

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

ROBERT C. SARVIS, LIBERTARIAN PARTY )  
OF VIRGINIA, WILLIAM HAMMER )  
JEFFREY CARSON, JAMES CARR )  
MARC HARROLD, WILLIAM REDPATH, )  
WILLIAM CARR, BO CONRAD BROWN, )  
and, PAUL F. JONES )

Plaintiffs, )

v. )

Civil Action No. )

CHARLES E. JUDD, DONALD PALMER )  
and KIMBERLY T. BOWERS, in their individual )  
and official capacities as members of the Virginia )  
State Board of Elections, )

Defendants. )

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**Introduction**

1. Plaintiffs are the Libertarian Party of Virginia, an alternative political party to the Republican and Democratic Parties (the Libertarian Party of Virginia, or “LP-Virginia”); William Redpath as the Chair of LP-Virginia and as the LP-Virginia Candidate for the United States House of Representatives for the Virginia 10<sup>th</sup> Congressional District; and Bo Conrad Brown, Paul F. Jones, William Hammer, James Carr, Jeffrey Carson, Marc Harrold, the LP-Virginia’s candidates for the United States House of Representatives for the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, and 11<sup>th</sup> Congressional Districts of Virginia respectively, and William Carr, an Independent (non-party) candidate for the United States House of Representatives in the 9<sup>th</sup> District of Virginia. Sarvis, Redpath, Hammer, Jones, James Carr, William Carr, Harrold, Brown, and Carson also sue in their capacity as qualified voters who want to support and vote for the LP-Virginia candidates and as candidates for the United States Congress in the 2016

general election.

2. Defendants are the members of the Virginia State Board of Elections (“Board of Elections”), which is the agency responsible for overseeing, supervising and coordinating the administration of elections in Virginia. Defendants are sued in their individual and official capacities.

3. Plaintiffs seek declaratory and injunctive relief from Virginia laws and practices which assign Sarvis, the LP-Virginia, independents and similarly-situated parties to positions on the ballot which are inferior to the ballot positions assigned to the major parties and their candidates.

### **Jurisdiction and Venue**

4. Federal jurisdiction is founded under 28 U.S.C. §§ 1331 and 1343.

5. Venue lies in this district under 28 U.S.C. §1391(b).

### **Parties**

6. Plaintiff LP-Virginia is an affiliation of voters formed to influence public policy by a variety of means, which include running candidates for public office and disseminating its views on policy issues through their campaigns. The LP-Virginia was founded in or about 1972 and is the Virginia affiliate of the national Libertarian Party. It has never attained the status of a major “party” or “political party” within the meaning of Va. Code § 24.2-101<sup>1</sup>, because it has never received at least 10 percent of the total vote cast for any statewide office. Rather, it is a “recognized political party” within the meaning of Va. Code §§ 24.2-613 and 24.2-640, which

---

<sup>1</sup> “Party” or “political party” means an organization of citizens of the Commonwealth which, at either of the two preceding statewide general elections, received at least 10 percent of the total vote cast for any statewide office filled in that election. The organization shall have a state central committee and an office of elected state chairman which have been continually in existence for the six months preceding the filing of a nominee for any office.

govern the form and contents of the ballot in the Commonwealth of Virginia.<sup>2</sup>

7. Plaintiff Robert C. Sarvis is a resident of Annandale, Virginia and is the Libertarian Party candidate for the United States Senate seat from Virginia being contested in the November 2014 general election. As of the date of filing of this Complaint he has qualified under the Virginia election laws to be on the ballot for this position.

8. Plaintiff William Redpath is a resident the Commonwealth of Virginia and is the chair of the LP-Virginia, as well as a candidate for the Virginia 10<sup>th</sup> Congressional District and wants to support and vote for the LP-Virginia candidates on the Virginia ballot. As of the date of filing of this Complaint he has qualified under the Virginia election laws to be on the ballot for this position.

