

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE

CESAR J. ALBERTO)
)
-and-)
)
KIESHA PRESTON,)
)
Plaintiffs,)
)
v.)
)
CITY OF ROANOKE, General Registrar,)
J. ANDREW COCHRAN,)
-and-)
CITY OF ROANOKE ELECTORIAL)
BOARD, and its members,)
SHARON A. LAZAR, Chair,)
ANNA I. GOLTZ, Vice-Chair, and)
JOHN A. BRILL, Secretary,)
-and-)
VIRGINIA DEPARTMENT OF ELECTIONS,)
-and-)
VIRGINIA STATE BOARD OF ELECTIONS,)
and its members,)
ROBERT H. BRINK, Chairman of)
The State Board of Elections, in his)
official capacity,)
JOHN O'BANNON,)
Vice-Chairman of the State Board of Elections,)
in his official capacity,)
JAMILAH D. LECRUISE,)
Secretary of the State Board of Elections,)
In her official capacity,)
CHRISTOPHER E. "CHRIS" PIPER,)
Commissioner of the State Board of Elections,)
in his official capacity, and)
JESSICA BOWMAN, Deputy Commissioner)
of the State Board of Elections, in her)
official capacity.)
)
Defendants,)

Civil Action No.:

VERIFIED COMPLAINT

COME NOW, your Plaintiffs, Cesar J. Alberto and Kiesha Preston, by counsel, pursuant to the First and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983, § 8.01-620 of the Code of Virginia (the “Code”), and Rule 3:2 of the Rules of Supreme Court of Virginia, and state the following verified complaint for declaratory judgment and permanent, preliminary, and emergency injunctive relief against the City of Roanoke General Registrar, J. Andrew Cochran; the City of Roanoke Electoral Board and its members, Sharon A. Lazar, Anna I. Goltz and John A. Brill; the Virginia Department of Elections; and the Virginia State Board of Elections, its Chairman, Vice-Chairman, Secretary, Commissioner, and Deputy Commissioner, (together, “Defendants”) to restrain Defendants, in this upcoming November election for the City of Roanoke Council, from enforcing in full the candidate signature requirement for the City of Roanoke City Council candidates codified at Virginia Code § 24.2-506(A)(5).

PARTIES

1. Plaintiff Cesar J. Alberto resides in the City of Roanoke, Virginia. Mr. Alberto is also a candidate for City Council for the City of Roanoke.
2. Plaintiff Kiesha Preston resides in the City of Roanoke, Virginia. Ms. Preston is also a candidate for City Council for the City of Roanoke.
3. The City of Roanoke General Registrar is Mr. J. Andrew Cochran (“Cochran”). The City of Roanoke General Registrar, in addition to the City of Roanoke Code, is bound by the applicable election laws of the Commonwealth of Virginia.
4. The City of Roanoke Electoral Board (“REB”) members are Sharon A. Lazar, Chair; Anna I. Goltz, Vice-Chair; and John A. Brill, Secretary.

5. The Virginia Department of Elections promotes and supports accurate, fair, open and secure elections for citizens of the Commonwealth.

6. Defendant State Board of Elections (“SBE”), is the regulatory board for the Virginia Department of Elections. The State Board of Elections oversees “voter registration, absentee voting, ballot access for candidates, campaign finance disclosure and voting equipment certification in coordination with Virginia’s 133 local election offices.” Virginia Department of Elections website, www.elections.va.gov/contact-us/about; Va. Code § 24.2-103(A) (vesting the State Board of Elections, through the Department of Elections, with supervisory authority to obtain uniformity in election laws, which includes the General Register of the City of Roanoke).

7. The SBE has the duty to receive both Declarations of Candidacy from candidates for City elections, as well as a Petition containing signatures. Va. Code §§ 24.2-500, et seq.

8. The SBE also has the duty to prescribe various forms for the registration of voters and the conduct of elections. See Va. Code § 24.2-105. The State Board of Elections has prescribed Form SBE 506/521, the form that contains the signatures of voters to place a candidate’s name on the ballot. Form SBE 506/521 requires that the circulator (the person collecting the signatures) swear or affirm in the affidavit that he or she personally witnessed the signature of each voter.

