

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
(Richmond Division)**

THE CONSTITUTION PARY OF  
VIRGINIA, et al.,

Plaintiffs,

v.

VIRGINIA STATE BOARD OF  
ELECTIONS, et al.,

Defendants.

**Case No. 3:20-cv-00349 (JAG)**

**PLAINTIFFS' MEMORANDUM IN  
SUPPORT OF THEIR MOTION FOR  
SUMMARY JUDGMENT**

Plaintiffs, by and through their undersigned counsel, hereby submit the following Memorandum in Support of Their Motion for Summary Judgment.

**INTRODUCTION**

This lawsuit presents the Court with a simple question: is it reasonable to require independent and minor party candidates for political office to circulate petitions in the midst of an unprecedented global pandemic? Plaintiffs contend that it is not; it is a violation of their First and Fourteenth Amendment rights to ask them to choose between endangering their health and being on the ballot. 1,881 Virginians have died of COVID-19 so far this year.<sup>1</sup> Last Thursday, the United States reported an all-time high of 53,000 new coronavirus cases.<sup>2</sup> Yet, today the state demands that Plaintiffs go into the public, clipboard in hand, door to door, and ask the residents

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<sup>1</sup> <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>

<sup>2</sup> <https://www.washingtonpost.com/nation/2020/07/02/coronavirus-live-updates-us/>

of Virginia to ignore social distancing requirements (also promulgated by the state) and sign their petitions. One would assume that such a risky ask must come with an equally weighty justification, but it does not. When asked to justify this severe burden on Plaintiffs' constitutional rights, the state can point only to conclusory statements about the prevention of voter confusion – a nonexistent problem with no factual support. Such a disparate gap between burden and state justification cannot withstand constitutional scrutiny. Plaintiffs ask that this Court recognize this as a unique moment in history – one in which the state's ballot access restrictions cannot pass constitutional muster – and grant their Motion for Summary Judgment.

### **STATEMENT OF UNDISPUTED FACTS**

#### **A. The COVID-19 Pandemic and Virginia's Response**

In December 2019, an outbreak of respiratory disease caused by a novel coronavirus emerged in Wuhan, China. It is an infectious disease, now known as “COVID-19,” that can spread from person to person and can result in serious illness and death. According to the Centers for Disease Control and Prevention, older adults (particularly those over 65) and people of any age who have serious underlying medical conditions (including asthma, heart disease, cancer, and diabetes) may be at higher risk for severe illness from COVID-19.<sup>3</sup>

On January 30, 2020, after the coronavirus outbreak had spread well beyond China, the World Health Organization (WHO) declared that COVID-19 constituted a Public Health Emergency of International Concern. (Ex. 8: WHO statement at 4.) The next day, as a result of confirmed cases of COVID-19 in the United States, Health and Human Services Secretary Alex

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<sup>3</sup> Centers for Disease Control and Prevention, People Who Are at Higher Risk for Severe Illness, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html> (last visited May 8, 2020).

M. Azar II declared a nationwide public health emergency retroactive to January 27, 2020. (Ex. 9: Azar determination.)

Immediately thereafter, public health officials in the United States began taking aggressive measures to stop the spread of the disease.<sup>4</sup> They began to warn the public about the possibility of severe disruption from COVID-19 outbreaks in the United States, and they urged cities and towns to begin preparing for social-distancing measures like school closures and meeting cancellations.<sup>5</sup>

On March 11, the World Health Organization declared COVID-19 to be a global pandemic. (Ex. 10: WHO director's remarks at 2.) Two days later, the President of the United States declared a national emergency (retroactive to March 1, 2020) due to the COVID-19 outbreak in the United States. (Ex. 11: Presidential Proclamation at 2.)