9. Plaintiff William Hammer is a resident the Commonwealth of Virginia and is the Libertarian Party candidate for the Virginia 6<sup>th</sup> Congressional District and wants to support and vote for the LP-Virginia. As of the date of filing of this Complaint he has qualified under the Virginia election laws to be on the ballot for this position.

10. Plaintiff James Carr is a resident the Commonwealth of Virginia and is the Libertarian Party candidate for the Virginia 7<sup>th</sup> Congressional District and wants to support and vote for the LP-Virginia. As of the date of filing of this Complaint he has qualified under the Virginia election laws to be on the ballot for this position.

11. Plaintiff Jeffrey Carson is a resident the Commonwealth of Virginia and is the Libertarian Party candidate for the Virginia 8<sup>th</sup> Congressional District and wants to support and

---

<sup>2</sup> Sections 24.2-613 and 24.2-640 define “recognized political party,” for the purpose of those sections, as “an organization that, for at least six months preceding the filing of its nominee for the office, has had in continual existence a state central committee composed of registered voters residing in each congressional district of the Commonwealth, a party plan and bylaws, and a duly elected state chairman and secretary.”

vote for the LP-Virginia. As of the date of filing of this Complaint he has qualified under the Virginia election laws to be on the ballot for this position.

12. Plaintiff Marc Harrold is a resident the Commonwealth of Virginia and is the Libertarian Party candidate for the Virginia 11<sup>th</sup> Congressional District and wants to support and vote for the LP-Virginia candidates on the Virginia ballot. As of the date of filing of this Complaint he has qualified under the Virginia election laws to be on the ballot for this position.

13. Plaintiff Paul F. Jones is a resident of the Commonwealth of Virginia and is the Libertarian Party candidate for the Virginia 5<sup>th</sup> Congressional District and wants to support and vote for the LP-Virginia candidates on the Virginia ballot. As of the date of filing of this Complaint he has qualified under the Virginia election laws to be on the ballot for this position.

14. Plaintiff William Carr is a resident of the Commonwealth of Virginia and is a candidate for the Virginia 9<sup>th</sup> Congressional District running as an independent (non-party) candidate. As of the date of filing of this Complaint, he has qualified under the Virginia election laws to be on the ballot for this position.

15. Plaintiff Bo Conrad Brown is a resident of the Commonwealth of Virginia and is the Libertarian Party candidate for the Virginia 4<sup>th</sup> Congressional District. As of the date of filing of this Complaint, he has qualified under the Virginia election laws to be on the ballot for this position.

16. Defendants Charles E. Judd, Donald Palmer and Kimberly T. Bowers are the members of the Board of Elections, which has its principal office in Richmond, Virginia and is responsible for overseeing, supervising and coordinating the administration of elections in Virginia. Va. Code § 24.2-103. They are sued in their individual and official capacities.

**COUNT I**  
**VIRGINIA CODE §24.2-613 VIOLATES THE FIRST AND FOURTEENTH**  
**AMENDMENTS TO THE UNITED STATES CONSTITUTION**

17. Plaintiffs adopt paragraphs 1 through 16 above as if they were fully set forth herein.

18. A bulletin promulgated by the Board of Elections' entitled "November 5, 2013

Election Candidacy Requirements for Statewide Office" (Exhibit A) provides that general election ballot positions are to be assigned to candidates and parties as follows:

**XIV. ORDER OF NAMES ON BALLOTS**

\* \* \*

**In General Elections**

The candidates of political parties appear first on the ballot in the order determined by a drawing conducted by the State Board of Elections. Candidates representing any other recognized political party (see Item XI on Page 12 herein), if any, appear next on the ballot in the order determined by a second drawing conducted by the State Board of Elections. Independent (non-party) candidates appear in alphabetical order after the aforementioned political party candidates.

*See*

<http://www.sbe.virginia.gov/Files/BecomingACandidate/CandidateBulletins/2013%20STATEWIDE.pdf>

These procedures for assigning ballot positions are prescribed in accordance with Va. Code § 24.2-613 (¶ 3), which provides:

§ 24.2-613. Form of ballot.

