford Bateman	Clifford Bateman	125B	6/9/18	Heather Guillot	N	Y	N
5.	Dan Lilly	Brett Lilly	103A	6/9/18	Roberta Marciano	Y	Y	N
6.	Elizabeth Cake	Richard Cake	124A	6/9/18	Heather Guillot	N	Y	N
7.	Joan Chittum	Melvin Chittum	124B	6/9/18	Heather Guillot	N	Y	N
8.	Joanne Anderson	Joanne Anderson	71A	6/9/18	Lauren Creekmore	Y	Y	N

³ Ex. 15. The names of these voters are Anthony (Tony) Flores, Anthony Flores, and Linda Flores; they appear on the Petition at page 72A. Ex. 9.

	<u>Nam of Affiant</u>	<u>Name of Voter</u>	<u>Page Signature Appears</u>	<u>Date Purportedly Signed</u>	<u>Name of Circulator</u>	<u>Included in State Count to Qualify for Ballot (Y/N)?</u>	<u>Circulator Known Taylor Associate (Y/N)?</u>	<u>Last Four Digits of SSN Listed (Y/N)?</u>
9.	John DeWald	John DeWald	126B	6/8/18	Roberta Marciano	Y	Y	N
10.	Linda Flores	Linda Flores	72A	6/8/18	Lauren Creekmore	Y	Y	N
11.	Mary Lynch	Mary Lynch	124A	6/9/18	Heather Guillot	Y	Y	N
12.	Mattie J. Jones	Mattie J. Jones	124A	6/9/18	Heather Guillot	Y	Y	N
13.	Michelle DeWald	Michelle DeWald	126B	6/8/18	Roberta Marciano	Y	Y	N
14.	Paul Hughes	Paul Hughes	124A	6/9/18	Heather Guillot	N	Y	N
15.	Polly Cutrell	Polly Cutrell	125B	6/9/18	Heather Guillot	Y	Y	N
16.	Ronald Bishop	Mary Bishop	115A	6/9/18	Heather Guillot	Y	Y	N

	<u>Nam of Affiant</u>	<u>Name of Voter</u>	<u>Page Signature Appears</u>	<u>Date Purportedly Signed</u>	<u>Name of Circulator</u>	<u>Included in State Count to Qualify for Ballot (Y/N)?</u>	<u>Circulator Known Taylor Associate (Y/N)?</u>	<u>Last Four Digits of SSN Listed (Y/N)?</u>
17.	Rosa Dowdy	Rosa Dowdy	124A	6/9/18	Heather Guillot	Y	Y	N
18.	Blair Woodall	Blair Woodall	123A	6/9/18	Heather Guillot	Y	Y	N
19.	Betty Simmons	Betty Simmons	114A	6/9/18	Heather Guillot	Y	Y	N
20.	Dennis Miller	Dennis Miller	122B	6/9/18	Heather Guillot	Y	Y	N
21.	Eileen Eady	Eileen Eady	124A	6/9/18	Heather Guillot	Y	Y	N
22.	Linda Skinner	Linda Skinner	125A	6/9/18	Heather Guillot	Y	Y	N
23.	Rebecca Tabakin	Rebecca Tabakin	113B	6/9/18	Heather Guillot	Y	Y	N
24.	Robert Roebuck	Robert Roebuck	123A	6/9/18	Heather Guillot	Y	Y	N

	<u>Nam of Affiant</u>	<u>Name of Voter</u>	<u>Page Signature Appears</u>	<u>Date Purportedly Signed</u>	<u>Name of Circulator</u>	<u>Included in State Count to Qualify for Ballot (Y/N)?</u>	<u>Circulator Known Taylor Associate (Y/N)?</u>	<u>Last Four Digits of SSN Listed (Y/N)?</u>
25.	Sandra Purvis	Sandra Purvis	71A	6/9/18	Lauren Creekmore	N	Y	N
26.	Troy Young	Troy Young	124B	6/9/18	Heather Guillot	Y	Y	N
27.	Truman Baxter	Truman Baxter	114A	6/9/18	Heather Guillot	Y	Y	N
28.	Ann H. Long	Ann H. Long	115A	6/9/18	Heather Guillot	N	Y	N
29.	Gregor McLeod	Gregor McLeod	73B	6/8/18	Lauren Creekmore	Y	Y	N
30.	Barbara Grantz	Barbara Grantz	122B	6/9/18	Heather Guillot	Y	Y	N
31.	Ellen Cox	Ellen Cox	115A	6/9/18	Heather Guillot	Y	Y	N
32.	Jeffrey Moffett	Jeffrey Moffett	116A	6/8/18	Heather Guillot	N	Y	N

	<u>Nam of Affiant</u>	<u>Name of Voter</u>	<u>Page Signature Appears</u>	<u>Date Purportedly Signed</u>	<u>Name of Circulator</u>	<u>Included in State Count to Qualify for Ballot (Y/N)?</u>	<u>Circulator Known Taylor Associate (Y/N)?</u>	<u>Last Four Digits of SSN Listed (Y/N)?</u>
33.	Jeffrey Renn	Jeffrey Renn	113A	6/9/18	Heather Guillot	Y	Y	N
34.	John Thurston	John Thurston	125B	6/9/18	Heather Guillot	Y	Y	N
35.	Stacy Rothwell	Stacy Rothwell	125A	6/9/18	Heather Guillot	Y	Y	N