On March 12, 2020, Governor Northam declared a State of Emergency. (Ex. 1 Executive Order Fifty-One (2020)). In his —Declaration Of A State Of Emergency Due To Novel Coronavirus (Covid-19), Governor Northam declared that COVID-19 is a public health threat because it is a communicable disease. *Id.* Four days later on Monday, March 16, 2020, Governor Northam issued a directive stating that restaurants, fitness centers, and theaters either had to

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<sup>4</sup> See, e.g., Julie Bosman and Denise Grady, *U.S. Officials Promise 'Aggressive Measures' to Contain Coronavirus*, N.Y. Times, Feb. 3, 2020, available at <https://nyti.ms/2Or1seZ>; Shraddha Chakradhar, *To fight coronavirus spread, the U.S. may expand 'social distancing' measures. But it comes at a cost*, STAT, Feb. 3, 2020, available at <https://www.statnews.com/2020/02/03/coronavirus-spread-social-distancing-us/>.

<sup>5</sup> See, e.g., Helen Branswell, *CDC director: More person-to-person coronavirus infections in U.S. likely, but containment still possible*, STAT, Feb. 12, 2020, available at <https://www.statnews.com/2020/02/12/cdc-director-more-person-to-person-coronavirusinfections-in-u-s-likely-but-containment-still-possible/>; Peter Belluck and Noah Weiland, *C.D.C. Officials Warn of Coronavirus Outbreaks in the U.S.*, N.Y. Times, Feb. 25, 2020, available at <https://nyti.ms/2uu1r30>; Megan Thielking, *CDC expects 'community spread' of coronavirus, as top official warns disruptions could be 'severe'*, STAT, Feb. 25, 2020, available at <https://www.statnews.com/2020/02/25/cdc-expects-community-spread-of-coronavirus-as-topofficial-warns-disruptions-could-be-severe/>.

reduce capacity to 10 people or close. (Ex. 2 Order of the Governor and State Health Commissioner Declaration of Public Health Emergency). Later, on Monday March 16, 2020, the Supreme Court of Virginia declared a judicial emergency. (Ex. 3 In Re: Order Declaring a Judicial Emergency in Response to COVID-19 Emergency). As amended, this order declared that a judicial emergency existed from March 16, 2020, to Monday, June 22, 2020, and further ordered that all non-emergency and non-essential court proceedings be suspended and that all deadlines be tolled for 21-days. *Id.* Then, on March 30, 2020, Governor Northam issued a stay-at-home order that required Virginians to remain in their places of residence except when leaving for certain essential needs and prohibited public and private in-person gatherings of more than ten individuals. (Ex. 4 Executive Order Number Fifty-Five (2020)). The order was effective until June 10, 2020, and did not make any exceptions for activity protected by the First Amendment. *Id.*

On April 21, 2020, responding to anti-quarantine protesters, Governor Northam stated that violating social distancing measures for political purposes was —selfish.”<sup>6</sup>

On May 15, 2020, Governor Northam began —Phase One” of easing the restrictions put in place to combat COVID-19. (Ex. 5 Executive Order Number Sixty-One (2020)). Phase One allowed for certain business to reopen in a limited capacity, but kept in place the prohibition on public or private gatherings of more than ten individuals. *Id.* In announcing Phase One, Governor Northam instructed Virginians to continue to practice social distancing and reminded them that they are safer staying in their homes. *Id.*

On June 5, 2020, Governor Northam began —Phase Two” of easing the restrictions put in place to combat COVID-19. (Ex. 6 Executive Order Number Sixty-Five (2020)). Phase Two,

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<sup>6</sup> <https://www.politico.com/news/2020/04/21/ralph-northam-shelter-in-place-protesters-198625>

which did not apply to the City of Richmond or the Northern Virginia Region, further eased restrictions on businesses and allowed public and private gatherings of up to fifty individuals to take place. *Id.* Governor Northam continued to advise Virginians to remain vigilant, wear facemasks, and to work from home whenever possible. *Id.*

On July 1, 2020, Governor Northam began —Phase Three” of easing the restrictions put in place to combat COVID-19. (Ex. 7 Executive Order Number Sixty-Seven (2020) (Northam)). Phase Three further eased restrictions on businesses and allowed public and private gatherings of up to 250 individuals to take place. *Id.* Phase Three still requires businesses and individuals to practice social distancing, requires the wearing of face masks in public, and continues to encourage Virginians to work from home whenever possible. *Id.* Governor Northam has stressed that Virginians with underlying health conditions remain home during Phase Three. (Ex. 12 Governor Northam Prohibits Congregating in Bars, Stresses Caution as Virginia Moves to Phase Three).