The ballots shall comply with the requirements of this title and the standards prescribed by the State Board.

\* \* \*

Except as provided for primary elections, the State Board shall determine by lot the order of the political parties, and the names of all candidates for a particular office shall appear together in the order determined for their parties. In an election district in which more than one person is nominated by one political party for the same office, the candidates' names shall appear alphabetically in their party groups under the name of the office, with sufficient space between party groups to indicate them as such. For the purpose of this section and § 24.2-640, except as provided for presidential elections in § 24.2-614, "recognized political parties" shall be treated as a class; the order of the recognized political parties within

the class shall be determined by lot by the State Board; and the class shall follow the political parties as defined by § 24.2-101 and precede the independent class. Independent candidates shall be treated as a class under “Independent;” their names shall be placed on the ballot after the political parties and recognized political parties; and where there is more than one independent candidate for an office, their names shall appear alphabetically.

\* \* \*

19. Virginia Code § 24.2-101 defines “political party” as:

“Party” or “political party” means an organization of citizens of the Commonwealth which, at either of the two preceding statewide general elections, received at least 10 percent of the total vote cast for any statewide office filled in that election. The organization shall have a state central committee and an office of elected state chairman which have been continually in existence for the six months preceding the filing of a nominee for any office.

20. Virginia Code § 24.2-613(¶2) defines “recognized political party” as follows:

For the purpose of this section, a “recognized political party” is defined as an organization that, for at least six months preceding the filing of its nominee for the office, has had in continual existence a state central committee composed of registered voters residing in each congressional district of the Commonwealth, a party plan and bylaws, and a duly elected state chairman and secretary.

21. Under this scheme, any party which has not achieved at least 10% of the vote in at least two of the immediately preceding general elections cannot be a “political party” under Virginia Code § 24.2-613 and, thus, cannot be placed in the number one position on the next ballot.

22. As previously noted, LP-Virginia meets the criteria for “recognized political party” and, therefore, can be placed no higher than the third position on the Virginia ballot.

23. The aforementioned provisions governing the assignment of positions on general election ballots confer an unfair “positional advantage” to major parties and their candidates relative to other parties and candidates, like the LP-Virginia and the individual Plaintiffs in this

case. Independent (non-party) candidates such as Plaintiff William Carr are similarly treated less favorably than both major party and recognized party candidates.

24. The candidate whose name appears first on the ballot has an advantage over all other candidates.

25. For more than half a century it has been recognized that candidates listed lower on the ballot are placed at a material disadvantage. See *Elliott v. Secretary of State*, 295 Mich. 245, 294 N.W. 171, 173 (Mich. 1940) ("It is a commonly known and accepted fact that in an election, either primary or general, where a number of candidates or nominees for the same office are before the electorate, those whose names appear at the head of the list have a distinct advantage.") See also Note, "California Ballot Position Statutes," 45 So. Cal. L. Rev. 365, 367 (1972) ("one can attribute at least a five percent increase in the first listed candidate's vote total to positional bias.")

26. It is obvious that, in any given election, some candidate must be listed first, and some candidate listed last; however, an electoral system that is designed to ensure that a specific class of candidates always has a ballot position more favorable than other classes of candidates is inherently unconstitutional.

27. In Virginia, the positional bias favoring major parties is expressly stated in Va. Code § 24.2-613 (§ 3); therefore, it is clear that the Virginia legislature intended to provide an advantage to the candidates of major parties.

28. It is not the place of the State to "take sides" by enacting legislation that favors one party over another, or that inherently favors established parties over new parties. As the court said in *Texas Democratic Party v. Benkiser*, 459 F.3d 582 (5th Cir. 2006), "[W]hile states enjoy a wide latitude in regulating elections and in controlling ballot content and ballot access, they must exercise this power in a reasonable, nondiscriminatory, politically neutral fashion." 459 F.3d at 590.

