

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

REPUBLICAN PARTY OF VIRGINIA, and)
)
PRINCE WILLIAM COUNTY REPUBLICAN)
COMMITTEE,)
)
Plaintiffs,)
)
)
v.) CL
)
PRINCE WILLIAM COUNTY ELECTORAL)
BOARD, and)
)
ERIC OLSEN, in his official capacity as General)
Registrar for Prince William County,)
)
Defendants.)

COMPLAINT

1. Plaintiffs Republican Party of Virginia and Prince William County Republican Committee bring this action seeking declaratory relief pursuant to Virginia Code section 8.01-184 and injunctive relief pursuant to Virginia Code section 8.01-620, *et seq.*, against the Prince William County Electoral Board (“Electoral Board”) and Mr. Eric Olsen, in his official capacity as General Registrar and Director of Elections for Prince William County (collectively “Defendants”) to prevent Defendants’ continuing violation of Article II, Section 8 of the Virginia Constitution and Virginia Code Section 24.2-115.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to Va. Code §§ 8.01-620 and 8.01-184.
3. Venue is proper in this Court pursuant to Va. Code § 8.01-261.

PARTIES

4. Plaintiff Republican Party of Virginia is one of the two major political parties in Virginia, empowered by law to “make its own rules and regulations, . . . provide for the nomination of its candidates[,] . . . [and] perform all other functions inherent in political party organizations.” Va. Code § 24.2-508. It is also a “party” or “political party” for purposes of Va. Code § 24.2-115. *See* Va. Code § 24.2-101 (defining “Party” or “political party”). Plaintiff has an interest in defining for itself who speaks on its behalf and in ensuring that the 2022 general election is and is perceived to be free and fair.
5. Plaintiff Prince William County Republican Committee is the county unit of the Republican Party of Virginia for Prince William County. *See* Republican Party of Virginia, Plan of Organization at Art. VI (adopted Dec. 3, 2021).
6. Defendant Prince William County Electoral Board is the board appointed pursuant to Va. Code § 24.2-106 to administer elections for Prince William County. *See* Va. Code § 24.2-101 (defining “Electoral board”).
7. Defendant Eric Olsen, in his official capacity as General Registrar and Director of Elections for Prince William County, was appointed by the electoral board of Prince William County pursuant to Va. Code § 24.2-110. *See* Va. Code § 24.2-101 (defining “General registrar”).

STATEMENT OF FACTS

8. Article II, § 8 of the Constitution of the Commonwealth of Virginia provides “Each electoral board shall appoint the officers of election and general registrar for its county or city. In appointing such officers of election, representation, as far as practicable, shall be

given to each of the two political parties which, at the general election next preceding their appointment, cast the highest and next highest number of votes.”

9. Among the election officers, “[t]he electoral board shall ensure that one officer is designated as the chief officer of election and one officer is designated as the assistant for each precinct. The officer designated as the assistant for a precinct, whenever practicable, shall not represent the same political party as the chief officer for the precinct.” Va. Code § 24.2-115.
10. Only where representatives of the two largest political parties are “unavailable” may citizens who do not represent either political party be designated chief or assistant chief election officer. Va. Code § 24.2-115.
11. In such cases, “the general registrar shall provide notice to representatives of both parties at least 10 days prior to the election that he intends to use nonaffiliated officers so that each party shall have the opportunity to provide additional nominations.” Va. Code § 24.2-115.
12. Chief and assistant chief election officers are to receive training “not less than three nor more than 30 days before each election.” Va. Code § 24.2-115.
13. On September 15, 2006, the Attorney General of Virginia issued an official advisory opinion interpreting Va. Code § 24.2-115. 2006 Va. Att’y Gen. Op. No. 06-058, 2006 WL 4286452 (Sept. 15, 2006). The Attorney General’s opinion stated “[t]he use of [the] word ‘shall’ ordinarily implies that such provisions are mandatory” in reference to article II, § 8, and Va. Code § 24.2-115. The Attorney General went on to interpret “practicable” as synonymous with “feasible,” and concluded “it is my opinion that the Constitution of Virginia requires a local electoral board, where it is feasible to do so, to

appoint officers of election who represent the two dominant political parties. It is further my opinion that when it is not feasible to appoint representatives of such parties, a board may appoint nonpartisan officers of election.”