9. Defendant Robert H. Brink is the Chairman of the State Board of Elections. He is sued in his official capacity.

10. Defendant John O’Bannon is the Vice-Chairman of the State Board of Elections. He is sued in his official capacity.

11. Defendant Jamilah D. LeCruise is the Secretary of the State Board of Elections. She is sued in her official capacity.

12. Defendant Christopher E. "Chris" Piper is the Commissioner of the State Board of Elections. He is sued in his official capacity.

13. Defendant Jessica Bowman is the Deputy Commissioner of the State Board of Elections. She is sued in her official capacity.

14. Cochran, REB, SBE, and the named individual members in their official capacities of each of the cited City of Roanoke and Commonwealth of Virginia departments, agencies, boards or offices are herein referred to collectively as the Commonwealth Defendants.

JURISDICTION

15. This Court has jurisdiction over the subject matter of this Complaint pursuant to §8.01-184 and 8.01-186 of the Code. This statute permits this Court to issue both declaratory judgments as well as grant injunctive relief to effectuate its declaratory judgment.

16. Venue is appropriate in the City of Roanoke Circuit Court because several officers of the City of Roanoke are sued in their official capacity and those officers have offices within the City of Roanoke, as well as the election at issue is for the City Council of the City of Roanoke. Va. Code § 8.01-261(2) and (15) c.

FACTS

17. Cesar J. Alberto and Kiesha Preston, candidates for Roanoke City Council, began the signature gathering operation to obtain the necessary signatures pursuant to Virginia Code § 24.2-506(A)(5).

18. However, at the same time the worldwide pandemic COVID-19, also known as the Coronavirus, gained widespread strength and has essentially shut down the Commonwealth and it remains essentially shut down as the of date of filing and by Governor Northam's Executive Order 55 until June 10, 2020.

19. On Monday March 16, 2020, the Supreme Court of Virginia declared a judicial emergency. This Order declared that a judicial emergency exists from March 16 to Monday April 6, 2020. The Order further ordered that all non-emergency and non-essential court proceedings be suspended and that all deadlines are tolled for 21 days. On March 27, 2020, The Virginia Supreme Court extended the judicial emergency through April 26, 2020. On April 22, 2020 the Virginia Supreme Court, again by Order, extended the restrictions to the date of May 17, 2020. On May 6, 2020, the Virginia Supreme Court entered its Fourth Order, which modified and extended the judicial emergency from May 18, 2020 through June 7, 2020.

20. By Executive Order Number 53, Governor Northam on March 23, 2020 placed temporary restrictions on numerous economic and social activities and non-essential business and restricted public gatherings to no more than 10 persons.

21. By Executive Order Number 55, Governor Northam on March 30, 2020 at paragraph number one stated that “All individuals shall remain at their place of residence, except as provided below by this Order and Executive Order 53. To the extent individuals use shared or outdoor spaces, whether on land or on water, they must at all times maintain social distancing of at least six feet from any other person, with the exception of family or household members, or caretakers. Individuals may leave their residences for the purpose of:...”

22. There are no exceptions in the Governor’s Executive Orders for obtaining voter signatures on ballots to qualify candidates for upcoming elections.

23. It appears “individuals” such as your Plaintiffs, cannot be expected to reasonably engage in any acts of seeking signatures from registered voters in the City of Roanoke and turn the current requisite number of signatures into to the City Registrar’s office by June 9, 2020.

Furthermore, the circulator cannot swear or affirm in an affidavit that he or she witnessed the signature of each voter, as required by Form SBE 506/621.

24. In fact, the Executive Order 55 remains in effect until June 10, 2020.

25. Finally, of specific importance, the Center for Disease Control has recommended that people maintain a safe social distance of at least six feet. This is because contact with a person within six feet can cause transmission of COVID-19.

