

**VIRGINIA:**

**IN THE CIRCUIT COURT OF RICHMOND CITY**

DCCC,

**Plaintiff,**

v.

The Virginia State Board of Elections;  
Robert H. Brink in his official capacity as  
Chair of the Virginia State Board of  
Elections; John O'Bannon in his official  
capacity as Vice Chair of the Virginia State  
Board of Elections; Jamilah D. LeCruise in  
her official capacity as Secretary of the  
Virginia State Board of Elections; the  
Virginia Department of Elections;

**Defendants.**

**VERIFIED COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF AND  
PETITION**

**At Law No.** \_\_\_\_\_

Plaintiff DCCC, by and through the undersigned attorneys, for its Verified Complaint for Declaratory and Injunctive Relief, alleges as follows:

**INTRODUCTION**

1. As the Supreme Court of Virginia has long recognized, “the perpetuity of our institutions and the preservation of the liberty of the people depend upon honest and fair elections; and the highest public policy requires that the laws should be so framed and administered as to secure fair elections.” *Booker v. Donohoe*, 95 Va. 359, 367-68, 28 S.E. 584, 587 (1897). Ballot access laws serve important state interests and ensure the integrity of the ballot. *See El-Amin v. State Bd. of Elections*, 717 F. Supp. 1138 (E.D. Va. 1989). This includes Va. Code Ann. § 24.2-503, which requires that, to qualify for inclusion on the general election ballot, candidates must file written statements of qualification by 7:00 p.m. on the second Tuesday in June (the “Deadline”). This year, the Deadline fell on June 9, 2020. Although the law provides the Virginia State Board of Elections (the “Board”)

with authority to grant a limited extension of that Deadline, both the history and text of the Statute make clear that discretion is not unfettered.

2. Neither Nick Freitas nor Bob Good, both prospective Republican congressional candidates, met the Deadline or sought an extension—at least not until after it had already passed. In Mr. Freitas’ case, this was the second election *in a row* that he has failed to comply with the Deadline. More than a full month after the Deadline came and went, the Board voted 2-1 on July 7 to excuse this violation of law and qualify Mr. Freitas and Mr. Good. In permitting these candidates to flout these clear and unequivocal requirements to qualify to run for office in Virginia, the Board exceeds its statutory authority and upends the Commonwealth’s clear and important election laws, effectively waiving the Deadline without any legal authority to do so. Urgent action is needed to ensure that only qualified candidates are included on Virginia’s ballots in the November 3 general election.<sup>1</sup>

3. Plaintiff DCCC seeks declaratory and injunctive relief to do just that. Specifically, DCCC asks the Court to: (i) declare that the July 7 extension exceeded the Board’s statutory authority and was therefore invalid; (ii) declare that neither Mr. Freitas nor Mr. Good met the statutory requirements to appear on the general election ballot; and (iii) enjoin the Board and the Virginia Department of Elections, as well as the Board’s and Department’s agents, officers, and employees, and any person who acts in concert with either, from including either Mr. Freitas or Mr. Good as candidates on Virginia ballots for the general election.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction to grant declaratory and injunctive relief under the Virginia Declaratory Judgment Act, Va. Code Ann. § 8.01-184, which authorizes the Court to declare rights, status, and other legal relations among the parties and to issue

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<sup>1</sup> All references herein to the “general election” refer to the upcoming November 3, 2020 general election.

injunctive relief as necessary to effectuate the judgment. *See also* Va. Code Ann. § 8.01-186 (authorizing further relief based on a declaratory judgment “whenever necessary or proper”). The Court also has jurisdiction under Va. Code Ann. § 17.1-513.

5. Venue is appropriate under Va. Code Ann. § 8.01-261(2) because this is an action “against one or more officers of the Commonwealth in an official capacity,” each of whom has official offices in Richmond, Virginia.