**B. Virginia’s Ballot Access Restrictions**

Prior to COVID-19 pandemic, it was well known that Virginia has one of the most restrictive set of ballot access laws in the United States.<sup>7</sup> An independent or minor party congressional candidate may only appear on the ballot if they file a declaration of candidacy and the required number of petition signatures of qualified Virginia voters. Va. Code § 24.2-505 et seq. The number of petition signatures required to appear as a candidate for the United States Senate is 10,000, including 400 signatures from each congressional district. Va. Code § 24.2-506(1). The number of petition signatures required to appear as a candidate for House of

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<sup>7</sup> "How did Virginia's ballot access get so strict?". [Richmond Times Dispatch](#). Dec 31, 2012. Retrieved July 5, 2020.

Representatives is 1,000. Va. Code § 24.2-506(2). Those signatures were due by June 9, 2020. Va. Code § 24.2-507.4.

Likewise, independent groups of qualified voters are permitted to select the names of electors to be printed on official ballots to be used in the selection of electors for President and Vice-President. Va. Code § 24.2-543. The qualified voters must submit petition signatures of at least 5,000 qualified voters, including at least 200 signatures from each congressional district. Va. Code § 24.2-543(A). Those signatures are required to be filed by August 21, 2020. *Id.*

**C. Gathering Signatures Made More Difficult During a Pandemic**

Gathering petition signatures during a regular election cycle is slow and difficult work. Declaration of Becker Sidney Smith in Support of Plaintiffs' Motion for Summary Judgment, ¶ 2. Experienced signature gatherers report being able to gather only about 5 signatures per hour going door-to-door over the course of a week. *Id.* at 3. These signatures are typically gathered during the spring at large public events or in public spaces, as private property generally does not allow petitioning. *Id.* at 4. Petition circulators typically must gather at least 50% more signatures than required to account for any signatures that may be rejected by the state, and many candidates must hire professional signature gatherers to circulate petitions on their behalf. *Id.* at 5.

During a pandemic, these incredibly difficult, but achievable tasks become practically impossible. First, the pandemic and the related shut down orders hit, without warning, during the spring, when petition circulators tend to gather the most signatures. *Id.* at 4. Second, the majority of public events wherein petition signatures are typically gathered have all been cancelled and continue to be cancelled. *Id.* at 4, 7; (See also Ex. 13 and Ex. 14, partially listing cancelled events in Virginia). Third, the public spaces where petition signatures are typically gathered were all closed during peak signature gathering times, and the private spaces that

remained open did not allow petitioning activity as it violated social distancing requirements. Dec. Smith, ¶ 7. Fourth, petition signatures are gathered on forms provided by the state – paper forms with up to 21 spaces for signatures and one space for a notary acknowledgment – that are passed between dozens of hands and are incapable of being disinfected between use. *Id.* at 8. Fifth, many of the Plaintiffs or their loved ones are at high risk of death from COVID-19 as a result of either age or disease (with one Plaintiff currently hospitalized as a result of COVID-19). *Id.* at 9, 10; Declaration of John Bloom in Support of Plaintiffs’ Motion for Summary Judgment, ¶ 2; Declaration of Carey Campbell in Support of Plaintiffs’ Motion for Summary Judgment, ¶ 2; Declaration of Nick Dunbar in Support of Plaintiffs’ Motion for Summary Judgment, ¶ 2. Lastly, it is incredibly difficult, if not impossible, to convince members of the public to support your candidacy and to handle a pen and clipboard, all while maintaining the state required six feet of physical distance. Dec. Smith, ¶ 7

