

Circuit Court
OF THE
City Of Richmond

GREGORY L. RUPE
JUDGE

JOHN MARSHALL COURTS BUILDING
400 NORTH 9TH STREET
RICHMOND, VIRGINIA 23219

September 6, 2018

Jeffrey A. Breit
BREIT DRESCHER IMPREVENTO, P.C.
600 22nd Street
Suite 402
Virginia Beach, VA 23451

Aria Branch
Marc E. Elias
Elisabeth C. Frost
PERKINS COIE LLP
700 Thirteenth Street, N.W.
Suite 600
Washington, D.C. 20005

Stephen A. Cobb
Heather Hays Lockerman
Joshua D. Heslinga
Office of the Attorney General of Virginia
900 E. Main Street
Richmond, VA 23219

James Stephen Ellenson
11712 Jefferson Avenue
Suite C-450
Newport News, VA 23606

Re: Democratic Party of Virginia v. Piper, et al.
Case No.: (CL 18-4061)

Dear Counsel:

This matter came before the court on September 5, 2018, upon Plaintiff's Motion for Temporary Injunction and Petition for Writ of Mandamus. The Court has considered the entirety of the record along with the testimony, exhibits, and arguments presented at the hearing. The Court concludes, without doubt, that the petition of candidate Shaun Brown contains forgery, perjury, fraud, and significant material, sophomoric errors. These shortcomings are of such a nature, and so substantial, as to leave the Court with no doubt that there are less than 1,000 valid

signatures on her candidacy petitions. For this reason, Ms. Brown must be removed from all ballots for Virginia's Second Congressional District. By the Court's Order granting Plaintiff a temporary injunction and writ of mandamus, all election officials are ordered to remove Ms. Brown from any printed or electronic ballots and to ensure she is not included in any future 2018 ballots.

I. Procedural and Factual Background

A. Factual Background

In 2016, Ms. Brown ran as the Democratic Party's candidate in Virginia's Second Congressional District. Ms. Brown lost to Scott Taylor, the 2016 Republican candidate and current Congressman.

In 2017, Ms. Brown was indicted in federal court on charges of wire fraud and theft of government property. The indictment made two prominent allegations. First, that she defrauded the Virginia State Government of approximately \$450,000. Second, that Ms. Brown lied in Federal Election Commission filings about donating \$700,000 to her campaign which was later "reimbursed."

Following the indictment, Ms. Brown announced that she would not seek the Democratic nomination for Virginia's Second Congressional District in 2018. Ms. Brown did not participate in the ensuing Democratic primary. Ms. Brown subsequently filed a petition to run as an independent candidate for Virginia's Second Congressional District on June 12, 2018, the last day allowed by statute. Code § 24.2-507. Ms. Brown's petition contained a total of 2,550 signature lines with 1,927 signatures.

B. The Statutory Scheme

Independent candidates for office must comply with the provisions of Code §§ 24.2-505 through 507 to be included on a ballot by the Virginia State Board of Elections ("SBE"). An independent candidate for the U.S. House of Representatives must submit a petition with the signature of 1,000 qualified voters. Code § 24.2-506(A)(2). Each petition page must include an affidavit from the circulator which affirms that the petition circulator witnessed each signature on that petition page. Code §24.2-505(A).

A petition "should not be rendered invalid if it contains an error or omission not material to its proper processing. 1 VAC 20-50-20(A). However, the omission of any of the following requirements "are always material and any petition containing such omissions shall be rendered invalid:

1. The petition submitted is not the double-sided document, or a double-sided copy thereof, provided by the State Board of Elections;
2. The petition does not have the name, or some variation of the name, and address of the candidate on the front of the form;
3. The petition fails to identify the office sought on the front of the form;

4. The petition fails to identify the applicable election district in which the candidate is running for office;
5. The circulator has not signed the petition affidavit and provided his current address;
6. The circulator is a minor or a felon whose voting rights have not been restored;
7. The circulator has not signed the petition he circulated in the presence of a notary;
8. The circulator has not had a notary sign the affidavit for each petition submitted;
9. A person other than the circulator signed the petition affidavit;
10. The notary has not affixed a photographically reproducible seal;
11. The notary has not included his registration number and commission expiration date; or
12. Any combination of the scenarios of this subsection exists.