29. A legislative enactment that clearly favors the established parties cannot be deemed politically neutral. As the court said in *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 587 (6th Cir. 2006), “[T]he State may not be a wholly independent or neutral arbiter as it is controlled by the political parties in power, which presumably have an incentive to shape the rules of the electoral game to their own benefit.” (quoting *Clingman v. Beaver*, 544 U.S. 581, 125 S.Ct. 2029, 2044, 161 L.Ed.2d 920 (2005) (O’Conner, J., concurring)).

30. “The Equal Protection Clause of the Fourteenth Amendment commands that no State shall deny to any person within its jurisdiction the equal protection of the laws, which is essentially a direction that all persons similarly situated should be treated alike.” *City of Cleburne v. Cleburn Living Center*, 473 U.S. 432, 439, 105 S.Ct. 3249, 3254 87 L.Ed.2d 313 (1985). “[T]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.” *Village of Willowbrook v. Olech*, 528 U.S. 562, 564, 120 S.Ct. 1073, 1074-75, 145 L.Ed.2d 1060 (2000).

31. Equal Protection applies whenever an individual is treated differently from other who are similarly situated “in all material respects.” *TriHealth, Inc. v. Bd. of Comm'rs*, 430 F.3d 783, 790 (6th Cir. 2005)<sup>3</sup>. “Disparate treatment of similarly situated persons who are dissimilar only in immaterial respects is not rational.” *Id.*

---

<sup>3</sup> See also *Penrod v. Zavaras*, 94 F.3d 1399, 1406 (10th Cir.1996) (“An equal protection violation occurs when the government treats someone differently than another who is similarly situated.”) (citing *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985)).



32. Parties that actually have candidates listed on the ballot as the nominee of that party are certainly “similarly situated in all material respects.”<sup>4</sup> The fact that some parties may be newer, smaller, or less established, or have fewer candidates listed on the ballot than other parties, is not sufficient justification for treating them differently.

33. Independent (non-party) candidates such as Plaintiff William Carr also are similarly situated in all material respects to candidates of the major and recognized political parties and there is no justification for relegating them in every instance, and as a matter of state policy, to the least favored position on election ballots.

34. When ballot access-limiting statutes are also viewed from the perspective of their impact on voters, it is important to recognize that, as the Sixth Circuit said in *Libertarian Party of Ohio v. Blackwell*:

“A burden that falls unequally on new or small political parties or on independent candidates impinges, by its very nature, on associational choices protected by the First Amendment. It discriminates against those candidates—and of particular importance—***against those voters whose political preferences lie outside the existing political parties.***” 462 F.3d 589. [Emphasis added.]

35. The courts have repeatedly held that all candidates for the same office must be treated the same. *See Gjersten v. Board of Election Comm'rs*, 791 F.2d 472 (7th Cir. 1986) (Holding unconstitutional a statute requiring different numbers of signatures for candidates for the same or similar offices.); *Rockefeller v. Powers*, 909 F. Supp. 863 (E.D. N.Y. 1995) (Striking petition requirement that discriminated between candidate for the same office.) *See, also, Bullock v. Carter*, 405 U.S. 134, 148, 31 L. Ed. 2d 92, 92 S. Ct. 849 (1972) (finding no

---

<sup>4</sup> While there are numerous reasons why States may have different provisions regulating the path to the general election ballot for independent and party candidates, once the candidates have qualified for inclusion on the general election ballot they are all entitled to equal treatment—and an equal chance of having the top listing on the ballot.

justification for filing fees in party primary where "candidates for offices requiring statewide primaries are generally assessed at a lower rate than candidates for local offices").

36. Explaining the importance of ballot form and candidate labeling, in *Cook v. Gralike*, 531 U.S. 510, 121 S.Ct. 1029, 149 L.Ed.2d 44 (2001), the United States Supreme Court emphasized that: “[t]he result is that the State injects itself into the election process at an absolutely critical point—the composition of the ballot, which is the last thing the voter sees before he makes his choice.” *Gralike* means that the ballot is the last place where discriminatory practice can be tolerated. Virginia Code § 24.2-613 represents a codification of a longstanding practice of the Board of Elections that violates the First and Fourteenth Amendments.