26. Virginia Courts have previously entered Injunction Orders in similar situations. See Judge Marchant's Order in *Faulkner v. State Board of Elections*, Case No CL20-1456, (Richmond City Circuit Court March 25, 2020); Judge Taylor's Order in *Mclean v. Showalter*, Case No. CL20-1959 (Richmond City Circuit Court May 18, 2020).

27. There is no known cure for the COVID-19 virus and it is highly contagious and to date has resulted in over 100,000 (as of May 27, 2020) deaths in the United States and is expected to continue resulting in many more deaths until a vaccine is found and proven effective.

28. States have addressed COVID-19 and its impact on elections in various ways.

29. The Commonwealth Defendants themselves have in fact started taking measures to limit human interaction in relation to the upcoming election. In recognizing the danger of coming into close contact with others, the Virginia Department of Elections "to protect [Voters'] health during COVID-19 outbreak" has strongly encouraging voters to vote absentee.

30. Despite their diligence, Plaintiffs are still significantly shy of the requirement to have at least 125 witnessed signatures from the City of Roanoke.

31. Because of the current health crisis in Virginia, particularly because COVID-19 is a highly communicable disease with no known cure at this time, and which requires social isolation and social distancing and now even the use of face masks, Mr. Alberto and Ms. Preston are unlikely

to be able to obtain the necessary signatures prior to the deadline absent relief sought in this lawsuit. The circulator will be unable to swear or affirm in an affidavit that he or she personally witnessed the signature of each voter, as required by Form SBE 506/521.

32. At best, continued attempts to obtain signatures is challenging, and at worst is in direct conflict with directives from everyone in the public health community, which only risks making a very serious situation worse and specifically exposes Plaintiffs and campaign staff to additional dangers.

33. Absent an injunction, Plaintiffs' names at this point will not appear on the ballot. This will violate their constitutional right to free speech and free association

34. Defendants at all times are acting under the color of state law.

U.S. CONSTITUTIONAL LAW

35. The First Amendment declares in no uncertain terms that Congress shall make no law abridging the freedom of speech. U.S. Const. amend. I. See also *Citizens United v. FEC*, 558 U.S. 310, 336 (2010). This restriction against governmental power is applied to the states through the Fourteenth Amendment. *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015).

36. "It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." *NAACP v. Alabama*, 357 U.S. 449, 460 (1958).

37. The Supreme Court has made clear, "whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters ... state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny" *Id.* at 460-61.

38. The right to “voluntary political association ... is an important aspect of the First Amendment freedom” that the Supreme Court “has consistently found entitled to constitutional protection.” *Lefkowitz v. Cunningham*, 431 U.S. 801, 808 (1977).

39. A person’s ability to exercise their rights guaranteed under the First Amendment is “[u]ndeniably enhanced by group association.” *Buckley v. Valeo* 424 U.S. 1, 15 (1976) (quoting *NAACP v. Alabama*, 357 U.S. at 460)

40. Both the First and the Fourteenth Amendments therefore, guarantee the “freedom to associate with others for the common advancement of political beliefs and ideas...” *Id.*; see also *Anderson v. Celebrezze*, 460 U.S. 780, 787 (1983) (“[T]he right of individuals to associate for the advancement of political beliefs . . . rank[s] among our most precious freedoms.”).

41. Further, because the freedom of association enhances the effectiveness of the freedom of speech, the government cannot limit or dictate with whom an association chooses to associate for the common advancement of the association’s beliefs. *Tashjian v. Republican Party*, 479 U.S. 208, 224 (1986) (emphasis added).

42. Although states are entrusted with administering their elections and imposing reasonable restrictions “in exercising their powers of supervision over elections ... the States may not infringe upon basic constitutional protections.” *Kusper v. Pontikes*, 414 U.S. 51, 57 (1973).

43. “[Ballot] Access restrictions also implicate the right to vote because, absent recourse to referendums, voters can assert their preferences only through candidates or parties or both.” *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979).