So far, two of these instances involve individuals who passed away before the date upon which they are purported to have signed the Petition. Ex. 21 at 15, 16. At least 28 of the 35 signatures that the affidavits demonstrate were falsified were, in fact, *validated* by the Board and ultimately counted toward Brown's signature total. Ex. 10. Moreover, not all of the voters who the Party contacted who confirmed that they did not sign the Petition

were willing to sign affidavits. Approximately half declined to do so, citing concerns that a legal proceeding related to this matter might bring unwanted intrusion or publicity. Munson Aff. ¶ 7. Given the extensive media interest in this still-developing story, this reticence is understandable. *See, e.g.*, Exs. 2, 13-19.

In each instance of forgery, the fraud was compounded when the petition circulator signed an affidavit on the petition sheet attesting—falsely—that he or she personally witnessed the signatures. The affidavit protects the integrity of the nomination petition process, and requires a petition circulator to attest that they “personally witnessed” the signature. *See* Ex. 9.

In addition to the growing number of affidavits that the Party has obtained that confirm that many of the signatures submitted in support of the Petition were fraudulent, the Petition on its face exhibits numerous other objective indicia of widespread forgery. The handwriting on many of the forged signatures is markedly similar to the handwriting on other purported signatures appearing on the same petition sheet—and, in some cases, across petition sheets— indicating that whole sheets of signatures were forged with only the most minimal steps taken to differentiate the handwriting on each “signature.” Take, for example, the signatures that appear in the reproduction below of page 124A, a signature sheet submitted by Heather Guillot, a paid staffer of Congressman Taylor, where it has been confirmed by sworn affidavits from voters that at least six of the ten signatures that appear on that sheet were forged. *See* Ex. 21 at 1, 15, 26-27, 35, 44, 56. Of the six *known* forged signatures on this sheet, four were counted by the Board and Department of Elections in qualifying Brown for the ballot. *See* Ex. 10.

Excerpt of Petition Page 124A

OFFICE USE ONLY ▼		THAN ONE CANDIDATE.		POST OFFICE BOXES ARE NOT ACCEPTABLE RESIDENCE ADDRESS House Number and Street Name or Rural Route and Box Number and City/Town	DATE SIGNED (Must be after January 1 of election year)	*SEE NOTE BELOW LAST 4 DIGITS OF SOCIAL SECURITY NUMBER (OPTIONAL)
		SIGNATURE OF REGISTERED VOTER (PRINT NAME IN SPACE BELOW SIGNATURE)				
1.	SIGN	<i>Paul Hughes</i>		RESIDENCE	4837 Baxter Rd.	6/9/15
	PRINT	Paul Hughes		CITY/TOWN	Va Beach	
2.	SIGN	<i>Kenneth Weber</i>		RESIDENCE	1108 Cresthaven Ln	6/14/15
	PRINT	Kenneth Weber		CITY/TOWN	VB	
3.	SIGN	<i>Therese Bratton</i>		RESIDENCE	671 Maresfield Cir	6/14/15
	PRINT	Nicole Bolt		CITY/TOWN	Virginia Beach	
4.	SIGN	<i>Mary Jones</i>		RESIDENCE	1035 Charity Dr.	6/14/15
	PRINT	Manny Jones		CITY/TOWN	VB	
5.	SIGN	<i>Mary Lynch</i>		RESIDENCE	1517 W Little Neck Rd	6/14/15
	PRINT	Mary Lynch		CITY/TOWN	Va Beach	
6.	SIGN	<i>Rick</i>		RESIDENCE	1609 Westfield Rd	6/14/15
	PRINT	RICHARD LAKE		CITY/TOWN	VB	
7.	SIGN	<i>Donna Harris</i>		RESIDENCE	325 Paxford Dr	6/14/15
	PRINT	Doris Harris		CITY/TOWN	VB	
8.	SIGN	<i>Anne Kolander</i>		RESIDENCE	509 Cuddley Ln	6/14/15
	PRINT	Anne Kolander		CITY/TOWN	Va Beach	
9.	SIGN	<i>Eileen Eady</i>		RESIDENCE	129 N Bussing Ave	6/14/15
	PRINT	Eileen Eady		CITY/TOWN	VB	
10.	SIGN	<i>Rosa Dandy</i>		RESIDENCE	821 S Sutherland Dr	6/14/15
	PRINT	Rosa Dandy		CITY/TOWN	Va Beach	

CONTINUE ADDITIONAL SIGNATURES AND COMPLETE AFFIDAVIT ON REVERSE SIDE

* Privacy notice: The Code of Virginia, §§ 24.2-506 and 24.2-521, authorizes requesting the last four digits of your social security number to facilitate checking this petition with the official voter registration record. You are not required to provide this information and may sign the petition without doing so. The State Board of Elections or the General Registrar, when copying this document for public inspection, must cover the column containing any social security number or part thereof.