**D. Plaintiffs and All Independent Candidates for Congress Will Be Unable To Obtain Ballot Access This Year**

Despite their best efforts to the contrary, none of the Plaintiffs will be able to qualify for placement on the November 3, 2020, general election ballot as a result of Virginia’s ballot access restrictions taken together with: 1) the coronavirus pandemic striking in the spring; 2) Virginia’s Executive Orders issued in response to the pandemic; 3) public events and venues being cancelled or closed in response to the pandemic; 4) private venues not allowing petition activity due to the state imposed social distancing requirements; and 5) the general social anxieties

associated with a pandemic. Dec. Smith, ¶ 7; Dec. Campbell, ¶ 3; Dec. Bloom, ¶ 3; Dec. Dunbar, ¶ 3.<sup>8</sup>

In fact, under the current signature requirements, of the 27 independent or minor party candidates for U.S. Senate and U.S. House of Representatives who filed some form of document in an attempt to qualify for the ballot, only one independent candidate for Congress will achieve ballot access for the 2020 general election. (Ex. 15, Response to Plaintiffs' Requests for Admission, Interrogatories and Requests for Production of Documents Directed to Defendant Virginia State Board of Elections.) The rest either filed no signatures at all or a miniscule amount. *Id.*

### **SUMMARY JUDGMENT STANDARD**

Summary judgment must be granted “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The movant bears the initial burden of demonstrating the absence of a genuine dispute over a material fact, *Celotex*, 477 U.S. at 323, and to that end may rely upon —particular parts of the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations..., admissions, interrogatory answers, or other materials.” Fed. R. Civ. P. 56(c).

Upon satisfaction of this initial burden, the non-moving party, to avoid summary judgment, must adduce admissible evidence to establish that specific material facts are in dispute. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986); Fed. R. Civ. P. 56(c)(2). —Only disputes over facts that might affect the outcome of the suit under the

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<sup>8</sup> Plaintiffs also incorporate herein their Declarations filed in Support of Plaintiffs' Motion for a Preliminary Injunction and/or Temporary Restraining Order found at Docket No. 9, attachments 1-5.



governing law will properly preclude the entry of summary judgment.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In contrast, “[f]actual disputes that are irrelevant or unnecessary will not be counted.” *Id.* Moreover, the non-moving party must demonstrate that “there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party.” *Anderson*, 477 U.S. at 249.

## ARGUMENT

### **A. Virginia’s Statutory Scheme Requiring Plaintiffs to Gather Signatures During the COVID-19 Pandemic Cannot Withstand Constitutional Scrutiny**

Plaintiffs are entitled to summary judgment because there is no genuine dispute as to any of the material facts of this case and Virginia’s signature requirements, as applied here, cannot withstand constitutional scrutiny under the analytic framework the Supreme Court set forth in *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428 (1992).

Under that analysis, a reviewing court must:

first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiff’s rights. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional.

*Anderson*, 460 U.S. at 789. This framework establishes a “flexible standard,” according to which “the rigorousness of [the Court’s] inquiry into the propriety of a state election law depends upon the extent to which a challenged restriction burdens First and Fourteenth Amendment rights.” *Burdick*, 504 U.S. at 434; *Marcellus v. Va. State Bd. of Elections*, 849 F.3d 169, 175 (4th Cir. 2017). Under this standard, “reasonable, nondiscriminatory restrictions” are subject to less exacting review, whereas laws that impose “severe” burdens are subject to strict scrutiny.

*Burdick*, 504 U.S. at 434 (citations omitted). But in every case, —Howeverslight [the] burden may appear ... it must be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation.” *Crawford v. Marion County Election Bd.*, 128 S.Ct. 1610, 1616 (2008) (citation and quotation marks omitted); *McLaughlin v. N.C. Bd. of Elections*, 65 F.3d 1215, 1221 n.6 (4th Cir. 1995) (—We believe that a regulation which imposes only moderate burdens could well fail the *Anderson* balancing test when the interests that it serves are minor, notwithstanding that the regulation is rational.”).