44. In constitutional analysis, the primary concern of courts is “with the tendency of ballot access restrictions to limit the field of candidates from which voters might choose.” *Anderson v. Celebrezze*, 460 U.S. 780, 786 (1983).

45. “By limiting the choices available to voters, the State impairs the voters' ability to express their political preferences.” Illinois State Board of Elections v. Socialist Workers Party, 440 U.S. 173, 184 (1979).

VIRGINIA LAW

46. Under Virginia law, Mr. Alberto and Ms. Preston, in order for their names to appear on the ballot as candidates for City Council must comply with the provisions of Chapter 5 (§§24.2-500 et seq.) of Title 24.2 of the Code of Virginia, and must file with their declaration of candidacy a petition containing a minimum of 125 signatures of qualified voters of the city. See Va. Code §§ 24.2-505, 506 and 507. The circulator of the petition must swear or affirm in an affidavit that he or she personally witnessed the signature of each voter, pursuant to Form SBE 506/521.

47. Mr. Alberto and Ms. Preston are also required to submit these 125 signatures to the City of Roanoke, General Registrar and the City of Roanoke Electoral Board by June 9, 2020 at 7:00 p.m. Va. Code § 24.2 507.

CLAIMS

COUNT I

Violation of The First Amendment's Free Speech And Association Clauses 1983 Action

48. Plaintiffs incorporate by reference paragraphs 1-47 as if fully restated herein.

49. It is impracticable for the Plaintiffs to complete their task of obtaining 125 signatures citywide given recent events. It is impracticable for the circulator to swear or affirm in an affidavit that he or she personally witnessed the signature of each voter. Given the impracticability of Mr. Alberto and Ms. Preston being able to obtain the required signatures, and

of the circulator from making such an affirmation, since the declaration of a State of Emergency, the Plaintiffs seek redress.

50. “No 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. Other rights, even the most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S. 1, 17, 84 S. Ct. 526, 11 L. Ed. 2d 481 (1964).

51. Ballot restrictions that severely burden the right to vote and associate violate the First Amendment to the U.S. Constitution. See *Storer v. Brown*, 415 U.S. 724, 728-29 (1974).

52. Accordingly, “[p]recision of regulation must be the touchstone in an area so closely touching our most precious freedoms. If the State has open to it a less drastic way of satisfying its legitimate interests, it may not choose a legislative scheme that broadly stifles the exercise of fundamental personal liberties.” *Kusper v. Pontikes*, 414 U.S. 51, 59 (1973) (internal quotation marks and citations omitted).

53. Therefore, in recognizing that States must enact election codes for orderly, fair, and honest elections, courts reviewing challenges to ballot access cases impose a flexible standard. *Burdick v. Takushi*, 504 U.S. 428, 433-34 (1992). If the election regulation imposes a severe burden, then the regulation must survive strict scrutiny. *Id.* at 434. By contrast, if the election regulation imposes a light burden, rational basis or intermediate scrutiny applies. *Id.*

54. Under the current conditions created by COVID-19, including a declared state of emergency in our Commonwealth as well as a declared National emergency, the City of Roanoke’s signature requirement and in the alternative the filing deadline of June 9, 2020 imposes a severe, if not an impossible, burden on Plaintiffs.

55. This burden is compounded because of the various government recommendations that individuals maintain at least six feet distance between themselves and other individuals, and the same individuals are encouraged and/or required to wear face masks.

56. The City of Roanoke and the Commonwealth of Virginia do not have a compelling justification to require Plaintiffs to continue circulating petitions and/or attempting to obtain in person the now required signatures of registered voters of the City of Roanoke for the Plaintiffs to be able to qualify to be placed on the November 3, 2020 ballot between now and June 9, 2020, especially with Executive Order 55 and its restrictions in place until June 10, 2020, and when there are guidelines from the U.S. Government, and the Center for Disease Control recommending people to maintain a safe distance of six feet or more.