**COUNT II**  
**VIRGINIA CODE §24.2-506(A) VIOLATES THE FIRST AMENDMENT AND**  
**FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION**

37. Plaintiffs incorporate paragraphs 1 through 36 above as if fully set forth herein.

38. Virginia Code § 24.2-506(A) prescribes the requirements that any political candidate who is not from a “party” as that term is defined in Virginia Code § 24.2-100 must collect a certain number of signatures from qualified voters depending on the office sought.

39. Virginia Code § 24.2-506(A) provides:

\*\*\*\*

**§ 24.2-506. Petition of qualified voters required; number of signatures required;**  
**certain towns excepted**

A. The name of any candidate for any office, other than a party nominee, shall not be printed upon any official ballots provided for the election unless he shall file along with his declaration of candidacy a petition therefor, on a form prescribed by the State Board, signed by the number of qualified voters specified below after January 1 of the year in which the election is held and listing the residence address of each such voter. Each signature on the

petition shall have been witnessed by a person who is himself a legal resident of the Commonwealth and who is not a minor or a felon whose voting rights have not been restored and whose affidavit to that effect appears on each page of the petition.

Each voter signing the petition may provide on the petition the last four digits of his social security number, if any; however, noncompliance with this requirement shall not be cause to invalidate the voter's signature on the petition.

The minimum number of signatures of qualified voters required for candidate petitions shall be as follows:

1. For a candidate for the United States Senate, Governor, Lieutenant Governor, or Attorney General, 10,000 signatures, including the signatures of at least 400 qualified voters from each congressional district in the Commonwealth;
2. For a candidate for the United States House of Representatives, 1,000 signatures;
3. For a candidate for the Senate of Virginia, 250 signatures;
4. For a candidate for the House of Delegates or for a constitutional office, 125 signatures;
5. For a candidate for membership on the governing body or elected school board of any county or city, 125 signatures; or if from an election district not at large containing 1,000 or fewer registered voters, 50 signatures;
6. For a candidate for membership on the governing body or elected school board of any town which has more than 1,500 registered voters, 125 signatures; or if from a ward or other district not at large, 25 signatures;
7. For membership on the governing body or elected school board of any town which has 1,500 or fewer registered voters, no petition shall be required;
8. For a candidate for director of a soil and water conservation district created pursuant to Article 3 ([§ 10.1-506 et seq.](#)) of Chapter 5 of Title 10.1, 25 signatures; and
9. For any other candidate, 50 signatures.

\*\*\*\*\*

40. As pleaded in paragraph 16, *supra*, “party” is defined by Virginia Code § 24.2-101, *inter alia*, as: “...an organization of citizens of the Commonwealth which, at either of the

two preceding statewide general elections, received at least 10 percent of the total vote cast for any statewide office filled in that election.”

41. Because the only political organizations which have met the criteria found in Virginia Code § 24.2-101 to be a “party” are the Republican and Democratic Parties, unless a candidate is a Republican or Democrat, they are subjected to the burden of having to obtain the above number of signatures or risk being left off the ballot.

42. In the case of the plaintiffs seeking Congressional seats, they were required to obtain 1,000 signatures each.

43. Robert Sarvis, as the candidate for the United States Senate, is required to not only obtain “...10,000 signatures, but the signatures of at least 400 qualified voters from each congressional district in the Commonwealth.” Virginia Code § 24.2-506(A)

44. By contrast, the Republican or Democratic parties, being “parties” as defined in Virginia Code § 24.2-100, can each unilaterally place a candidate on the ballot who has multiple misdemeanor drug or sex offense convictions and who would not be able to obtain even a single signature other than his own on a petition provided that he or she was otherwise qualified to vote in Virginia.