### **PARTIES**

6. Plaintiff DCCC is the national congressional committee of the Democratic Party as defined by 52 U.S.C. § 30101(14). Its mission is to elect Democrats to Congress, including to Virginia’s eleven congressional districts. DCCC works to accomplish its mission by, among other things, making expenditures for, and contributions to, Democratic candidates for U.S. Congress and assisting state parties throughout the country, including in Virginia. In 2020, DCCC is making contributions and expenditures in the tens of millions of dollars nationwide to persuade and mobilize voters to support Democratic congressional candidates, including in Virginia. If the two prospective candidates whose qualification is the subject of this action—neither of whom has met applicable requirements for ballot qualification under Virginia law—are listed on the ballot in November, DCCC and its affiliated candidates must expend limited resources competing against candidates who did not actually qualify for the ballot, a concrete and direct injury. *See* Letter Op. *Democratic Party of Va. v. Piper*, No. CL 18-4061 (Sept. 6, 2018 Richmond Cir. Ct.) (holding Democratic Party of Virginia would experience concrete injury and irreparable harm if forced to expend resources competing against candidate who had not legitimately qualified for inclusion on the ballot); *see also* *Mont. Tavern Ass’n v. State*, 2005 ML 144, 6 (Mont. Dist. Ct. 2005) (holding entity had standing to contest unfair competition resulting in economic harm); *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 585 (5th Cir. 2006) (holding Texas Democratic Party had direct standing to challenge Republican Party candidate’s qualifications for elected office); *Fulani v. Hogsett*, 917 F.2d

1028, 1030 (7th Cir. 1990) (holding political party has standing and suffered injury in fact because, “[o]n account of the decision by the Indiana officials to allow the two major political parties on the ballot, New Alliance faced increased competition which . . . required additional campaigning and outlays of funds”).

7. Defendant Virginia State Board of Elections (the “Board”), is responsible for, among other things, “supervis[ing] and coordinat[ing] the work of the county and city electoral boards and of the registrars to obtain uniformity in their practices and proceedings and legality and purity in all elections.” Va. Code Ann. § 24.2-103. The Board’s duties include, *inter alia*, considering the propriety of, and where appropriate, granting or denying requested extensions “of any deadline for filing either or both written statements” within certain parameters. Va. Code Ann. § 24.2-503; *id.* at § 24.2-505(A). The Board’s principal offices are in Richmond, Virginia.

8. Defendants Robert H. Brink, John O’Bannon, and Jamilah D. LeCruise are named in their official capacities as members of the Board.

9. Defendant Virginia Department of Elections (the “Department of Elections” or “Department”) is responsible for, among other things, approving the final list of candidates who have qualified to be included on Virginia’s ballots. Va. Code Ann. § 24.2-612 (stating that county general registrars should send proposed lists of qualified candidates to the Department of Elections, who shall “promptly advise the general registrar of the accuracy of the list”). The Department’s principal offices are in Richmond, Virginia.

### **FACTUAL BACKGROUND**

10. A general election will take place in Virginia on November 3, 2020.

11. In the general election, Bob Good intends to be the Republican nominee for Virginia’s 5th congressional district. Nick Freitas intends to be the Republican nominee for Virginia’s 7th congressional district.

12. Virginia law provides, in relevant part, that candidates for U.S. Congress must file written statements of qualification by 7:00 p.m. on the second Tuesday in June. Va. Code Ann. § 24.2-503.

13. In 2020, the second Tuesday in June—and thus, the Deadline—fell on June 9, 2020.

14. The Deadline was clear, unequivocal, and well-publicized, including in the Candidate Bulletin published by the Department of Elections for prospective candidates for the U.S. House of Representatives who seek to obtain access to the ballot in Virginia.

15. The Deadline applied not just to candidates for U.S. Congress but also for a wide variety of other offices. *See* Va. Code Ann. § 24.2-503 (proscribing other deadlines for certain candidates in specific offices and stating the June deadline applies to “all other candidates”).

16. Hundreds of candidates for these offices were able to comply with the Deadline, filing their papers on time and without incident.

17. Mr. Good and Mr. Freitas were among the rare exceptions: neither filed the requisite paperwork by the Deadline. Nor did they file it the next day, or the next.

18. Mr. Good and Mr. Freitas appear to have first learned that they had missed the Deadline on June 12, 2020, when a journalist named Brandon Jarvis reported on Twitter that the Department of Elections had confirmed that both had failed to comply with the Deadline.

19. Only then did Mr. Good or Mr. Freitas begin to take action to comply with the Deadline.

20. Mr. Freitas submitted his paperwork in full on June 12, but Mr. Good did not complete his submission until three days later, on June 15.