**1. The Character and Magnitude of the Injury to Plaintiffs’ Constitutional Rights is Severe**

Virginia’s signature requirements burden —two different, although overlapping kinds of rights—the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively.” *Williams v. Rhodes*, 393 U.S. 23, 30 (1968). —Bothof these rights, of course, rank among our most precious freedoms.” *Id.* The right to associate, which includes the —ight of citizens to create and develop new political parties,” is obviously diminished if a party can be kept off the ballot. *Norman v. Reed*, 502 U.S. 279, 288 (1992); see also *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979). Ballot-access restrictions also implicate the right to vote because, except for initiatives and referenda, —voters can assert their preferences only through candidates or parties or both.” *Lubin v. Panish*, 415 U.S. 709, 716 (1974). —Its to be expected that a voter hopes to find on the ballot a candidate who comes near to reflecting his policy preferences on contemporary issues.” *Id.* An election campaign is a platform for the expression of views on the issues of the day, and a candidate —serves as a rallying point for like-minded citizens.” *Anderson*, 460 U.S. at 787-88.

Even in normal times, the burdens of Virginia’s ballot-access restrictions on independent and third-party candidates are undoubtedly heavy, as is evidenced by the fact that only three independent candidates for the U.S. House of Representatives appeared on the ballot in 2016. (Ex. 15, Request for Admission No. 5.) As the Supreme Court has recognized, “[t]he right to vote is ‘heavily burdened’ if that vote may be cast only for major-party candidates at a time when other parties or other candidates are ‘clamoring for a place on the ballot.’” *Anderson*, 460 U.S. at 787 (quoting *Lubin*, 415 U.S. at 716).

But, again, these are not normal times. Petitioning has been unlawful for more than half of the 160-day petitioning period, and Virginia’s executive orders provided no exemptions for First Amendment activity. It continues to be incredibly dangerous for many of the Plaintiffs to circulate petitions due to their advanced age, preexisting conditions, or living situation.

Putting legality aside, it is simply not reasonable for signature requirements designed for normal times to govern access to the ballot when the nation is in the middle of a global pandemic caused by a highly communicable infectious disease. More than six months after the virus arrived in America, the pandemic remains a public health crisis without any modern equivalent, and the situation remains dynamic. Much is still unknown about the nature of the virus, its transmission, and its effects. There is still no vaccine, no cure and no widely available treatment. Uncertainty, like the virus, hangs in the air.

Because it has been shown that one can carry and spread COVID-19 without any apparent symptoms, every encounter with another person—particularly a stranger—poses a risk of infection. And because it is not altogether clear how long the virus can survive on various surfaces, touching a pen, a clipboard, or a piece of paper that has recently been touched by another person also poses a risk of infection. Circulating a petition during this crisis risks the

health and safety not only of the person requesting the signature but also the health and safety of the person who is signing the petition, the signer's family, and potentially the entire community. Every federal court that has addressed this issue so far has found that signature requirements for ballot-access impose severe burdens on candidates' rights during the time of this pandemic. *See Garbett v. Herbert*, Civ. No. 2:20-cv-245-RJS, 2020 WL 2064101 at \*12 (D. Utah May 1, 2020); *Libertarian Party of Ill. v. Pritzker*, Civ. No. 1:20-cv-2112, 2020 WL 1951687 at \*4 (E.D. Ill. April 23, 2020); *Esshaki v. Whitmer*, Civ. No. 2:20-cv-10831, 2020 WL 1910154 at \*6 (E.D. Mich. April 20, 2020), *aff'd in part and reversed in part*, No. 20-136, 2020 WL 2185553 at \*1 (6th Cir. May 5, 2020)(—The district court correctly determined that the [ballot-access restrictions] imposed a severe burden on the plaintiffs' ballot access, so strict scrutiny applied..."). One state court that applied an analogous framework similarly found a severe burden. *See Goldstein v. Secretary of the Commonwealth*, 125 N.E.3d 560, 571 (Ma. 2020). This Court should likewise conclude that Virginia's signature requirements impose a severe burden under current circumstances.