1 VAC 20-50-20(B). The regulations also provide eight examples of non-material omissions, provided that the general registrar can still independently verify the validity of the petition or signature:

1. An older version of the petition is used (provided that the information presented complies with current laws, regulations, and guidelines);
2. The "election information" including (i) county, city, or town in which the election will be held; (ii) election type; and (iii) date of election are omitted;
3. The name of the candidate and office sought are omitted from the back of the petition;
4. The circulator has not provided the last four digits of his social security number in the affidavit;
5. The signer omits his first name, provided he provides a combination of his first or middle initials or a middle name and last name and address that matches a qualified voter within the Virginia voter registration system;
6. The signer provided a derivative of his legal name as his first or middle name (e.g., "Bob" instead of "Robert");
7. The signer prints his name on the "Print" line and prints his name on the "Sign" line; or
8. The signer fails to provide the date but a period of time that qualifies can affirmatively be established with previous and subsequent dates provided by other signers upon the petition page.

1 VAC 20-50-20(D).

Once a petition page is 'facially validated,' election officials conduct a review of each signatures. Each signature must be "after January 1 of the year in which the election is held and listing the residence address of each such voter." Code § 24.2-506(A). Additionally, a signature is counted only if:

1. The petition signer is a qualified voter who is maintained on the Virginia voter registration system either (i) with active status or (ii) with inactive status and qualified to vote for the office for which the petition was circulated;
2. The signer provides his name; and

3. The signer provides an address that matches the petition signer's address in the Virginia voter registration system, or the signer provided an address that is within the same precinct where a voter is currently registered in the Virginia voter registration system, and the signer can be reasonably identified as the same registered voter.

1 VAC 20-50-20(E). Subsection (D) also dictates when omissions are non-material for signatures. *Supra*, 3. The following omissions are material and always invalidate a signature:

1. The signer is not qualified to cast a ballot for the office for which the petition was circulated;
2. The signer is also the circulator of the petition;
3. The signer provided an accompanying date that is subsequent to the date upon which the notary signed the petition;
4. The signer did not sign the petition; or
5. The signer provided an address that does not match the petition signer's address in the Virginia voter registration system, unless the signer provided an address that is within the same precinct where a voter is currently registered in the Virginia voter registration system, and the signer can be reasonably identified as the same registered voter.

1 VAC 20-50-20(C).

Election officials review each petition in accordance with these guidelines. Election officials rely on the affidavit of the circulator and review signatures only for *facial validity*. (*See* Resp. of Def., Ex. D1 ¶¶ 20-22.) The petition is only reviewed until a candidate is credited with the required number of signatures—1,000 for a U.S. House of Representatives race. (*See* Resp. of Def., Ex. D1 ¶¶ 5-15.)

C. Procedural Background

At the outset, the Court takes judicial notice that the Attorney General of Virginia has appointed a Special Prosecutor to investigate whether any individuals involved in this matter should be criminally charged. (*See* Compl. Ex. 1.)

On August 13, 2018, the Democratic Party of Virginia (“DPVA”) filed a Verified Complaint in this Court seeking declaratory judgment, injunctive relief, and a writ of mandamus. The Complaint followed a torrent of news stories beginning on August 1, 2018, which alleged numerous inconsistencies, errors, and fraudulent activities related to Ms. Brown’s petition. Plaintiff alleged four causes of action: (1) violation of the right to vote under Article I, Section 6 of the Virginia Constitution; (2) violation of the rights of free speech and association under the First and Fourteenth Amendments to the United States Constitution; (3) violation of the rights of free speech and association under Article I, Section 12 of the Virginia Constitution; and (4) violations of Code §§ 24.2-504 through 24.2-507. (Compl. 12–19.) Plaintiff also petitioned for a writ of mandamus to prevent Ms. Brown from appearing on the ballot. (Compl. 20–21.) Simultaneously, Plaintiffs filed a Motion for Temporary Injunction, seeking the similar relief. (Pl.’s Aug. 13 Motion, 3–4.) With their Complaint and Motion, Plaintiff filed 35 affidavits from

individuals whose signature or family member's signature was included on Ms. Brown's Petition. Each affiant swore that the signature included in the petition was forged. (Compl., Ex. 21.) In the case of family members, the affiant swore that the person alleged to have signed the petition was deceased prior to the date of signature. (*See, e.g.*, Compl., Ex. 21, 15 ("Affidavit of Elizabeth Cake").)