57. Furthermore, the City of Roanoke and the Commonwealth of Virginia cannot claim a compelling justification when Virginia, recognizing the danger imposed by the communicable disease COVID-19, is encouraging voters to cast absentee ballots rather than go to the polls and vote. The fact that Commonwealth Defendants are encouraging voters to vote absentee and not travel to the polls insinuates that it is contrary to the health of Virginians to come into close contact with others. Virginia cannot say that for the health of voters, do not vote in person but still demand that Plaintiffs send volunteers out to neighborhoods and business to collect signatures in person.

58. Accordingly, the City of Roanoke and the Commonwealth of Virginia do not have a compelling or even sufficiently important interest to justify maintaining its 125- signature requirement in light of the current public health emergency. Nor do they have a compelling or even sufficiently important interest to justify maintaining the requirement that the circulator swear or affirm that he or she personally witnessed the signature of each voter in light of the public health emergency.

59. Absent an injunction, Plaintiffs will not appear on the ballot and will suffer a severe burden to their First Amendment rights. See Fla. Democratic Party, 215 F. Supp. 3d at 1257.

60. Additionally, Plaintiffs have demonstrated a sufficient modicum of support in the context of this election. See *Bowe v. Board of Election Comm'rs*, 614 F.2d 1147, 1152 (7th Cir. 1980) (“The ultimate question was said to be whether in the context of California politics, a reasonably diligent candidate could be expected to be able to meet the requirements and gain a place on the ballot.”) (citing *Storer*, 415 U.S. at 742).

60. Given the global pandemic that has seized our world, and has severely restricted the activity of individuals in our Commonwealth, Plaintiffs have demonstrated a modicum of support in their efforts to date to merit a place on the ballot.

61. Again, at all times, both the City and the Commonwealth Defendants are acting under the color of state law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Declare Virginia Code § 24.2-506(A)(5) and all applicable City Code sections and state statutes unconstitutional as applied to Roanoke City Council candidates in this particular pending Roanoke City Council election;

B. Declare that the requirement of Form SBE 506/521 that the circulator swear or affirm that he or she personally witnessed the signature of each voter is unconstitutional as applied to Roanoke City council candidates in this particular pending Roanoke City Council election;

C. Enjoin all Defendants from enforcing Virginia Code § 24.2-506(A)(5) and all applicable City Code sections and state statutes, including Form SBE 506/521's in person witness

requirement, in full against City of Roanoke City Council candidates in the pending Roanoke City Council election.

D. Order that, to be qualified to be placed on the election ballot for the City of Roanoke City Council, candidates must now only obtain a total of 50 signatures citywide, and that Form SBE 506/521's requirement that the circulator must swear or affirm that he or she personally witnessed the signature of each voter is waived;

E. Alternatively and/or in addition, Plaintiffs seek an extension of the filing date for the required signatures (or of any newly adjusted number of signatures of City of Roanoke qualified voters, if done so by this Court's Order as requested herein), to be moved from the current date of June 9, 2020 at 7:00 p.m. to June 23, 2020 at 7:00 p.m., if not longer;

F. DEMAND FOR ATTORNEYS' FEES: Pursuant to Rule 3:25 of the Rules of the Supreme Court of Virginia, Plaintiffs seek reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and

G. Award all other relief that this Court deems just and necessary.

Respectfully submitted,

CESAR J. ALBERTO and

KIESHA PRESTON

BY:



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VERIFICATION PURSUANT TO VIRGINIA CODE §8.01-4.3

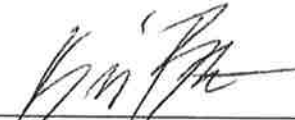
I, Cesar J. Alberto, have reviewed the factual averments in the Verified Complaint and I can swear under penalty of perjury that those factual averments are true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read 'Cesar J. Alberto', written over a horizontal line.

Cesar J. Alberto

VERIFICATION PURSUANT TO VIRGINIA CODE §8.01-4.3

I, Kiesha Preston, have reviewed the factual averments in the Verified Complaint and I can swear under penalty of perjury that those factual averments are true and correct to the best of my knowledge.



Kiesha Preston