## **2. The Defendants' Asserted Interests Are Not Compelling Nor Their Means Narrowly Tailored**

Because Virginia's signature requirements impose a severe burden here, they must be narrowly drawn to advance a compelling state interest. The Supreme Court held in *Storer v. Brown*, 415 U.S. 724, 736 (1974), that a state has a —compelling" interest in —the stability of its political system." But the Court held more recently that this interest does not extend so far as to permit a state to protect existing parties from competition with independent or minor-party candidates. *Anderson*, 460 U.S. at 801-02. Indeed, —[c]ompetition in ideas and governmental policies is at the core of our electoral process and of the First Amendment Freedoms." *Id.* at 802 (quoting *Williams*, 393 U.S. at 32).

But that is exactly what is happening in Virginia as a result of independent candidates being unable to meet the state's signature gathering requirements during the pandemic. In Virginia's 2018, congressional elections, there was 1 independent or minor party candidate for U.S. Senate, and 3 independent or minor party candidate for the U.S. House on the ballot.<sup>9</sup> This year, only one candidate, Bruce David Foster running for the U.S. House, made the ballot. (Ex. 15, Request for Admission No. 6.)

Further, in their Opposition to Plaintiffs' Motion for Preliminary Injunction and/or Temporary Restraining Order, Defendants argued that Plaintiffs' requested relief will result in voter, election official, and candidate confusion. Docket No. 19. This claim is patently untrue. Plaintiffs are seeking only to invalidate the signature requirements found in Va. Code §§ 24.2-506(1), 24.2-506(2), and § 24.2 543, in light of signature gathering being made impossible by the ongoing pandemic and government orders in response thereto. As Defendants admit, candidates are still required to file a declaration of candidacy to appear on the ballot, and that deadline for candidates for the U.S. House and Senate has already passed. Docket No. 19, pg. 4. In fact, as discovery in this case has shown, only 18 candidates for the U.S. House, 3 candidates for the U.S. Senate and 9 candidates for the U.S. presidency have filed declarations of candidacy. (Ex. 15, Request for Admission No. 11.). Thus, there is no "intense confusion" as election officials "grapple with who is qualified to appear on the ballot." Opposition pg. 17. If Plaintiffs' relief is granted, Defendants would already know precisely who is qualified for those offices. Likewise, the claim that the candidates themselves would be confused is equally dismissed for the same reason. Further, the idea that Virginians would be confused by having more candidates on the ballot, as if more choice would somehow render a Virginian at the ballot box unable to determine

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<sup>9</sup> [https://ballotpedia.org/Virginia\\_elections,\\_2018](https://ballotpedia.org/Virginia_elections,_2018)

who they showed up to vote for, is without merit and insulting to Virginians.<sup>10</sup> Not to mention the fact that it has never happened, not even before the challenged signature requirements were put into place.<sup>11</sup>

Accordingly, because there is no genuine dispute as to issues of material fact, the burden on Plaintiffs' First and Fourteenth Amendment rights created by Virginia's enforcement of its ballot access restrictions in a time of a global pandemic is severe, the state's justification not compelling and its methods not narrowly tailored, Plaintiffs are entitled to summary judgment on their claims.

### CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request this Court grant their Motion for Summary Judgment.

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<sup>10</sup> The 2003 California Gubernatorial recall election is an instructive example. In that election 240 candidates turned in filing papers and 135 qualified to appear on the ballot. The election went forward without a hitch resulting in the election of Arnold Schwarzenegger. PBS (August 14, 2003) *California Certifies 135 Candidates in Recall Election*. ([https://www.pbs.org/newshour/politics/politics-july-dec03-recall\\_08-14](https://www.pbs.org/newshour/politics/politics-july-dec03-recall_08-14)). Plaintiffs strongly believe that Virginians are just as capable of conducting an election.