On August 17, 2018, DPVA filed a Notice of Supplemental Authority. The filing levied new allegations that five paid staffers of current Representative Scott Taylor circulated petitions on behalf of Ms. Brown. (Notice of Suppl. Auth., 5–6.) Five additional affidavits swearing to forged signatures were also attached. (Notice of Suppl. Auth., Ex. A.)

On August 24, 2018, DPVA filed a Second Notice of Supplemental Authority, containing additional allegations. First, the filing alleged numerous problems with individual signatures and petition pages, including incorrect notary seals, addresses, and affidavits. (Notice of Suppl. Auth., 5–8.) Second, the notice offered more circumstantial evidence that Ms. Brown was working in concert with the staffers in Representative Scott Taylor's office. Third, the notice claimed that incorrect addresses for Ms. Brown were included at the top of each petition page. (Notice of Suppl. Auth. II, 2–5.) Plaintiff noted that 117 of the 193 petition pages listed Ms. Brown's address as 5887 Campus Drive, Virginia Beach, VA 23462 ("5887 Campus Drive"). (Notice of Suppl. Auth. II, 3.) However, the SBE mailed correspondence to Ms. Brown at 5587 Campus Drive, Virginia Beach, VA 23462 ("5587 Campus Drive"). (Notice of Suppl. Auth. II, Ex. DD.) Plaintiff also attached evidence that 5887 Campus Drive is not a real address according to property records. (Notice of Suppl. Auth. II, Ex. HH.) Furthermore, Plaintiff provided an affidavit of the owner of 5587 Campus Drive, swearing that Ms. Brown had never resided at that address. (Affidavit of Dr. Hammond.) Plaintiff further noted that the remaining 76 petition pages listed Ms. Brown's address as 3683 Windmill Drive, Virginia Beach, VA 23462 ("3683 Windmill Drive"). Plaintiff attached forms submitted by Ms. Brown on May 31, 2018 to SBE attesting under penalty of perjury that 3683 Windmill Drive was her residential address. (Notice of Suppl. Auth. II, Exs. BB and CC.) Plaintiff also provided evidence from the property manager of that residence stating that 3683 Windmill Drive was vacant between May 3 and August 1, 2018. (Notice of Suppl. Auth., Exs. EE, FF, and GG.) Ms. Brown was neither the tenant who vacated on May 3 nor the tenant who moved in on August 1. (Notice of Suppl. Auth., Ex. GG.)

On August 29, 2018, the State Defendants filed a response "urg[ing] the Court to make any appropriate finding, as permitted under Virginia law, to resolve this legal and factual dilemma." (Def.'s Resp., 3.) Defendant's attached the affidavit of David Nichols, Election Services Director for the Virginia Department of Elections. (Def.'s Resp., Ex. D1.) Nichols swore that he counted and examined every petition page submitted by Ms. Brown. (Def.'s Resp., Ex. D1. ¶¶ 16–22.) Nichols concluded that Ms. Brown's petition contained 1,193 *facially valid* signatures. (Def.'s Resp., Ex. D1. ¶ 21.)

On August 29, 2018, this Court granted Ms. Brown's Motion to Intervene as a defendant in this matter. Concurrently, Ms. Brown's Memorandum in Response to Plaintiff's Motion for Temporary Injunction was filed. Ms. Brown contends the following: (1) Plaintiff lacks standing;

and (2) the Court cannot enjoin the printing of ballots due to Separation of Powers principles. (Ms. Brown's Mem. in Resp., 1–4.)

On September 4, 2018, Plaintiff filed a singular Reply. Plaintiff reiterated their previous claims and made three new allegations. First, that Ms. Brown circulated 37 petition pages and all of those pages incorrectly list her address as either 3683 Windmill Drive or 5887 Campus Drive. (Pl. Reply, 12–13.) Second, all five staffers of Representative Taylor who circulated petition pages swore to the validity of signatures which were forged. (Pl. Reply, 13–18.) Lastly, Plaintiff avers that at least two petition pages were notarized despite incomplete circulator affidavits. (Pl. Reply, 18–19.)