SBE-506/521 REV 1/2013

124A

Compare page 124A with the signatures that appear in the reproduction below of page 71A, a signature sheet submitted by Lauren Creekmore, also a paid staffer of Congressman Taylor, where it is known that at least two of the six incredibly similar signatures were forged. See Ex 21 at 17, 68. Of the two known forged signatures, one was counted by the Board and Department of Elections in qualifying Brown for the ballot. See Ex. 10.

Excerpt of Petition Page 71A

OFFICE USE ONLY ▼	SIGNATURE OF REGISTERED VOTER (PRINT NAME IN SPACE BELOW SIGNATURE)		POST OFFICE BOXES ARE NOT ACCEPTABLE RESIDENCE ADDRESS House Number and Street Name or Rural Route and Box Number and City/Town	DATE SIGNED (Must be after January 1 of election year)	*SEE NOTE BELOW LAST 4 DIGITS OF SOCIAL SECURITY NUMBER (OPTIONAL)
1.	SIGN	<i>Michael Brown</i>	RESIDENCE	4132 Rehman Dr.	6/6/18
	PRINT	Michael Brown	CITY/TOWN	Virginia Beach	
2.	SIGN	<i>Edward D. Price</i>	RESIDENCE	41636 Prunella Ln	6/6/18
	PRINT	Edward D. Price	CITY/TOWN	VB	
3.	SIGN	<i>Ramona Geswein</i>	RESIDENCE	4424 Delmar	6/6/18
	PRINT	Ramona Geswein	CITY/TOWN	VB	
4.	SIGN	<i>Sandra Purvis</i>	RESIDENCE	4149 Shoreline	6/6/18
	PRINT	Sandra Purvis	CITY/TOWN	Va Beach	
5.	SIGN	<i>Joanne Anderson</i>	RESIDENCE	4105 Eastwood	6/6/18
	PRINT	Joanne Anderson	CITY/TOWN	Va Beach	
6.	SIGN	<i>Phillip Zangaglia</i>	RESIDENCE	4620 Coral Reef	6/6/18
	PRINT	Phillip Zangaglia	CITY/TOWN	VB	

CONTINUE ADDITIONAL SIGNATURES AND COMPLETE AFFIDAVIT ON REVERSE SIDE

* Privacy notice: The Code of Virginia, §§ 24.2-506 and 24.2-521, authorizes requesting the last four digits of your social security number to facilitate checking this petition with the official voter registration record. You are not required to provide this information and may sign the petition without doing so. The State Board of Elections or the General Registrar, when copying this document for public inspection, must cover the column containing any social security number or part thereof.

SBE-506/521 REV 1.2013

Similarly, compare the signatures that appear in the reproduction below of page 126B, a signature sheet submitted by Roberta Marciano, whose LinkedIn profile identifies her as a Political Regional Field Director in charge of recruitment, event management, and political outreach for Congressman Taylor, where it is known that at least one of the eleven incredibly similar signatures was forged, *see* Ex. 21 at 20, and that the one *known* forged signature was counted by the Board and Department of Elections in qualifying Brown's candidacy. *See* Ex. 10.

Excerpt of Petition Page 126B

SIGNATURE OF PETITIONER (PRINT NAME)		ADDRESS (PRINT NAME, ADDRESS AND CITY/STATE)		DATE	
11.	SIGN <i>[Signature]</i>	RESIDENCE	5961 Glen View	6/8/18	
	PRINT Michelle Deniald	CITY/TOWN	VB VA		
12.	SIGN <i>[Signature]</i>	RESIDENCE	8961 Glen View	6/8/18	
	PRINT John Deniald	CITY/TOWN	Va Beach		
13.	SIGN <i>[Signature]</i>	RESIDENCE	8909 Stalworth	6/8/18	
	PRINT Albert Livingston	CITY/TOWN	VA BEACH VA 23456		
14.	SIGN <i>[Signature]</i>	RESIDENCE	640 Bollino LA	6/8/18	
	PRINT Robert MacG	CITY/TOWN	VA Beach		
15.	SIGN <i>[Signature]</i>	RESIDENCE	640 Bollino LN	6/8/18	
	PRINT Robert Cyance Jr	CITY/TOWN	VA Beach VA		
16.	SIGN <i>[Signature]</i>	RESIDENCE	1112 Stalworth	6/8/18	
	PRINT Jennifer Gidyczell	CITY/TOWN	Va Beach VA		
17.	SIGN <i>[Signature]</i>	RESIDENCE	4181 Tangle Creek	6/8/18	
	PRINT Jimmy Brown	CITY/TOWN	Va Beach 23462		
18.	SIGN <i>[Signature]</i>	RESIDENCE	617 Tyson Rd.	6/8/18	
	PRINT Deborah Korer	CITY/TOWN	Va Beach VA 23462		
19.	SIGN <i>[Signature]</i>	RESIDENCE	1109 Eichen	6/8/18	
	PRINT Angela Johnson	CITY/TOWN	Va Beach 23464		
20.	SIGN <i>[Signature]</i>	RESIDENCE	5201 Lowery Drive	6/8/18	
	PRINT Donald Lachaux	CITY/TOWN	Va Beach VA 23464		
21.	SIGN <i>[Signature]</i>	RESIDENCE	3300 Maxine Ct	6/8/18	
	PRINT Charity Suro	CITY/TOWN	VA Beach VA 23452		

As is immediately evident by these examples, the fraudulent effort to prop up Brown's candidacy and ensure that she appeared on the general election ballot was not just egregious and widespread, it was flagrant.