<sup>11</sup> State control of the ballot was foreign to the founders of America. *See* Richard Winger, —History of U.S. Ballot Access Law for New and Minor Parties,” *The Encyclopedia of Third Parties in America*, Vol. 1 (2000); *see also* A. Ludington, *American Ballot Laws, 1888-1910* (1911). The invention of the state ballot originated in the late nineteenth century. *See id.* Before that, voters and their supporters could bring their own ballot to the voting polls. *See id.* Most states adopted the state ballot and employed free and open ballot access to be as inclusive as many voter options as possible, with few ballot access restrictions, during most of the first half-century of state ballots. *See id.* State control of the ballot was foreign to the founders of America. *See* Richard Winger, —History of U.S. Ballot Access Law for New and Minor Parties,” *The Encyclopedia of Third Parties in America*, Vol. 1 (2000); *see also* A. Ludington, *American Ballot Laws, 1888-1910* (1911). The invention of the state ballot originated in the late nineteenth century. *See id.* Before that, voters and their supporters could bring their own ballot to the voting polls. *See id.* Most states adopted the state ballot and employed free and open ballot access to be as inclusive as many voter options as possible, with few ballot access restrictions, during most of the first half-century of state ballots. *See id.*

Respectfully submitted,

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**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
(Richmond Division)**

THE CONSTITUTION PARTY OF  
VIRGINIA, et al.,

Plaintiffs,

v.

VIRGINIA STATE BOARD OF  
ELECTIONS, et al.,

Defendants.

**Case No. 3:20-cv-00349 (JAG)**

**DECLARATION OF JOHN BLOOM IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR SUMMARY JUDGMENT**

I, John Bloom, declare as follows:

1. I have personal knowledge of the facts set forth in this Declaration, and if called upon to testify I could do so competently based upon my own personal knowledge or information and belief.

2. I have a medical condition that places me in the high risk category for COVID-19. Likewise, Plaintiff Tittle is high risk for COVID-19 and is currently in quarantine. We are unable to gather signatures without placing our lives in danger.

3. This year, the Constitution Party of Virginia and its candidates were unable to gather sufficient signatures for ballot access due to the coronavirus pandemic striking in the spring, Virginia's Executive Orders made in response to the pandemic, public events and venues being cancelled or closed in response to the pandemic, private venues not allowing petitioning



activity due to social distancing requirements, and general social anxieties associated with a pandemic.

I declare under penalty of perjury under the laws of the Commonwealth of Virginia that the foregoing is true and correct.

DATED: July 7, 2020.

  
\_\_\_\_\_  
John Bloom

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
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THE CONSTITUTION PARY OF  
VIRGINIA, et al.,

Plaintiffs,

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Defendants.

**Case No. 3:20-cv-00349 (JAG)**

**DECLARATION OF CAREY CAMPBELL  
IN SUPPORT OF PLAINTIFFS' MOTION  
FOR SUMMARY JUDGMENT**

I, Carey Campbell, declare as follows:

1. I have personal knowledge of the facts set forth in this Declaration, and if called upon to testify I could do so competently based upon my own personal knowledge or information and belief.

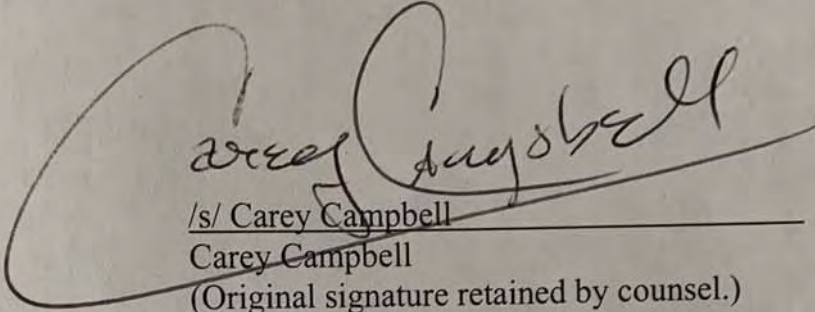
2. I am in the high risk category for COVID-19 and am the primary caregiver for my 92 year old aunt. Likewise, Plaintiffs Modglin, Parker, Wahlert, Lyles, and Fisher are high risk for COVID-19 due to either age or underlying condition. We are unable to gather signatures without placing our lives in danger.

3. This year, the Independent Green Party of Virginia and its candidates were unable to gather sufficient signatures for ballot access due to the coronavirus pandemic striking in the spring, Virginia's Executive Orders made in response to the pandemic, public events and

venues being cancelled or closed in response to the pandemic, private venues not allowing petitioning activity due to social distancing requirements, and general social anxieties associated with a pandemic.