II. Analysis

A. Standing

“A litigant has standing if he has ‘a sufficient interest in the subject matter of the case so that the parties will be actual adversaries and the issues will be fully and faithfully developed.’ ” *Howell v. McAuliffe*, 292 Va. 320, 332, 788 S.E.2d 706, 713 (2016) (quoting *Cupp v. Bd. of Sup'rs*, 227 Va. 580, 589, 318 S.E.2d 407, 411 (1984)). Standing to seek mandamus relief also requires Plaintiff to “demonstrate a direct interest, pecuniary or otherwise, in the outcome of the controversy that is separate and distinct from the interest of the public at large.” *Id.* at 330, 788 S.E.2d at 712 (quoting *Goldman v. Landsidle*, 262 Va. 364, 373, 552 S.E.2d 67, 72 (2001)). All factual allegations are considered as true when analyzing standing. *Id.* (citing *Virginia Marine Res. Comm'n v. Clark*, 281 Va. 679, 686–87, 709 S.E.2d 150, 154–55 (2011)).

Plaintiff alleges that Ms. Brown has obtained a place on the ballot through rampant fraud. (See Compl., ¶ 9.) Plaintiff avers that Ms. Brown's continued presence on the ballot will force it to “divert funds and other resources to counter the candidacy of an additional person in the contest who, as a matter of law, should not be on the ballot.” (Compl., ¶ 9.) Plaintiff further claims that these resources would otherwise be used for other mission-central purposes elsewhere in the state. (Compl., ¶ 9.)

The Court finds that DPVA has a sufficient interest in the subject matter of this case to ensure that the parties will be “actual adversaries.” See *Howell*, 292 Va. at 332, 788 S.E.2d at 713. The Court is satisfied that the issues will be—and, in fact, are—fully and faithfully developed. See *id.* Accordingly, this Court finds that DPVA has standing in its claim for declaratory and injunctive relief. Furthermore, DPVA's allegations demonstrate a direct pecuniary interest in the subject matter of this case which is distinct from the interest of the public at large. Therefore, Plaintiff also has standing to seek mandamus relief. See *id.* at 330, 788 S.E.2d at 712.

Because the Court holds that Plaintiff has standing in its own right, the Court does not address Plaintiff's claim that it also has associational standing in this action.

B. Justiciability

Justiciability is not specifically raised in Ms. Brown's Memorandum in Response. However, to the extent that Ms. Brown alludes to this action being a non-justiciable controversy, the Court addresses her concerns.

The Court is cognizant that identification of an actual controversy is a prerequisite to the exercise of its authority. *Martin v. Garner*, 286 Va. 76, 82 (2013). The absence of an actual controversy would render any judgment an impermissible advisory opinion. *Id.* To be justiciable, the controversy must be one in which "there are specific adverse claims." *Id.* at 83. In other words, the question involved "must be real and not a theoretical question; the person raising it must have a real interest to raise it; he must be able to secure the proper contradicter, that is to say, someone presently existing who has a true interest to oppose the declaration sought." *Id.* (quoting *Patterson v. Patterson*, 144 Va. 113, 120 (1926)). Additionally, the claim must be based on present facts ripe for judicial adjustment, not future facts or speculation. *Id.* (quoting *Blue Cross & Blue Shield v. St. Mary's Hosp.*, 245 Va. 24, 35 (1993)).

Here, the requirements for a justiciable controversy are met. There are "specific adverse claims" regarding the validity of Ms. Brown's petition pages, signatures, and status as a 'qualified independent candidate.' These claims are based on present facts that are ripe for judicial determination. DPVA also has "real interests to raise" in its own right. First, the DPVA has an interest in knowing how to allocate its resources throughout the state to further its mission. Additionally, it has an interest in not devoting additional resources to Virginia's Second Congressional District when Ms. Brown's petition allegedly violates the requirements of Title 24.2. Lastly, DPVA has an interest in ensuring the integrity of elections in the Commonwealth. DPVA has also secured the "proper contradicters." Ms. Brown is party to this lawsuit and has an adverse interest in remaining on the ballot. Additionally, state election officials and agencies are party to the suit and have real interests in maintaining election integrity.