Although the Party's investigation into the fraud related to the Petition has only been actively ongoing for ten days, it has become clear that many of the fraudulent entries share similar characteristics. Munson Aff. ¶ 10. For example, forged signatures omit the last four digits of the signatories' Social Security Numbers. *Id.* This is perhaps unsurprising; while the other factual information contained in the false entries (e.g., voter name, address) could have been obtained from publicly available sources, it would have been much more difficult to obtain social security information.⁴ Confirmed forgeries also appear to have multiplied during the final days before the submission deadline, with mounting numbers of fraudulent signatures submitted on each successive day during June 8, 9, and 10—the

⁴ One of the Taylor staffers who appears to have signed an alarming number of pages that have since been discovered to contain false entries, Heather Guillot, also apparently personally signed the Petition at page 105A. Ex. 10 at 52. Although she appears to have included her own social security information, only 9 of the 125 signatures that Guillot purports to have "collected" include social security information. Ex. 9.

final days of signature gathering. Munson Aff. ¶ 9. Many of the voters whose signatures were forged appear to have been elderly. *Id.* And nearly all of the confirmed false signatures have thus far been found most commonly in the pages submitted by specific circulators: namely, Heather Guillot, Lauren Creekmore, and Roberta Marciano. All three have verifiable relationships with Congressman Taylor. *See* Exs. 13, 16.

Argument

A. The Party is Entitled to a Temporary Injunction.

While the Virginia Supreme Court has not determined which factors a court must consider when evaluating a motion for a temporary or preliminary injunction, circuit courts throughout Virginia have consistently applied the four factors laid out by the Supreme Court in *Winter v. Nat'l Res. Def. Council, Inc.*, 129 S. Ct. 365 (2008). *See Fame v. Allergy & Immunology, P.L.C.*, 91 Va. Cir. 66 (2015) (noting lack of Virginia precedent and applying *Winter* factors); *Seniors Coal., Inc. v. Seniors Found., Inc.*, 39 Va. Cir. 344, 350 (1996) (noting a lack of Virginia precedent and applying federal law). In accordance with that test, Virginia courts considering motions for temporary or preliminary injunctions consider whether the plaintiff has established: (1) a likelihood of success on the merits, (2) likelihood of irreparable harm in the absence of preliminary relief, (3) that the balance of the equities tips in favor of relief, and (4) that an injunction is in the public interest. *Winter*, 555 U.S. at 20. *See also* Va. Code § 8.01-628 (“No temporary injunction shall be awarded unless the court shall be satisfied of the plaintiff’s equity.”). Here, each of these requirements is easily satisfied and the Court should issue the requested injunction.

1. The Party is likely to succeed on the merits.

Through their Complaint, the Party alleges four claims: inclusion on the ballot of a candidate whose qualification petition is riddled with indisputably fraudulent entries violates the right to vote of the Party’s members and the voters who associate with it, as set forth in Article I, Section 6 of the Virginia Constitution (Count I); Party members whose names appear on the Petition as the result of fraud have suffered (and, absent relief from

this Court, will continue to suffer) injury to their free speech and associational rights under the First and Fourteenth Amendments to the U.S. Constitution (Count II) and Article I, Section 12 of the Virginia Constitution (Count III); and the Defendants’ qualification of Brown, upon a clearly deficient nominating Petition that, in addition to and beyond the fraudulent entries that the Party has been able to definitively identify in the short time period during which they have been investigating this matter, is rife with serious and substantive errors that preclude her placement on the ballot under Virginia law (Count IV). The Party is likely to succeed on all of these claims, and this factor weighs heavily in favor of granting the requested injunctive relief. *See, e.g., Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (“Likelihood of success on the merits “is the most important” Winter factor.”); *Aamer v. Obama*, 742 F.3d 1023, 1038 (D.C. Cir. 2014) (“[T]he first and most important [*Winter*] factor [is] whether petitioners have established a likelihood of success on the merits.”).

First, Article I, Section 6 of the Virginia Constitution affirmatively protects the right to vote; if a candidate may qualify for the ballot based on brazen fraud, or upon a nominating petition that is clearly deficient as a matter of law, that right—and, indeed, because the right to vote is “fundamental” precisely because it is “preservative of all rights,” *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886), ***all other rights***—is illusory. *See also Commonwealth v. Willcox*, 111 Va. 849, 860 (1911) (“However 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.”); *Booker*, 95 Va. at 367 (“[T]he 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.”); *see also Burdick v. Takushi*, 504 U.S. 428, 441 (1992) (“[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”); *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) (“No right is more precious . . . than that of having a voice in the election of those who make the laws.”).