21. On June 12, the Republican Party of Virginia publicly released a letter that they apparently submitted via e-mail to Defendants Chairman Brink, Vice-Chair O’Bannon, and Secretary LeCruise (the “June 12 Letter”).

22. In the June 12 Letter, the Republican Party requested that the Board exercise their authority under Va. Code Ann. § 24.2-503 to extend the Deadline for filing the statements “for all candidates” whose filing deadline was June 9 (emphasis added).

23. The June 12 Letter offered no reason why either Mr. Good or Mr. Freitas failed to comply with the Deadline; in fact, it did not mention either of them by name at all.

24. Instead, the June 12 Letter asserted that the Deadline should be broadly extended for all candidates because Governor Northam had extended the primary election until June 23, and that the deadline for the Republican Party to nominate their candidates by a non-primary method had been extended until July 28.

25. The June 12 Letter did not explain why the separate decision by the Governor to move these other deadlines meant that candidates should be excused from complying with the Deadline at issue, nor did it explain why the Republican Party (or any of its candidates) failed to even raise this issue until days after the Deadline had already passed.

26. On June 30, *a full 21 days* after the deadline had already passed, counsel for Mr. Good sent a letter to the Board, explicitly requesting that it extend the deadline for Mr. Good specifically.

27. On information and belief, there is no indication that Mr. Freitas, either individually or through counsel, ever requested an extension of the Deadline.

28. Rather than call a special meeting to consider either the blanket extension request made by the Republican Party in the June 12 Letter, or to consider Mr. Good’s counsel’s belated request to extend the Deadline specifically as it related to him, the Board chose to wait until its next regularly scheduled meeting of July 7 to even consider the requests.<sup>2</sup>

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<sup>2</sup>The delay between meetings does not appear to have been caused by restrictions on in-person gatherings due to the COVID-19 pandemic, as records reflect that the Board met

29. On July 6, counsel for Plaintiff sent a letter to the Board urging them to reject the extension requests and explaining why granting them at that late stage—more than a month after the Deadline had passed—would exceed the Board’s statutory authority.

30. On July 7, the Board held a public meeting and considered both the Republican Party’s and Mr. Good’s extension requests.

31. During the meeting, Mr. Good admitted that his failure to comply with the Deadline was an oversight and that he had no legitimate excuse.

32. At the conclusion of the meeting, the Board voted 2-1 to extend the Deadline.

33. The extension granted by the Board applied to all candidates whose filing deadline was June 9 and granted an additional ten days from the date of the Board’s decision to grant the extension for affected candidates to complete their paperwork.

34. Thus, under the terms of the extension granted by the Board, the Deadline was extended for candidates for countless offices until July 17, 2020—a full 38 days after the statutory deadline.

35. The Board lacked statutory authority to grant the extension requests.

36. Va. Code Ann. § 24.2-503 provides in relevant part:

The State Board may grant an extension of any deadline for filing either or both written statements [statement of economic interests and/or statement of candidate qualification] and shall notify all candidates who have not filed their statements of the extension. Any extension shall be granted for a fixed period of time of ten days from the date of the mailing of the notice of the extension.

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regularly throughout the spring of 2020 via electronic means. *See* Virginia Regulatory Town Hall, *Meetings and Public Hearings*, <https://townhall.virginia.gov/L/Meetings.cfm?BoardID=151&time=PastYear> (detailing eight separate meetings held in March, April, and May of 2020). At least three of those meetings appear to have been convened on an emergency basis. *Id.*; *see also* Va. Code Ann. § 2.2-3701 (permitting Board to convene meetings on an emergency basis).

37. Under this provision, the Board has wide discretion to *deny* extension requests (as indicated by the word “may” in the first sentence), but only a *limited* ability to grant them (as indicated by the use of the word “shall” in the first and second sentences).

38. Under the plain text of the Statute, the Board only has authority to grant extensions of the Deadline where: (1) it notifies all candidates who have not filed their statements, and (2) any extension must be for ten days from the date of the mailing of the notice of the extension—no more, no less.

39. The statutory history of the Statute further makes clear that the only reasonable reading of it is to give the Board limited authority to grant politically-neutral extensions *contemporaneously* with the statutorily-fixed Deadline.