C. Separation of Powers

"[T]he legislative, executive, and judicial departments of the Commonwealth should be separate and distinct." Va. Const. art. I, Section 5. Therefore, judicial interference and review of co-equal branches of government should be exercised only with great circumspection. *Howell*, 292 Va. at 350, 788 S.E.2d at 724. However, as is often repeated, "[i]t is emphatically the province and duty of the judicial department to say what the law is." *Id.* (quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803)). Accordingly, the Separation of Powers Doctrine does not erect impenetrable barriers between the branches. Instead, it acts to ensure that the "whole power" of one branch is "not exercised by the same hands which possess the whole power" of another branch. *In re: Phillips*, 265 Va. 81, 86–87, 574 S.E.2d 270, 273 (2003) (quoting *Winchester & Strasburg R.R. Co. v. Commonwealth*, 106 Va. 264, 268, 55 S.E. 692, 693 (1906)). In other words, the Separation of Powers Doctrine "exists not 'to protect the other branches, but rather to protect the populace.'" *Bd. of Sup'rs of Fluvanna Cty. v. Davenport & Co. LLC*, 285 Va. 580, 593, 742 S.E.2d 59, 65 (2013) (McClanahan, J., concurring) (quoting

Martin H. Redish & Elizabeth J. Cisar, “If Angels Were to Govern”: The Need for Pragmatic Formalism in Separation of Powers Theory, 41 Duke L.J. 449, 486–87 (1991)).

Cognizant of these principals, the Court is satisfied that a review of Ms. Brown’s petition in accordance with Code §§ 24.2-505 through 507 and 1 VAC 20-50-20 does not run afoul of the Separation of Powers Doctrine. In conducting such review, the Court exercises neither the “whole power” of the executive nor the legislative. The Court merely applies the laws and regulations duly adopted by each branch to the peculiar facts of this case.

D. Temporary Injunction

The Virginia Code provides only that “[n]o injunction shall be awarded unless the court shall be satisfied of the plaintiff’s equity.” Code § 8.01-628. The Supreme Court of Virginia has not delineated a clear standard governing temporary injunctions. However, at a minimum, a party must establish “traditional prerequisites, i.e., irreparable harm and lack of an adequate remedy at law before a request for injunctive relief will be sustained.” *Levisa Coal Co. v. Consolidation Coal Co.*, 276 Va. 44, 60 (2008). Furthermore, the Supreme Court of Virginia has counseled that courts should also consider the substance of the claim, magnitude of potential harm, and the equities of the parties. *Commonwealth ex rel. Bowyer v. Sweet Briar Inst.*, No. 150619, 2015 WL 3646914 (Va. June 9, 2015). These factors map comfortably onto the Federal standard, which evaluates the (1) likelihood of success on the merits; (2) likelihood of irreparable harm; (3) balance of the equities; and (4) public interest in issuing the injunction. *Winter v. Nat’l Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Therefore, this Court joins many of its sister courts in applying the federal standard. *See, e.g., Fame v. Allergy & Immunology, P.L.C.*, 91 Va. Cir. 66 (City of Roanoke, 2015); *McEachin v. Bolling*, 84 Va. Cir. 76 (City of Richmond, 2011).

At the outset, the Court notes that Plaintiff has no adequate remedy at law. Damages and/or other remedies at law are wholly insufficient to remedy Ms. Brown’s inclusion on the ballot for Virginia’s Second Congressional District.

i. Likelihood of Success on the Merits

Plaintiff’s likelihood of success depends on the number of signatures that the Court ultimately invalidates. The parties agree that Virginia election officials have certified 1,193 facially valid signatures on Ms. Brown’s petition. The Court uses this as a starting figure and examines each allegation purported to invalidate signatures *seriatim*.

a. The 24 Signatures on Petition Pages 141 and 156

The Court finds that the circulator of pages 141 and 156 (Pl.’s Exs. 17 and 18) failed to sign the circulator affidavit as required by 1 VAC 20-50-20(A)(5). Therefore, those 24 signatures are stricken and will not count towards Ms. Brown’s total number of signatures.