45. A legislative enactment that clearly favors the established parties cannot be deemed politically neutral. As the court said in *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 587 (6th Cir. 2006), “[T]he State may not be a wholly independent or neutral arbiter as it is controlled by the political parties in power, which presumably have an incentive to shape the rules of the electoral game to their own benefit.” (quoting *Clingman v. Beaver*, 544 U.S. 581, 125 S. Ct. 2029, 2044, 161 L.Ed.2d 920 (2005) (O’Conner, J., concurring)).

46. The ability of a political party to appear on the general election ballot affects not only the party's rights, but also the First Amendment free speech and associational rights of

voters. *See Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 214, 107 S. Ct. 544, 93 L.Ed.2d 514 (1986)(noting the fundamental importance of “[t]he right to associate with the political party of one's choice”)

47. “The Equal Protection Clause of the Fourteenth Amendment commands that no State shall deny to any person within its jurisdiction the equal protection of the laws, which is essentially a direction that all persons similarly situated should be treated alike.” *City of Cleburne v. Cleburn Living Center*, 473 U.S. 432, 439, 105 S. Ct. 3249, 3254 87 L.Ed.2d 313 (1985). “[T]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.” *Village of Willowbrook v. Olech*, 528 U.S. 562, 564, 120 S. Ct. 1073, 1074-75, 145 L.Ed.2d 1060 (2000).

48. Equal Protection applies whenever an individual is treated differently from others who are similarly situated “in all material respects.” *TriHealth, Inc. v. Bd. of Comm'rs*, 430 F.3d 783, 790 (6th Cir. 2005)<sup>5</sup>. “Disparate treatment of similarly situated persons who are dissimilar only in immaterial respects is not rational.” *Id.*

49. The courts have repeatedly held that all candidates for the same office must be treated the same. *See Gjersten v. Board of Election Comm'rs*, 791 F.2d 472 (7th Cir. 1986) (Holding unconstitutional a statute requiring different numbers of signatures for candidates for the same or similar offices.); *Rockefeller v. Powers*, 909 F. Supp. 863 (E.D. N.Y. 1995) (Striking petition requirement that discriminated between candidate for the same office.) *See*,

---

<sup>5</sup> See also *Penrod v. Zavaras*, 94 F.3d 1399, 1406 (10th Cir.1996) (“An equal protection violation occurs when the government treats someone differently than another who is similarly situated.”) (citing *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985)).

also, *Bullock v. Carter*, 405 U.S. 134, 148, 92 S. Ct. 849, 31 L. Ed. 2d 92, (1972) (finding no justification for filing fees in party primary where "candidates for offices requiring statewide primaries are generally assessed at a lower rate than candidates for local offices").

50. Virginia Code § 24.2-506(A) thus limits the non “party” access to the ballot and shows favoritism to the two well-established political parties by eliminating the requirement that their candidates obtain thousands of signatures from qualified voters in order to appear on the ballot, denying the Plaintiffs the equal protection under the laws and their First Amendment speech and associational rights without even a legitimate state interest in doing so.

### **SUMMARY OF CONSTITUTIONAL VIOLATIONS**

51. The aforementioned provisions, Virginia Code §§ 24.2-506(A) and 24.2-613 governing the assignment of ballot positions and limiting access to the ballot by requiring signatures for non-Republicans or Democrats violate the First and Fourteenth Amendments to the United States Constitution as they place undue burdens on First Amendment voting and associational rights of minor parties and independent candidates; no cognizable state interests justify these burdens; and non-discriminatory means are available to assign ballot positions.

52. By implementing the aforementioned means for assigning ballot positions under Virginia Code § 24.2-613 and by restricting access to the ballot under Virginia Code § 24.2-506(A), the defendants are acting under color of state law to deprive Plaintiffs, and similarly situated parties, of voting and associational rights secured by the First and Fourteenth Amendments.

53. Defendants are therefore liable to Plaintiffs pursuant to 42 U.S.C. § 1983.

54. Plaintiffs have no adequate remedy at law and will suffer irreparable harm from these ballot positioning mechanisms and from their implementation by the defendants.