40. Prior to 1988, the Board had unfettered discretion to grant extensions of the Deadline. Va. Code Ann. § 24.1-167 (1987); *see also El-Amin*, 717 F. Supp. at 1139.

41. In 1988, the Legislature amended the law to eliminate the Board’s authority to grant (or deny) extensions of the Deadline. Va. Code Ann. § 24.1-167 (1988); *El-Amin*, 717 F. Supp. at 1139.

42. The 1988 amendment was meant to curb the potential for “abuse, favoritism and caprice” that the Statute had previously given to the Board, based on the concern it would allow the Board “to permit late entries by favored candidates.” *El Amin*, 717 F. Supp. at 1142-43.

43. The Statute was later amended again in 1993 to give the Board authority to grant extensions under limited circumstances, “provid[ing] a bright-line, fixed rule that applies equally to all candidates and [which] cannot be manipulated.” *Id.*

44. To interpret the Statute as the Board has in this case, to allow it to grant a ten-day extension of the Deadline beginning on *any* date—even long after the Deadline had already passed—would effectively give back to the Board the unfettered discretion that the Legislature intentionally took away, permitting members of the Board to manipulate the Deadline to enable favored candidates to break the rules and enter the race late.



45. If the Board's actions in this case are lawful—where it waited over a month after the Deadline had passed to even consider the request for an extension, and then granted an extension of 38 days after the statutory deadline—nothing would stop the Board from granting extensions up to the eve of elections. Because the ten-day extension period only begins to run after the notice is mailed, the Board could alternately grant limitless extensions by indefinitely delaying the mailing of notices.

46. Neither scenario could possibly be what the Legislature intended when it limited the Board's extension powers to a fixed ten-day period in order to curb the opportunity for abuse and ensure that the pool of candidates is set sufficiently in advance of the election to ensure that the public has a fair opportunity to learn about them as they make the crucially important decision as to who to support for public office. *El Amin*, 717 F. Supp. at 1142-43.

47. Had the Legislature intended the Board to be able to grant what is effectively a five-week extension, it could have reenacted the prior version of the Statute and granted the Board unfettered discretion to issue any extension at any point in time. It did not do so.

48. There is no precedent for the Board to grant such an expansive and late extension request.

49. Research has not revealed any other instances in which the Board has granted an extension request that effectively grants several additional weeks to candidates to complete the statutory requirements.

50. On the contrary, the Board appears to typically grant requests only on or very near the statutory deadline.

51. In 2018, the Board granted an extension request for candidates to file their Certificate of Candidate Qualification and/or Statement of Economic Interests in relation to the December 18, 2018 special election for House of Delegates District 24. The request for extension was made just 51 minutes after the deadline and the extension was granted

the following day; documents were thus due by November 30, 2018 instead of the previous deadline of November 19, 2018.

52. The circumstances there—where the extension request was granted after the candidate made a good faith effort to meet the deadline, in close proximity to the deadline (one day later)—are consistent with the Statute’s text and legislative history. But those circumstances are not present here.

53. Even assuming that the Board does possess the authority to grant the extension under circumstances present here (and it does not), it would have had no reasonable basis to do so.

54. Neither Mr. Good nor Mr. Freitas even argued that they had attempted to meet the Deadline. Neither showed that they had made good faith efforts to comply with the Deadline. Neither offered any legitimate excuse as to their failure.

55. In its general request for an extension in the June 12 Letter, the Republican Party broadly blamed the COVID-19 pandemic for unnamed candidates’ failure to comply with the Deadline, but even after a lengthy hearing in which the Board debated the matter, no evidence has come to light that would indicate that either Mr. Good’s or Mr. Freitas’ ability (or rather, inability) to submit a simple set of forms by the Deadline was in any way impacted by COVID-19. Indeed, as noted, plenty of other candidates were able to comply.

56. For Mr. Freitas, moreover, it was not even the first instance in which he failed to comply with the Deadline. He has repeatedly disregarded Virginia’s filing requirements, and was excluded from the partisan ballot in 2019 after he failed to timely file his paperwork for a different candidacy. He nonetheless went on to win the election as a write-in candidate.