14. “Although it is not binding on this Court, an Opinion of the Attorney General is ‘persuasive’ and may be used as an aid in construing legislative intent.” *Nejati v. Stageberg*, 286 Va. 197, 203 (2013).
15. Consistent with its powers and duties under Virginia Code section 24.2-103(A), on December 12, 2019, the Virginia Department of Elections issued an “Official ELECT Advisory” (attached as Exhibit A) advising “[a]n officer of elections represents a party only if (s)he is appointed from the list of nominations submitted by a political party entitled to appointments under the Code of Virginia § 24.2-115.” The Department of Elections further advised “the ‘general registrar shall provide notice to representatives of both parties at least 10 days prior to the election that he intends to use nonaffiliated officers so that each party shall have the opportunity to provide additional nominations.’ *If the party provides additional nominations, the electoral board must meet to re-assess the assignments in enough time to provide training to any new chief or assistant chief officer of election ‘not less than three nor more than 30 days before each election.’”*
16. The Virginia Department of Elections recirculated the December 12, 2019 guidance on October 5, 2022 (attached as Exhibit B). The October 5, 2022 advisory emphasized language in the 2019 guidance stating “[i]f your locality provides an application form for prospective officers of election, ensure that the form does not allow an individual to ‘self-designate’ a party to represent. Also keep in mind that neither an individual nor electoral

board can designate a party affiliation, even if an individual has historically represented a specific party, or indicated a willingness to represent either party.”

17. In February 2022, Defendant Olsen developed a list from which Defendant Electoral Board appointed individuals as officers of election eligible to serve in the 2022 General Election and primary.
18. In May 2022, Defendant Olsen developed and circulated a list of proposed election officer assignments for the June 21, 2022, Republican Party primary election. On May 5, 2022, Mr. Dennis Daugherty, Chairman of the Prince William County Republican Committee (“PWC GOP”) expressed concern about several officers proposed to represent the Republican Party and several proposed to serve as “independent” or unaffiliated election officers, noting that several individuals in both categories had previously voted in multiple primary elections to select candidates for the Democratic Party.
19. On August 26, 2022, PWC GOP Chair Daugherty reiterated concerns regarding the partisan representation among chief and assistant chief election officers, this time in reference to the 2022 general election, in a meeting with Mr. London Steverson, Chairman of the Electoral Board, and Defendant Olsen.
20. On September 2, 2022, Defendant Olsen sent an email to the party chairs that included a list of individuals who applied to be election officers between February 1, 2022, and August 31, 2022, proposed that Defendant Electoral Board appoint those individuals as election officers at the September 9, 2022, meeting of the Electoral Board, and requested that party chairs lodge objections prior to noon on September 8, 2022.
21. On September 7, 2022, PWC GOP Chair Daugherty responded, proposing to agree to designate over three dozen of the proposed unaffiliated officers as “Republican”

representatives and objecting to the designation of four other individuals as Republicans on Defendant Olsen's supplementary list.

22. On September 9, 2022, PWC GOP Chair Daugherty inquired "Will we have an opportunity to do a similar review of those who have already received appointments? Several of those employed last fall and in the primary this spring had voting histories contradicting the Republican designation.[] Several had voted 8 or more times in Democratic primaries and at most one Republican primary."
23. Also on September 9, 2022, Defendant Olsen replied in part "[a]s the Board already appointed the officers in February, I was not planning to revisit those appointments. You can raise that issue with the Board if you would like."
24. On September 14, 2022, PWC GOP Chair Daugherty noted via email to Defendant Olsen and Defendant Electoral Board that he raised the issue of parity relating to officer assignments at the September 9, 2022, electoral board meeting and reiterated his request to review "approved officers for purposes of determining parity in assignments."
25. On September 15, 2022, Defendant Olsen replied in part "[o]ur staff has already nearly completed setting up staff for early voting, [central absentee precinct], and Election Day, so having to go back and modify officers and inform them of party changes in the middle of all that process would be difficult and confusing for some of the officers."
26. That same day, September 15, 2022, PWC GOP Chair Daugherty responded in part "I disagree strongly that you can claim compliance with parity requirements on the basis of officer self designation, rather than nomination by a party."
27. On September 16, 2022, in an email to Electoral Board members and party chairs, Defendant Olsen provided notice pursuant to Va. Code § 24.2-115 of his intent to use

purportedly “nonpartisan” officers for the general election, and stated “[i]f you all have additional officers to nominate, please have them apply as soon as possible so that the Electoral Board can nominate them at the October 7th EB meeting. We will provide the Chairs with that list for review on September 30th.”