55. Plaintiffs, therefore, have stated a claim under the First and Fourteenth Amendments to the United States Constitution in that the aforementioned determinants of ballot position and ballot access and their enforcement impairs Plaintiffs' rights to equal protection and due process of law, to cast their votes effectively, and to speak and associate politically, including their "constitutional right ... to create and develop new political parties," *Norman v. Reed*, 502 U.S. 279, 288 (1992), and such impairment of Plaintiffs' rights cannot be justified by a sufficient state interest.

**COUNT III**  
**Preliminary and Permanent Injunctive Relief**

**Plaintiffs will suffer irreparable harm**

56. Plaintiffs incorporate paragraphs 1 through 55 above as if fully set forth herein.

57. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Here, every day that the Plaintiffs are denied equal ballot access, and each election, such as the general election coming in November of 2014, they suffer an attack on their associational rights under the First Amendment which cannot be repaired by money damages.

**The Balancing of the Equities Tips in Favor of the Plaintiffs**

58. While the Plaintiffs face irreparable damage and harm to their First Amendment rights if preliminary relief is not granted, the state Board of Elections faces no harm whatsoever if relief is granted as the only change to an allegedly party-neutral system is in the number of lots to be drawn.

**The Public Interest Favors the Plaintiffs**

59. Courts have repeatedly recognized that the vindication of First Amendment rights is a significant public interest. *See, e.g., Giovanni Carandola, Ltd. v. Bason*, 303 F.3d

507, 521 (4<sup>th</sup> Cir. 2002) (“upholding constitutional rights surely serves the public interest.”); *Christian Legal Society v. Walker*, 453 F.3d 853, 859 (7<sup>th</sup> Cir. 2006) (“[I]njunctive relief protecting First Amendment freedoms are always in the public interest.”); *Preminger v. Principi*, 422 F.3d 815, 826 (9<sup>th</sup> Cir. 2005); *Pacific Frontier v. Pleasant Grove City*, 414 F.3d 1221, 1237 (10<sup>th</sup> Cir. 2005) (“Vindicating First Amendment freedoms is clearly in the public interest.”); *Chabad of Southern Ohio v. City of Cincinnati*, 363 F.3d 427, 436 (6<sup>th</sup> Cir. 2004) (“the public interest is served by preventing the violation of constitutional rights.”) Therefore, redressing Plaintiffs’ constitutional injury is in the public interest.

60. Plaintiffs state a claim for attorney fees and costs under 42 U.S.C. § 1988.

### **Relief Requested**

WHEREFORE, Plaintiffs move this Court for the following relief:

- a. a declaration that the provisions of Virginia Code § 24.2-613 governing the assignment of positions on the ballot are unconstitutional on their face and as applied to Plaintiffs;
- b. a declaration that the provisions of Virginia Code § 24.2-506(A) requiring non-major party candidates to obtain signatures before they are allowed access to the ballot but allowing the major party candidates to forego obtaining qualifying signatures are unconstitutional on their face and as applied to Plaintiffs;
- c. enjoining the defendants from enforcing the aforementioned provisions of Virginia law;
- d. an order directing the defendants to assign ballot positions to all ballot-qualified candidates and parties on a random basis without regard to party status;
- e. the court to retain jurisdiction in this matter to ensure compliance with this Court’s Orders;



- f. a declaration that defendants are in violation of 42 U.S.C. § 1983;
- g. attorney fees and costs pursuant to 42 U.S.C. § 1988, and;
- h. such other and further relief as may be just and proper.

LIBERTARIAN PARTY OF VIRGINIA et. al.

By:  
Of counsel

David P. Morgan, VSB #70211  
9011 Arboretum Parkway, Suite 200  
Richmond, VA 23236  
(804)330-9220  
(804)330-9458 Facsimile  
[dmorgan@cravensnoll.com](mailto:dmorgan@cravensnoll.com)

Attorney for Plaintiffs  
Participating Attorney for  
THE RUTHERFORD INSTITUTE