The Virginia Constitution’s affirmative guarantee of the right to vote, moreover, is self-executing, and gives right to a private right of action, under which its infringement may only be justified if shown to be “necessary to promote a compelling or overriding governmental interest.” *Pulliam v. Coastal Emergency Servs. of Richmond, Inc.*, 257 Va. 1, 20-21 (1999); *see also Lafferty v. Sch. Bd. of Fairfax Cty.*, 293 Va. 354, 362 (2017) (even when a statute is silent, a private right of action may arise where “[t]he claimed right . . . implicate[s] [a] protected right under the Constitution of Virginia”) (citation omitted); *Robb v. Shockoe Slip Found.*, 228 Va. 678, 681 (1985) (explaining that, while not all constitutional provisions are self-executing and give right to a private right of action, those provisions contained within the Virginia Bill of Rights are typically self-executing).

It is inconceivable that the Commonwealth could have a “*compelling or overriding* governmental interest” that makes it necessary to keep a candidate on the ballot whose nomination papers are fraught with fraudulent entries, no matter the injury done to fundamental voting rights. It is inconceivable that the Commonwealth could have even a *legitimate* interest in doing so. Va. Const. art. 1 § 11. Thus, even if the Court were to find (contrary to *Pulliam*, cited above) that the Party’s claim under Article I, Section 6 of the Virginia Constitution should be reviewed under some standard less demanding than strict scrutiny, the Party would still be highly likely to succeed on this claim.

Take, for example, the analysis that would be applied under the *Anderson-Burdick* test, applied to claims that a state has violated the right to vote implicit in the federal constitution. That balancing test 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 forth by the State as justifications for the burden imposed by its rule,’ taking into account the extent to which those interests make it necessary to burden the plaintiff’s rights.” *Burdick*, 504 U.S. at 434 (quoting *Anderson v. Celebrezze*, 460 U.S.

780, 789 (1983)). On the one hand, the qualification and inclusion of a candidate on the ballot—where the candidate is qualified based on a petition process that is demonstrably amok in fraud—plainly infringes upon the fundamental right to vote, where the *only* rational conclusion is that Congressman Taylor’s associates engaged in this rampant fraudulent conduct with the goal and the hope that the inclusion of Brown on the ballot would siphon votes from Taylor’s formidable Democratic challenger, by presenting voters with a false “choice” between the candidate who won the Democratic Party’s nomination, and a candidate whose name is likely to be highly familiar to Democratic-leaning voters, if only because she was the Democratic nominee in 2016. *See supra* at 5; *see also* Munson Aff. ¶ 3. If this scheme is successful, it will serve to injure Democratic voters both by diluting the voting power of those who are not successfully misled and cast their ballots for the legitimate Democratic nominee, *see Jamerson v. Womack*, 26 Va. Cir. 145, 145 (1991), *aff’d* 244 Va. 506 (1992) (voter suffers injury where a law “dilute[s] voting power and diminish[es] the effectiveness of representation”), and by tricking other voters who would otherwise support the Democratic nominee to cast their ballot for an unqualified candidate who lacks legitimate support among the electorate, but whose name they may recognize from the last election in which Congressman Taylor faced off against Brown. It will also seriously and directly injure the Party, which stands in the shoes of its members and voters, *see* Ex. 24; *see also Philip Morris USA Inc. v. Chesapeake Bay Found. Inc.*, 273 Va. 564, 580 (2007) (applying federal standard for representational standing and concluding that foundation may bring suit on behalf of members), and will be forced to divert additional resources to educating voters ahead of the general election to combat this serious risk of significant voter confusion. *See Mont. Tavern Ass’n v. State*, 2005 ML 144, 6 (Mont. Dist. Ct. 2005) (holding an entity had standing to contest unfair competition resulting in economic harm); *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 585 (5th Cir. 2006) (the Texas Democratic Party had direct standing to challenge Republican Party candidate’s qualifications for elected office); *Fulani v. Hogsett*, 917 F.2d 1028, 1030 (7th

Cir. 1990) (a political party has standing and suffered an injury in fact because, “[o]n account of the decision by the Indiana officials to allow the two major political parties on the ballot, New Alliance faced increased competition which . . . required additional campaigning and outlays of funds”).

Although it remains to be seen what interests Defendants may attempt to argue outweigh these harms, or could otherwise negate the clear public interest in fair and equitable elections not tainted by demonstrable and broad ranging fraud, they cannot possibly provide the basis for finding that the Party is not entitled to the injunction that it seeks under the present (highly unusual and alarming) circumstances. Thus, because each of the requirements for entitlement to an injunction under *Winter* are easily met, the Party respectfully requests that the Court grant its motion and promptly issue the requested injunctive relief.