28. On September 19, 2022, PWC GOP Chair Daugherty wrote Defendant Olsen expressing particular concern about the parity in partisan representation in the early voting assignments for the main office in light of the designation of “Republican” and “nonpartisan” election officers with a history of voting in Democratic primary elections.
29. Also on September 19, 2022, Defendant Olsen replied, largely rebuffing PWC GOP Chair Daugherty’s concerns and stating in part “[n]owhere in the Code does it state the party Chairs must approve individual assignments. Nowhere in the Code does it state the definition of what a ‘real’ party member is aside from their nomination by the Board. That is what we have used.”
30. Defendant Olsen, PWC GOP Chair Daugherty, and the Electoral Board continued to engage in discussion, including over email over the next few weeks.
31. On September 22, 2022, PWC GOP Chair Daugherty and Prince William County Democratic Chair Tonya James wrote Defendant Board to ask for an emergency meeting to extend the application of the process of party chair review of party designations to the officers that had been approved to serve in February. The Board did not grant the request.
32. On September 29, 2022, Defendant Olsen sent the party chairs a list of individuals who had applied for appointment after September 1, 2022, for their review of party designations pursuant to the procedures adopted September 9. That same day, Defendant

Olsen submitted to Defendant Electoral Board and the party chairs, a list of the assignments he proposed to make for the November 8 General Election of special assistants, election officers, chief election officers, and assistant chief election officers.

33. On October 3, 2022, PWC GOP Chair Daugherty sent an email to Defendant Olsen and the Defendant Electoral Board stating in part “In response to your notice of intent to use nonpartisan officers, I hereby provide you the nominations of Republicans who could ably serve as chiefs and assistant chiefs in the precincts in which you have proposed to use nonpartisan officers.” PWC GOP Chair Daugherty went on to provide a list of nominations by precinct for 30 precincts.
34. On October 6, 2022, the Prince William County Republican Committee submitted a letter through counsel (attached as Exhibit C) advising Defendant Electoral Board of its obligations under the Constitution of Virginia and the Virginia Code, and requesting that Defendant Electoral Board “immediately act to appoint the Committee’s designated representatives as either chief or assistant chief election officers in the requested precincts” and to “appoint an assistant chief of the opposite party in the twenty precincts where the General Registrar proposes to appoint a chief and assistant chief of the same political party.”
35. On October 7, 2022, Defendant Electoral Board took no action on the appointments after considering the matter in executive session.
36. Defendant Olsen, in his capacity as General Registrar, thereafter moved forward with the appointment of the previously announced slate of chief and assistant election officers, election officers and special assistants.

37. The previously announced slate of chief and assistant chief election officers purports to assign individuals who have previously repeatedly participated in Democratic Party primaries to serve as Republican election officers, assigned purportedly “nonpartisan” election officers where Republican nominees are available, and assigned individuals who, based on their own self-designations, are both from the same political party to serve as chief and assistant chief election officers in multiple precincts.
38. On October 18, 2022, PWC Chair Daugherty provided Defendant Electoral Board and Defendant Olsen an updated list of nominees to serve as chief and/or assistant chief election officers on behalf of Plaintiffs.
39. PWC GOP Chair Daugherty has spoken with the individuals on the October 18, 2022, list and confirmed their availability for training and service on election day on the same terms as any other election officer.
40. The October 18 Republican nomination list nominates Republican officials to serve as chief or assistant chief election officers, respectively, in the following fourteen precincts where Defendants have proposed appointing two self-identified Democrats to serve as chief and assistant chief officers:
- Precinct 102;
 - Precinct 210;
 - Precinct 310;
 - Precinct 315;
 - Precinct 404;
 - Precinct 414;
 - Precinct 505;

- Precinct 511;
- Precinct 602;
- Precinct 613
- Precinct 615;
- Precinct 616;
- Precinct 707; and
- Precinct 712.