b. 41 Affidavits Alleging that Individual Signatures Are Forgeries

The Court finds that the 41 affidavits included in Plaintiff's Exhibit 1 are clear and convincing evidence that those signatures are forgeries. Therefore, those 41 signatures are invalid and do not count towards Ms. Brown's total number of signatures.

c. The Signatures Examined by Ms. Wong

The Court credits Ms. Wong's expert testimony and affidavit. The Court finds by clear and convincing evidence that 146 signatures were forged. (*See* Pl.'s Ex. 6.) Therefore, those signatures are invalid and do not count toward Ms. Brown's total number signatures.

d. The Signatures on Pages Which Contain Forgeries

The Court finds that any petition page which includes a forged signature must be excluded. Petition pages contain an affidavit that must be signed by the circulator in the presence of a notary. 1 VAC 20-50-20(B)(5) and (7). By signing the affidavit, the circulator swears that they "witnessed the signature of each person who signed this page or its reverse side." (*See, e.g.*, Pl.'s Exs. 17 and 18.) The presence of blatant forgeries—such as the signatures of deceased persons—provides clear and convincing evidence that the circulator did not witness each signature and lied when they signed the affidavit. Therefore, the Court will exclude every petition page, in its entirety, which contains a forged signature.¹ *See* Section II.D.i.b and c, *supra*. This invalidates 270 signatures, 189 of which were counted by Virginia election officials as valid signatures.

e. The Signatures on Pages Circulated by Lauren Creekmore, Heather Guillot, Roberta Marciano, Robert Catron, and David Boner

After reviewing the entirety of the record, briefing, and evidence presented at the hearing, the Court finds that every petition circulated by Laruen Creekmore, Heather Guillot, Roberta Marciano, Robert Catron, and David Boner must be struck. The Court was presented with clear and convincing evidence that the petitions circulated by these five individuals are rife with errors, inconsistencies, and forgeries. Therefore, the Court is satisfied that every petition circulated by these five individuals was done so with the intent to defraud the Commonwealth and its election officials. The Court strikes every petition page circulated by these individuals, which totals 600 signatures.² 415 of these signatures were counted by Virginia election officials towards Ms. Brown's total of 1,193 facially valid signatures. Therefore, striking these signatures alone leaves Ms. Brown with less than 1,000 signatures.

¹ The Court excludes the following petition pages in their entirety: 70, 71, 72, 73,77, 78, 89, 97, 101, 103, 113, 114, 115, 116, 117, 122, 123, 124, 125, and 126.

² The Court excludes the following petition pages in their entirety: 70–103, 105–117, and 121–126

f. The Petitions with the Allegedly Invalid Addresses of Ms. Brown

After reviewing the entirety of the record, briefing, and evidence presented at the hearing, the Court finds that *every* petition page must be struck because none of them listed a correct address for Ms. Brown. Every petition page must include the address of the candidate. 1 VAC 20-50-20(B)(2). The failure to include the candidate’s correct address is a material omission and “any petition containing such omission[] shall be rendered invalid.” 1 VAC 20-50-20(B). Brown’s contention that an incorrect address can satisfy the regulation is unconvincing.

The Court finds by clear and convincing evidence that Ms. Brown did not reside at either the 3683 Windmill Drive nor 5887 Campus Drive address. Plaintiff’s evidence is unequivocal—and uncontradicted—that there was *no* tenant or resident at the 3683 Windmill Drive address from May 3 to August 1, 2018. (Pl.’s Ex. 6.) Ms. Brown was not even the tenant that vacated on May 3 nor the incoming tenant on August 1. (*See* Pl.’s Ex. 6.) The Court is satisfied that 3683 Windmill Drive was not Ms. Brown’s address at any point. Therefore, every petition page listing 3683 Windmill Drive as Ms. Brown’s candidate address is invalidated in accordance with 1 VAC 20-50-20(B)(2).