The Party’s claims that Defendants’ action (or, under the current circumstances, inaction, despite the mounting evidence of fraud that permeates the Petition) also violates the speech and associational rights of its members and the voters who associate with it under the First and Fourteenth Amendments to the U.S. Constitution and Article I, Section 12 of the Virginia Constitution are similarly highly likely to succeed on the merits. Article I, Section 12 of the Virginia Constitution, which “is coextensive with the free speech provisions of the federal First Amendment,” *Elliot v. Commonwealth*, 267 Va. 464, 473-74 (2004), provides that “the General Assembly shall not pass any law abridging the freedom of speech or of the press, nor the right of the people peaceably to assemble, and to petition the government for the redress of grievances.” Like Article I, Section 6’s protection of the right to vote, this provision is self-executing—not only does it appear in the Virginia Constitution’s bill of rights, it is also prohibitive in nature. *See Robb*, 228 Va. at 682 (explaining that provisions of the Virginia Constitution provide for a private right of action if they are “self-executing,” which generally includes “constitutional provisions

in bills of rights” and “provisions which specifically prohibit particular conduct”). *Id.* at 681.

The Party’s claims under the First Amendment to the U.S. Constitution are, as discussed, properly evaluated under the *Anderson-Burdick* standard. *See supra* at 17-18. Further, the Party’s claims under Article I, Section 12 of the Virginia Constitution should be subject to more exacting review, under which infringement may only be justified if shown to be “necessary to promote a compelling or overriding governmental interest.” *Pulliam*, 257 Va. at 20-21. Indeed, the decision of whether to sign a petition implicates “core political speech.” *See Nev. Comm’n on Ethics v. Carrigan*, 564 U.S. 117, 128 (2011) (citations omitted); *see also 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 v. Grant*, 486 U.S. 414, 421 (1988))). Here, the injury to the fundamental rights of the Party’s members and the voters who voluntarily associate with it is one of forced speech and association. *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”).⁵ This violation, too, is serious and fundamental, and can cannot conceivably be justified by any legitimate, much less compelling state interest in maintaining access to the ballot where a candidate’s nominating petition has been

⁵ *See also 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, 359 (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”).

demonstrated to be suffused with fraud. *Pulliam*, 257 Va. at 20-21 (noting that the Virginia Supreme Court has recognized the right to free speech as “fundamental”).

That the Party is likely to succeed on their claims would necessarily be true even absent the rampant evidence of fraud in this case. If, for example, the Party simply brought a challenge based on the fact that the Petition does not meet the bare requirements of Va. Code Ann. § 24.2-506(A)(2), which required that she submit 1,000 signatures of registered, eligible voters in VA-2, consistent with Virginia’s statutory scheme governing nominating petitions. *See* Va. Code. Ann. § 24.2-504 (specifying that “[o]nly a person fulfilling all the requirements of a candidate shall have his name printed on the ballot for the election”). Allowing a candidate to appear on the ballot who has not met minimum qualifications under Virginia law plainly undermines the integrity and fairness of the entire electoral process. *See Willcox*, 111 Va. at 860 (“However 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.”). However, the case presently before the Court is plainly not simply a case where one political party challenges the qualifications of another candidate to be placed on the ballot because of their failure to comply (albeit repeatedly) with basic requirements that govern the petition process under state law.⁶ The

⁶ The decision of the federal district court in *Harvey* does not establish otherwise. Although the court in *Harvey* concluded that the plaintiff had not established a right of action under Va. Code Title 24.2, that decision was based on the fact that the plaintiff had not even attempted to allege a legal basis for their claims. In any event, the decision of a federal district court interpreting state law is not binding on this Court. *Toghill v. Commonwealth*, 289 Va. 220, 227 (2015) (“[B]ecause lower federal courts exercise no appellate jurisdiction over state tribunals, decisions of lower federal courts are not conclusive on state courts.”) (quoting *United States ex rel. Lawrence v. Woods*, 432 F.2d 1072, 1076 (7th Cir.1970)) (internal quotation marks omitted); *Maxey v. Am. Cas. Co. of Reading, Pa.*, 180 Va. 285, 290 (1942) (noting federal court’s construction of state statute is not binding on state court); *see also Saunders v. Commonwealth*, 62 Va. App. 793, 804 (2014), *aff’d sub nom. Saunders v. Commonwealth*, No. 140507, 2015 WL 10945236 (Va. Feb. 26, 2015) (“[T]hough state courts may for policy reasons follow the decisions of the Court of Appeals whose circuit includes their state, they are not obliged to do so.”) (quoting *Owsley v. Peyton*, 352 F.2d 804, 805 (4th Cir.1965)) (internal quotation marks omitted).

case before the Court (and the only one that it need presently decide) is whether, under the current circumstances, which present one of the most astounding attempts to corrupt the nominations process in recent memory, the Party is likely to succeed on any one of the claims that they allege. If voters are to maintain confidence in Virginia's elections, and if there is to be a meaningful judicial safeguard for each of the fundamental rights discussed, the only possible answer is yes. Because the other relevant factors (discussed below) also favor an injunction, the Party's Motion should be granted.