41. The October 18 Republican nomination list nominates Republican officials to serve as chief or assistant chief election officers, respectively, in place of the following eight individuals who are designated as Republican representatives but have voted in multiple Democratic Party primaries or otherwise been identified with the Democratic Party:

- Precinct 108, where the assigned assistant chief has voted in six Democratic primaries and one Republican primary;
- Precinct 303, where the assigned chief has voted in nine Democratic primaries and one Republican primary;
- Precinct 507, where the assigned assistant chief is labeled as a Republican, but was identified as a Democratic representative on the February 3, 2022 list;
- Precinct 516, where the assigned chief has voted in eight Democratic primaries and no Republican primaries;
- Precinct 604, where the assigned assistant chief has voted in three Democratic primaries and no Republican primaries;
- Precinct 614, where the assigned chief has voted in five Democratic primaries and two Republican primaries;

- Precinct 706, where the assigned assistant chief has voted in six Democratic primaries and two Republican primaries; and
- Precinct 709, where the assigned chief has voted in seven Democratic primaries and no Republican primaries.

42. The October 18 Republican nomination list nominates Republican officials to serve as chief or assistant chief election officers, respectively, in place of the following thirteen individuals who are designated as purportedly “nonpartisan” representatives:

- Precinct 103 assistant chief;
- Precinct 112 assistant chief;
- Precinct 206 assistant chief;
- Precinct 215 assistant chief;
- Precinct 301 assistant chief;
- Precinct 307 assistant chief;
- Precinct 316 assistant chief;
- Precinct 412 assistant chief;
- Precinct 509 assistant chief;
- Precinct 609 assistant chief;
- Precinct 701 assistant chief;
- Precinct 704 assistant chief; and
- Precinct 711 assistant chief.

43. Finally, the October 18 nomination list nominated a Republican assistant chief for Precinct 413, where previously no assistant chief had been nominated.

44. The failure to appoint election officers who are nominated by and represent Plaintiffs harms Plaintiffs' rights under Virginia law to make rules and regulations concerning the governance of their party and to perform the functions inherent in their identities as a political party.
45. The failure to appoint election officers who are nominated by and represent Plaintiffs harms Plaintiffs by limiting Plaintiffs' ability to ensure a free and fair election for its members and nominees. The purpose of having a chief election officer from one party and an assistant chief from another party is straightforward: it allows each party to have a hand in the administration of the election. By allowing Democrats to see what Republicans are doing and Republicans to see what Democrats are doing, the citizens of Prince William County can be confident that neither party gained an unfair advantage in the election through the means of election administration.
46. The failure to appoint chief and assistant chief election officers from different political parties harms Plaintiffs. Plaintiffs have an interest in seeing that the 2022 general election not only *is* fair, but also *is perceived* as fair. For the reasons described above, *supra* ¶ 45, the appointment of election officers from different political parties improves the perception of fairness in election administration.
47. The appointment of individuals who either self-designated as Republicans or were designated as Republicans by Defendant General Registrar or Defendant Electoral Board to represent the Republican Party as either chief or assistant chief election officers harms Plaintiffs and violates article II, section 8 of the Constitution of Virginia and section 24.2-115 of the Virginia Code.

48. The appointment of two individuals from the same political party to be chief and assistant chief election officers harms Plaintiffs and violates article II, section 8 of the Constitution of Virginia and section 24.2-115 of the Virginia Code.

REQUESTED RELIEF

Plaintiffs respectfully requests this Court:

- (1) Assume jurisdiction in this matter and maintain jurisdiction until Defendants comply with the requirements of Va. Code 24.2-115 and any and all orders of this Court.
- (2) Declare that the major political parties have authority to designate their representative chief and/or assistant chief election officers, and that partisan identification is neither self-designated nor selected by the Electoral Board;
- (3) Enjoin Defendants from proceeding with the appointment of the chief and/or assistant chief election officers identified in paragraph 40, *supra*, pending the appointment of individuals nominated by Plaintiffs as Republican representatives.
- (4) Enjoin Defendants from proceeding with the appointment of the chief and/or assistant chief election officers identified in paragraphs 41-42, *supra*, pending the appointment of individuals nominated by Plaintiffs as Republican representatives.
- (5) Grant Plaintiffs other such relief as the Court deems just and proper.

Dated: October 19, 2022

Respectfully submitted,

REPUBLICAN PARTY OF VIRGINIA
PRINCE WILLIAM COUNTY
REPUBLICAN COMMITTEE

By Counsel:



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VERIFICATION OF COMPLAINT

Pursuant to Virginia Code section 8.01-4.3, I declare under penalty of perjury that the foregoing is true and correct to the best of my belief and knowledge.

Date: October 19, 2022



Mr. Dennis Daugherty
Chairman
Prince William County Republican Committee

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