The Court also finds that 5887 Campus Drive was not Ms. Brown’s residence. Indeed, it is undisputed that 5887 Campus Drive is not even a real address. (Pl.’s Ex. 12.) The Court holds that any scrivener’s error in the candidate address is a material omission under 1 VAC 20-50-20(B)(2). However, even if it were not, Plaintiffs presented the affidavit of the owner of 5587 Campus Drive which swore that Ms. Brown never resided at that address either. (Pl.’s Ex. 9.) Therefore, the Court is satisfied that neither 5887 Campus Drive nor 5587 Campus Drive were Ms. Brown’s address at any point. Therefore, every petition page listing 5887 Campus Drive as Ms. Brown’s candidate address is invalidated in accordance with 1 VAC 20-50-20(B)(2).

Every petition page submitted by Ms. Brown listed either 3683 Windmill Drive or 5887 Campus Drive as her candidate address. Because every petition page listing either address is invalid, *all* 1,927 signatures submitted by Ms. Brown are invalid. *See* 1 VAC 20-50-20(B).

g. Plaintiff is Likely to Succeed on the Merits

All 1,927 signatures submitted by Ms. Brown in support of her petition have been invalidated by this Court on *at least* one ground. *See* Section II.D.i.a–f. Therefore Ms. Brown failed to submit a valid petition as required by Code 24.2-506 and Plaintiff is likely to succeed on the merits.

ii. Likelihood of Irreparable Harm

The “drop dead” date to begin printing ballots in order to meet applicable federal deadlines is September 13, 2018—just eight days away. (Def.’s Resp., Ex. D1. ¶ 23.) If this issue is not resolved prior to September 13, the only recourse available to state election officials will be to post notices at polling places and on the official election information website. (Def.’s Resp., Ex. D1. ¶ 24.) Therefore, in the absence of a temporary injunction, Ms. Brown’s name will appear on the ballot for Virginia’s Second Congressional District.

The Court finds that the inclusion of Ms. Brown on the ballot would cause substantial irreparable harm. DPVA would be forced to divert resources intended for other parts of the Commonwealth to inform voters and combat Ms. Brown's inclusion. This would irreparably harm DPVA's ability to carry out its mission both within and outside Virginia's Second Congressional District.

iii. Balance of Equities

In light of Section II.D.i, the Court finds that the balance of equities tips overwhelmingly in favor of Plaintiff. Ms. Brown has lied to the Commonwealth, cheated the electorate, and attempted to steal a spot on the ballot. Ms. Brown's sophomoric attempts to defraud the Commonwealth's electoral system leave her with no equitable leg to stand on.

iv. Public Interest

In light of Section II.D.i, the Court finds that injunctive relief is in the public interest. The public has an undeniable interest in fair and transparent elections. Injunctive relief removing Ms. Brown from the ballot undoubtedly furthers that public interest.

E. Writ of Mandamus

A petitioner for a writ of mandamus must demonstrate: (1) a clear right to the relief sought; (2) a legal duty of part of the respondent to act; and (3) the lack of an adequate remedy at law. *Bd. of Cty. Sup'rs. of Prince William Cty. v. Hylton Enters., Inc.*, 216 Va. 582, 584 (1976). Furthermore, the respondent's legal duty to act must be ministerial, not discretionary. *Id.*

For the same reasons elucidated in Section II.D.i, Petitioner has established a clear right to relief. Ms. Brown did not collect the 1,000 valid signatures required by Code § 24.2-506 and, therefore, cannot be included on the ballot for Virginia's Second Congressional District.

Virginia election officials "shall . . . promote the proper administration of election laws." Code § 24.2-504. This duty includes enforcing Code § 24.2-506, which provides that an independent candidate "*shall not* be printed upon any official ballots provided for the election" unless a qualifying petition is filed. (emphasis added). These Code Sections delegate a ministerial duty upon election officials to ensure that *only* qualified candidates appear on ballots; no part of this duty is discretionary.

Lastly, as the Court noted in Section II.D, Petitioners have no adequate remedy at law. Accordingly, the Court finds that Petitioners are entitled to relief through a writ of mandamus.

Conclusion

For the reasons state above, the Court grants Plaintiff's Motion for Temporary Injunction and Petition for Writ of Mandamus. Ms. Brown will be removed from the ballot for Virginia's Second Congressional District.

Very truly yours,


Gregory L. Rupp, Judge