I declare under penalty of perjury under the laws of the Commonwealth of Virginia that the foregoing is true and correct.

DATED: July 7, 2020.



/s/ Carey Campbell  
Carey Campbell  
(Original signature retained by counsel.)

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**DECLARATION OF BECKER SIDNEY  
SMITH IN SUPPORT OF PLAINTIFFS'  
MOTION FOR SUMMARY JUDGMENT**

I, Becker Sidney Smith, declare as follows:

1. I have personal knowledge of the facts set forth in this Declaration, and if called upon to testify I could do so competently based upon my own personal knowledge or information and belief.
2. Gathering petition signatures during a regular election cycle is slow and difficult work.
3. Experienced signature gatherers report being able to gather only about 5 signatures per hour going door-to-door over the course of a week.
4. For fall elections, signatures are typically gathered during the spring at large public events or in public spaces because private property owners generally do not allow petitioning.

5. Petition circulators typically must gather at least 50% more signatures than are required to account for any signatures that may be rejected by the reviewing authority.

6. When gathering signatures, many candidates must hire professional signature gatherers to circulate petitions on their behalf.

7. This year, the Green Party of Virginia and its candidates were unable to gather sufficient signatures for ballot access due to the coronavirus pandemic striking in the spring, Virginia's Executive Orders made in response to the pandemic, public events and venues being cancelled or closed in response to the pandemic, private venues not allowing petitioning activity due to social distancing requirements, and general social anxieties associated with a pandemic.

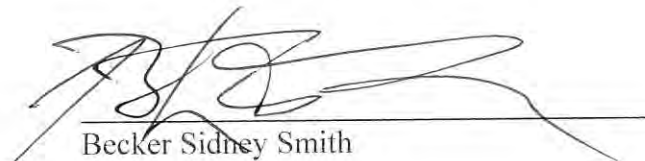
8. Petition signatures are gathered on paper forms provided by the state that contain up to 21 spaces for signatures and one space for a notary acknowledgment. Through the course of one day of signature gathering, these forms, along with pens and clipboards, are passed between dozens of hands. Being made of paper, there is no way to properly disinfect these forms.

9. My wife has a medical condition that places her in the high risk category for COVID-19. I am unable to gather signatures without placing mine and her life at risk.

10. Plaintiff Cheri Honkala is currently hospitalized as a result of COVID-19.

I declare under penalty of perjury under the laws of the Commonwealth of Virginia that the foregoing is true and correct.

DATED: July 7, 2020.



Becker Sidney Smith

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
(Richmond Division)**

THE CONSTITUTION PARY OF  
VIRGINIA, et al.,

Plaintiffs,

v.

VIRGINIA STATE BOARD OF  
ELECTIONS, et al.,

Defendants.

**Case No. 3:20-cv-00349 (JAG)**

**DECLARATION OF NICK DUNBAR IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR SUMMARY JUDGMENT**

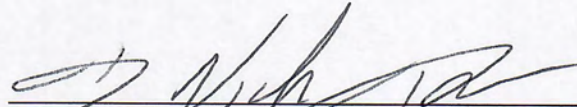
I, Nick Dunbar, declare as follows:

1. I have personal knowledge of the facts set forth in this Declaration, and if called upon to testify I could do so competently based upon my own personal knowledge or information and belief.
2. I have a medical condition that places me in the high risk category for COVID-19 and am unable to gather signatures without placing my live in danger.
3. This year, the Libertarian Party of Virginia and its candidates were unable to gather sufficient signatures for ballot access due to the coronavirus pandemic striking in the spring, Virginia's Executive Orders made in response to the pandemic, public events and venues being cancelled or closed in response to the pandemic, private venues not allowing petitioning

activity due to social distancing requirements, and general social anxieties associated with a pandemic.

I declare under penalty of perjury under the laws of the Commonwealth of Virginia that the foregoing is true and correct.

DATED: July 7, 2020.

  
\_\_\_\_\_  
Nick Dunbar