57. In granting the extension at issue here, the Board exceeded its statutory authority. Va. Code. Ann. § 24.2-503 gives only very limited authority to the Board to grant extensions; both the statutory text and legislative history make clear that the Board

may only grant ten-day extensions and does not have unfettered authority to grant those extensions whenever it desires.

58. By waiting a full month to grant a ten-day extension, the Board effectively extended the Deadline by more than five weeks, far beyond the limited time period contemplated by the Statute.

59. The Board is the gatekeeper of Virginia's democratic process and has an obligation to ensure that only statutorily qualified candidates appear on Virginia's ballots. It did not have authority to belatedly grant the extension requests at issue here, nor was there any legitimate reason for it to do so.

60. Immediate injunctive relief is appropriate and necessary to protect the DCCC from serious, irreparable harm. Specifically, unless the Board's illegitimate extension is enjoined, Mr. Good and Mr. Freitas will appear on the November ballot as candidates to represent Virginia in Congress, despite having failed to comply with the qualifications set forth under Virginia law to access the ballot. The deadline for printing ballots is fast approaching, and immediate relief is therefore necessary and appropriate to safeguard the fairness of Virginia's democratic process.<sup>3</sup>

### **COUNT ONE**

#### **Violation of Va. Code Ann. § 24.2-503**

61. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Verified Complaint as though set forth fully herein.

62. Under Va. Code Ann. § 24.2-503, the Board may grant ten-day extensions under limited circumstances. The plain text of the statute, the legislative history, and the

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<sup>3</sup> “The general registrar shall make printed ballots available for absentee voting not later than 45 days prior to any election or within three business days of the receipt of a properly completed absentee ballot application, whichever is later.” Va. Code Ann. § 24.2-612. Similarly, under federal law, all validly requested ballots to UOCAVA voters must be transmitted to voters no later than 45 days before an election for federal office (September 22, 2018). *See* 52 U.S.C. § 20302(a)(8)(A).

decision in *El-Amin* made clear that the extension must be granted on or very near the statutory deadline.

63. Here, the extension requests came a meaningful time after the Deadline had already passed, and the Board waited several more weeks before granting the extension. As a final result, the new filing deadline is a full 38 days—over five full weeks—after the statutory Deadline. That extension far exceeds the ten-day extension period that the Board is empowered to grant.

64. Because the Board effectively gave a 38-day extension when it was only permitted to grant a ten-day extension, the Board violated Va. Code Ann. § 24.2-503.

**COUNT TWO**  
**Violation of Va. Code Ann. §§ 24.2-504; 24.2-506**

65. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Verified Complaint as though set forth fully herein.

66. Virginia law clearly provides that candidates for the U.S. House of Representatives who wish to appear on the ballot for the upcoming general election must have filed qualifying paperwork by June 9, 2020. Va. Code. Ann. § 24.2-506(A)(2).

67. Va. Code. Ann. § 24.2-504 further specifies that “[o]nly a person fulfilling all the requirements of a candidate shall have his name printed on the ballot for the election.”

68. Here, however, neither Mr. Good nor Mr. Freitas filed their required paperwork by the statutory Deadline. Neither has offered any legitimate reason for their failure to do so.

69. Because neither Mr. Good nor Mr. Freitas met the statutory requirements to qualify for the ballot, Virginia law requires that each must be disqualified from appearing on the ballot for the general election.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court hear this action pursuant to Va. Code Ann. §§ 8.01-186, 17.1-131, and 17.1-513, and issue preliminary and permanent declaratory and injunctive relief:

- a. declaring that the Board exceeded its statutory authority when it granted the extension request and imposed a new deadline of July 17, 2020;
- b. declaring that the Board's July 7 notice of extension of deadline was therefore invalid;
- c. declaring that neither Mr. Good nor Mr. Freitas fulfilled the statutory requirements of Va. Code. Ann. § 24.2-506(A)(2) because they failed to submit the required paperwork by the statutory deadline and no valid extension was granted;
- d. enjoining Defendants from qualifying Mr. Good and Mr. Freitas for inclusion on the general election ballot;
- e. enjoining Defendants and their agents, officers, and employees, and any person who acts in concert therewith, from printing the names of either Mr. Good or Mr. Freitas on ballots for the general election.

Dated: July 14, 2020

By: 

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