

**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.	)	

**MOTION FOR TEMPORARY INJUNCTION**

Pursuant to Virginia Code sections 8.01-620, *et seq.* Plaintiffs Republican Party of Virginia and Prince William County Republican Committee hereby move for a temporary injunction to:

1. Enjoin Defendants from proceeding with the appointment of chief and/or assistant chief election officers in the following precincts where Defendants have proposed appointing two self-identified Democrats to serve as chief and assistant chief in the following precincts, pending the appointment of individuals nominated by Plaintiffs as Republican representatives:
  - 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.

2. Enjoin Defendants from proceeding with the appointment of the following chief or assistant chief election officers who have previously voted in multiple Democratic Party primaries or otherwise been identified with the Democratic Party, pending the appointment of individuals nominated by Plaintiffs as Republican representatives:

- Precinct 108 assistant chief;
- Precinct 303 chief;
- Precinct 507 assistant chief;
- Precinct 516 chief;
- Precinct 604 assistant chief;
- Precinct 614 chief;
- Precinct 706 assistant chief; and
- Precinct 709 chief.

3. Enjoin Defendants from proceeding with the appointment of the following chief or assistant chief election officers as “nonpartisan” election officers where there is a Republican representative available, pending the appointment of individuals nominated by Plaintiffs as Republican 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.

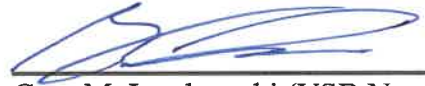
This Motion is supported by a verified complaint and memorandum in support thereof. In addition, Plaintiffs requests an emergency hearing and briefing schedule regarding this Motion.

Dated: October 19, 2022

Respectfully submitted,

REPUBLICAN PARTY OF VIRGINIA  
PRINCE WILLIAM COUNTY  
REPUBLICAN COMMITTEE

By Counsel:



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*Counsel for the Plaintiffs*

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PRINCE WILLIAM COUNTY ELECTORAL	)	
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ERIC OLSEN, in his official capacity as General	)	
Registrar for Prince William County,	)	
	)	
Defendants.	)	

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**PLAINTIFFS REPUBLICAN PARTY OF VIRGINIA AND PRINCE WILLIAM  
COUNTY REPUBLICAN COMMITTEE'S MEMORANDUM IN SUPPORT OF  
MOTION FOR TEMPORARY INJUNCTION**

## **I. Legal Standard**

“A plaintiff seeking a [temporary] injunction must establish [(1)] that he is likely to succeed on the merits, [(2)] that he is likely to suffer irreparable harm in the absence of preliminary relief, [(3)] that the balance of equities tips in his favor, and [(4)] that an injunction is in the public interest.” *Dillon v. Northam*, 105 Va. Cir. 402 at \*4 (Va. Cir. 2020) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)).

## **II. Plaintiffs are Likely to Succeed on the Merits**

The law in Virginia is clear: parties, not government officials, get to choose who represents them. Under Virginia law, “practicable” means more than just convenient or easy. It means feasible or possible. Given that the statute contemplates parties nominating additional chief and assistant chief election officers less than ten days before an election, the statute contemplates training chief and assistant chief election officers as late as three days before an election, and Prince William County has not conducted its final training for chief and assistant chief election officers, it is plainly practicable or feasible for the Electoral Board to appoint party representatives that actually represent the Republican Party of Virginia.

Article II, § 8 of the Constitution of Virginia provides that in appointing election officers, “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.” Section 24.2-115 of the Code of Virginia further clarifies that “[t]he officer designated as the assistant for a precinct, whenever practicable, shall not represent the same political party as the chief officer for the precinct.” 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. *Id.*

In 2006, the Attorney General of Virginia examined these provisions and confirmed, in an official advisory opinion, that the language of section 24.2-115 is mandatory. *See* 2006 Va. Att’y Gen. Op. No. 06-058, 2006 WL 4286452 (Sept. 15, 2006). The Attorney General went on to interpret “practicable” as synonymous with “feasible,” concluding “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 further is my opinion that when it is not feasible to appoint representatives of such parties, a board may appoint nonpartisan officers of election.” *Id.* Thus, the Electoral Board has a mandatory obligation to appoint party representatives where feasible and may only turn to nonpartisan officers of election if party representatives are not available.

More recently, in 2019 and again earlier this month, the Virginia Department of Elections confirmed that “[a]n officer of election 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.” Compl. at ¶ 15; Exhibit A. Individuals may not “self-designate” as party representatives, nor may they be selected as such by the Electoral Board or General Registrar. *See id.*; Compl. at ¶ 16 (Exhibit B) (“If 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.”).