2. Without Immediate, Expedited Relief, the Party and its Members Will Suffer Irreparable Harm.

As discussed, both the Party itself and the Virginia voters among its membership and who choose to affiliate with it will suffer serious, irreparable harm in the upcoming November election if the Court does not promptly issue injunctive relief. *See* Munson Aff. ¶ 3 (discussing serious risk of voter confusion, harm in the form of vote dilution, and direct harm to the Party in the form of diverted resources to educate voters to avoid the result for which Congressman Taylor's associates clearly intended to bring about—i.e., voters unwittingly casting ballots to support a “spoiler” candidate who lacks even a bare minimum of public support, who otherwise would have supported the Congressman's formidable Democratic challenger in the hopes of bolstering the Congressman's re-election chances. That these injuries are, by definition, irreparable, should be uncontroversial, as “once the election occurs, there can be no do-over and no redress.” *League of Women Voters of N.C. v. North Carolina*, 769 F. 3d 224, 247 (4th Cir. 2014); *see also* *Thompson v. Smith*, 155 Va. 367, 387 (1930) (interference with the exercise of a “common fundamental personal right” constitutes irreparable injury, and “a suit for injunction will lie.”). Indeed, courts regularly find the irreparable harm element met when voting rights are at stake. *See, e.g., Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (“A restriction on the fundamental right to vote . . . constitutes irreparable injury.”); *N.C. State Conference of the NAACP v. N.C. State Bd. of Elections*, No. 1:16CV1274, 2016 WL 6581284, at *8

(M.D.N.C. Nov. 4, 2016) (“Denying an eligible voter her constitutional right to vote and to have that vote counted will always constitute irreparable harm.”); *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986) (finding “irreparable harm if [plaintiffs’] right to vote were impinged upon”).

3. The Balance of the Equities and the Public Interest Both Favor an Injunction.

As both the U.S. Supreme Court and the Virginia Supreme Court have long recognized, “[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964); *see also Willcox*, 111 Va. at 860 (“However 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 . . . the effect of the election must be the consummation of a fraud and the defeat of the will of the people.”); *Booker*, 95 Va. at 367 (“Under our form of government, 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.”); *Boston Correll v. Herring*, 212 F. Supp. 3d 584, 615 (E.D. Va. 2016) (finding that “[t]he balance of equities . . . weighs heavily in favor” of plaintiff, because “[d]efendants are ‘in no way harmed by issuance of an injunction that prevents the state from’ violating the Constitution) (citation omitted).

In weighing the equities, on one side of the scale are the significant injuries that will be sustained by the Party and its voters (and, indeed, any voter who casts their ballot in November for the Democratic candidate, as well as any that is unwittingly tricked into casting their ballot for a candidate who obtained access to the ballot as a result of a fraudulent effort by supporters of the Republican candidate hoping to bolster his chances at reelection) the targeted victim of this scheme. The Party will now have to pour

additional, precious resources into extensive voter education, to minimize the serious risk of voter confusion that was the clear purpose of this fraudulent scheme. Munson Aff. ¶ 3.

Although it remains to be seen what interests the State may attempt to argue outweigh these harms, or could otherwise negate the clear public interest in fair and equitable elections not tainted by demonstrable and broad ranging fraud, they cannot possibly provide the basis for finding that the Party is not entitled to the injunction that they seek under the present (highly unusual and alarming) circumstances. *See, e.g., HotJobs.com, Ltd. v. Digital City, Inc.*, 53 Va. Cir. 36, 46 (2000) (finding the irreparable harm to defendant from issuance of preliminary injunction “would flow from [defendant’s] own wrongdoing and therefore [defendant] can hardly complain that it will suffer irreparable injury if a preliminary injunction is issued because it brought the harm on itself”); *see also Seniors Coal., Inc.*, 39 Va. Cir. at 350 (finding despite argument defendant will be “out of business” if injunction issues, the balance of equities “tips decidedly” in plaintiff’s favor where “[t]he likelihood of irreparable harm to the [plaintiff] if the temporary injunction does not issue is great”). Thus, because the Party easily meets each of the requirements for entitlement to an injunction under *Winter*, they respectfully request that the Court grant their motion and promptly issue the requested injunctive relief.

B. The Court Should Issue a Writ of Mandamus.

The Board, its members, the Department of Corrections, and the Commissioner have an affirmative legal duty to prevent Brown’s name from being printed on the ballot, and this Court should order them to comply with that duty through a writ of mandamus. For a writ of mandamus to issue (1) the petitioner must have “a clear right in the petitioner to the relief sought,” (2) “there must be a legal duty on the part of the respondent to perform the act which the petitioner seeks to compel,” and (3) “there must be no adequate remedy at law.” *Bd. of Cty. Supervisors of Prince William Cty. v. Hylton Enters., Inc.*, 216 Va. 582, 584 (1976).