The Electoral Board’s conduct is plainly inconsistent with the requirements of the Constitution and Code, and the official guidance of the Attorney General and Department of Elections. Eight individuals, appointed to represent the Republican Party of Virginia, were not

nominated by the party or its representatives in the Prince William County Republican Committee. *See* Compl. at 41. Instead, the Electoral Board has designated them to represent the Republican Party of Virginia as chief and assistant chief election officers and sought to rely on self-designations, in direct conflict with the Department of Election’s official guidance. *See* Compl. at ¶ 29 (quoting September 29, 2022 email from Defendant Olsen stating “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.”). In addition, in fourteen precincts, there are chief and assistant chief election officers who self-designated as representing the same party and in thirteen precincts there are purportedly “nonpartisan” representatives when there are party representatives available, in clear conflict with Virginia Code section 24.2-115. *See* Compl. at ¶¶ 41-42.

Moreover, it is still “practicable” to appoint the individuals nominated by the Republican Party of Virginia to represent the party. Virginia Code section 24.2-115 mandates that the Electoral Board notify the two major parties at least ten days before an election of their intent to use nonpartisan election officers “*so that each party shall have the opportunity to provide additional nominations*” (emphasis added). Thus, the Code plainly contemplates situations where each party nominates additional election officers *within 10 days* of election day. This view is confirmed by the Department of Elections advisory, which reminds localities “[i]f 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.’” *See* Compl. at ¶ 15; Exhibit A (emphasis in the original). Election Day is still over 20 days away – more than 10 days, and certainly more than 3.



Finally, Prince William County is scheduled to hold a training session for chief and assistant chief officers of election on October 29, 2022. All that needs to happen for additional party nominees to serve as chief or assistant chief election officers is for those individuals to attend the October 29, 2022, training session. Plaintiffs stand ready to nominate additional officers prior to then. This is eminently feasible.

### **III. Plaintiffs Will Suffer Irreparable Injury Absent Temporary Injunctive Relief**

The 2022 General Election is scheduled for November 8, 2022, approximately 20 days away. Under a standard briefing and trial schedule, the election will have come and gone before a trial occurs. Once the votes are cast, they are cast – the election is over. The harms associated with the failure to follow the Constitution and Code of Virginia (*see* Compl. at ¶¶ 44-46) will have occurred. Once they have occurred, there is no remedy that can unring the bell. Accordingly, Plaintiffs will suffer irreparable injury absent temporary injunctive relief.

### **IV. The Balance of Equities and the Public Interest Favors Granting a Temporary Injunction**

Confidence in elections is of paramount importance to the preservation of our democratic republic. 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. The drafters of the Constitution of Virginia felt strongly enough about this principle to enshrine it in article II, § 8. The General Assembly felt strong enough about it to enshrine it in the Code of the Virginia. And the Department of Elections felt strongly about it to issue and reissue guidance concerning its implementation twice in the past three years, including under both

Republican and Democratic administrations. Applying the law as written furthers these equities and the public interest.

On the other side, Defendants raise concerns about their ability to administratively implement changes and to ensure that election officers have sufficient experience to smoothly administer election day operations. Concerns about administrative implementation are less than they appear. Plaintiffs have nominated individuals who are available to serve on the same terms as any other chief or assistant chief election officer. Very little, if any, additional work is required by the Defendants to implement these changes.

Defendants' concerns regarding the ability to smoothly administer election day operations are also heavily mitigated by the surrounding circumstances. Under the Code, chief and assistant chief election officers must take a training class before they can serve. The point of this class is to make sure that chief and assistant chief officers have the knowledge necessary to smoothly administer the election. In addition, Plaintiffs' proposed representatives would not be working in a vacuum. They would be working with a chief or assistant chief election officer (generally from the other party) under circumstances where both individuals have a strong incentive to work together to ensure the smooth conduct of the election. Plaintiffs' nominees would not be operating alone.

Finally, in balancing the equities, Defendants have had numerous opportunities to alleviate this situation earlier in the process. Plaintiffs raised issues with parity among election officers in May regarding the June 2022 primary election and has been expressing concern about the general election since at least August. Plaintiffs have sought to work with Defendants to correct these legal infirmities without disruption and without litigation. Plaintiffs have been rebuffed.

Dated: October 19, 2022

Respectfully submitted,

REPUBLICAN PARTY OF VIRGINIA

By Counsel:



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