1. The Party Has a Clear Right to the Relief Sought.

The Party has indisputably demonstrated that the continued inclusion of Brown on the ballot violates numerous provisions of the Virginia Constitution, as well as settled Virginia statutory law. As set forth in both their Complaint and above, the inclusion on the ballot of a candidate whose qualification petition is riddled with indisputably fraudulent entries violates the affirmative right to vote and irreparably injures the speech and associational rights of the Party members whose names fraudulently appear on the Petition, and is in clear violation of Virginia law regarding the standards an independent candidate must meet in order to appear on the ballot under Virginia law. *See supra* at 20-21; Complaint at ¶¶ 35-42, 65-69. Because the continued inclusion of Brown on the ballot is both unconstitutional and in violation of Virginia law, the Party has a clear right to a writ directing Defendants to discharge their duty to prevent Brown's name from appearing on the ballot.

Such a writ would be in keeping with the historical practice of the Virginia Supreme Court in election law case. In prior cases, the Court has granted an original petition for a writ of mandamus, in favor of both a voter, *Wilkins v. Davis*, 205 Va. 803 (1965), and a candidate for office, *Brown v. Saunders*, 159 Va. 28 (1932), where it found that the challenged election law violated the Constitution of Virginia. Here too, the numerous constitutional injuries which would flow from Brown's inclusion on the ballot compel this remedy.

2. Defendants Have an Affirmative Legal Duty to Ensure that Only Candidates Qualified Under Virginia Law Appear on the General Election Ballot.

The Board, Department, and Commissioner have affirmative duties to act here, both because of the oaths as state officials to obey Virginia's Constitution, and as arising from the text of the statutes at issue themselves. Because these duties are non-discretionary, mandamus is an appropriate remedy. *See Bd. of Cty. Supervisors of Prince William Cty.*, 216 Va. at 584 ("Mandamus is the proper remedy to compel performance of a purely ministerial duty, but it does not lie to compel the performance of a discretionary duty.").

First, as state officials all Defendants here must swear to support the Constitution of the United States and the Constitution of the Commonwealth of Virginia. *See* Va. Code Ann. § 49-1 (2018) (“Every person before entering upon the discharge of any function as an officer of this Commonwealth shall take and subscribe the following oath: ‘I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the Commonwealth of Virginia’”). This places on each official an affirmative duty to ensure that the Constitution is faithfully followed. As discussed at length above, under the current circumstances, inclusion of Brown on the general election ballot would result in serious and irreparable constitutional injury to thousands of Virginia voters, in clear violation of the oaths that the individually-named state official Defendants have sworn.

Second, settled Virginia law places an affirmative duty on the officials named here to ensure that only the names of candidates who have appropriately qualified under Virginia law are placed on ballots in the state of Virginia. Va. Code Ann. § 24.2-103 requires that the Board and the Department “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*,” (emphasis added), and that they “shall . . . promote the proper administration of election laws.” Va. Code Ann. § 24.2-504 further states that “[o]nly a person fulfilling all the requirements of a candidate shall have his name printed on the ballot for the election,” while § 24.2-506 states that the name of an independent candidate for the House of Representatives “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.* As the Party has demonstrated, thousands of the signatures submitted in support of the Petition are either infected with fraud, or contain plainly disqualifying errors, calling into question whether she has demonstrated the support necessary under Virginia law to appear on the ballot. Ex. 29. In such circumstances, Defendants have an affirmative duty to ensure that Brown

is not listed as a candidate on the ballot, and the Party is entitled to a writ of mandamus compelling them to execute this duty.

In particular, the use of the words “shall” and “shall not” in all of the statutes relied upon by the Party compel this result. The use of these terms makes mandamus relief appropriate because the governing statutes require the relevant officials “to perform a prospective non-discretionary act.” *Town of Front Royal v. Front Royal & Warren Cty. Indus. Park Corp.*, 248 Va. 581, 587 (1994). In *Town of Front Royal*, the Virginia Supreme Court held that an order stating that a local government “shall” take the relevant actions “expressly orders” the town to act, and thus “imposes a ministerial” rather than discretionary duty. *Id.* at 583, 585. The statutes at issue here likewise require mandatory action: this is not a case where the official’s duties “require[] the exercise of judgment and discretion” *Richlands Med. Ass’n v. Commonwealth*, 230 Va. 384, 388 (1985). The election officials simply have no discretion to decline to follow the law and to permit the appearance on the ballot of a candidate who has not submitted a petition with an adequate number of qualified signatures.

3. The Party Has No Adequate Remedy at Law.

The alternative remedy open to the Party—an action for an injunction—is not a remedy “at law.” The inquiry here is not whether there is any alternative remedy, but whether there is an adequate alternative remedy “at law.” An action for an injunction is not a remedy “at law,” as it is well settled that ““a party must establish . . . 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.*, 276 Va. 44, 61 (2008) (quotation marks omitted). An action for injunctive relief plainly cannot be an “adequate remedy at law” when an injunction will not issue unless the movant establishes the “lack of an adequate remedy at law.” *Id.* Accordingly, the Party has no adequate remedy at law and is entitled to a writ of mandamus.

Conclusion

For all of the reasons set forth above and in the papers submitted in support of this Motion, Plaintiff respectfully requests that this Court grant the motion and issue relief substantially in the form set forth in the proposed order submitted herewith.

Dated: August 13, 2018

By: 

Aria Branch, VA Bar No. 83682
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**Pro hac vice application to be filed*

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