

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

December 18, 2023

Fernando Galindo,
Clerk of Court
Albert V. Bryan
U.S. Courthouse
401 Courthouse Square
Alexandria, VA 22314


Re: Roy L. Perry-Bey, et al., v. Donald John Trump, et al., 1:23-c-v1165 (LMB/IDD)

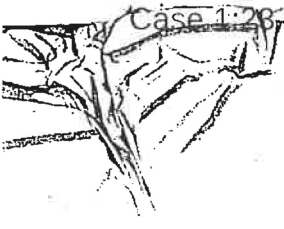
Dear Mr. Galindo:

Enclosed please find Plaintiff's Motion for Temporary or Preliminary Injunction to remove Donald John Trump, against the Commonwealth Defendants, pursuant FRCP to be filed in the above referenced matter, which I ask that you please present to the Honorable Judge Leonie M. Brinkema.

Thank you for your kind assistance in this matter.

Very truly yours,


Mr. Roy L. Perry-Bey
89 Lincoln Street #1772
Hampton, VA 23669



FROM: (000) 000-0000
Roy Perry-Bey II
89 Lincoln at # 1772
Hampton VA 23669
US

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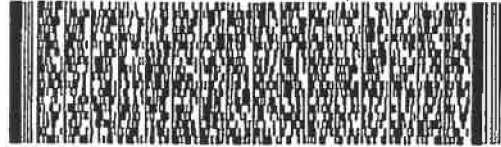
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TO Fernando Galindo Clerk of
Court Albert V. Bryan UN Courthouse
401 COURTHOUSE SQ

ALEXANDRIA VA 22314

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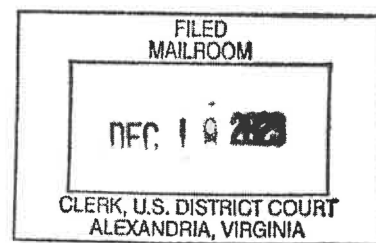


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ALEXANDRIA VIRGINIA

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION



ROY L. PERRY-BEY, *et al.*,

Petitioner,

1:23cv1165 (LMB/IDD)

v.

DONALD JOHN TRUMP, *et al.*

Respondents.

**MOTION FOR TEMPORARY OR PRELIMINARY INJUNCTION
TO REMOVE DONALD J. TRUMP AND MEMORANDUM OF LAW IN SUPPORT**

The Plaintiff respectfully move this Court to compel the Virginia State Board of Elections and Department of Elections, (collectively, the "Commonwealth Defendants", acting through Georgia Alvis-Long Secretary of Elections to comply with the Virginia Election Law, the U.S. Constitution and Voting Rights Act; and to enjoin the Secretary from certifying or to exclude Donald John Trump's Declaration of Candidacy, and Statement of Petition of Signatures for Presidential Candidate, and Petition of Qualified Voters for Presidential Primary, to appear on the ballot in Virginia, under applicable state or federal law.

Mr. Trump an insurrectionist and presidential candidate is not legally eligible to hold office, and has broken an oath to support the U.S. Constitution and engaged in insurrection. **See: Indicted Criminal Defendant and Insurrectionist Donald John Trump's Declaration of Candidacy Exhibit(s)P.**

Plaintiff brings this motion to ensure that Virginia's elections are not tainted by illegality that corrupts the process, undermines public confidence, and irreparably harms the fundamental rights of the Plaintiff.

Mr. Trump has declared his candidacy for president again in 2024. However, under the Fourteenth Amendment to the U.S. Constitution, Mr. Trump is constitutionally ineligible to appear on any future ballot for federal office based on his engagement in insurrection against the United States.

I. The Constitution's Insurrectionist Disqualification Clause disqualifies Trump from the presidency.

Section 3 of the Fourteenth Amendment, known as the Insurrectionist Disqualification Clause, provides: No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath . . . as an officer of the United States . . . to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

* **TAKE JUDICIAL NOTICE:** The U.S. Supreme Court in *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997), rejected a political party's claimed right to compel ineligible candidates to appear on state ballots. *Id.*

II. The Virginia Constitution affirmatively guarantees "all men . . . the right of suffrage," Va. Const. art. I, § 6, and the Supreme Court has long recognized that, "[u]nder our form of government, the perpetuity of our institutions and the preservation of the liberty of the people depend upon honest and fair elections." *Booker v. Donohoe*, 95 Va. 359, 367 (1897) (emphasis added). These guarantees mean nothing, however, if a candidate may qualify for the ballot based on brazen illegitimacy, and the state actors with the power to do so do not promptly act to stymie the injuries caused by the banned or unconstitutional conduct of individuals who have sought to manipulate the process by illegality.

But that is exactly what has happened here: over the past approximately two-years, it has become undeniably clear that the qualification of Donald John Trump was constitutionally ineligible to be listed as a party candidate on the general election ballot and presidential primary in Virginia, is based on an illegitimate declaration of candidacy (the "Declaration") that was positively unconstitutional.

III. On January 20, 2017, Trump swore an oath to support the Constitution as an officer of the United States, i.e., as president.

The events of January 6, 2021 constituted an "insurrection" within the meaning of Section 3 of the Fourteenth Amendment,

and Trump "engaged" in that insurrection within the meaning of Section 3. Consequently, he is disqualified from holding "any office" under the United States—including the presidency.

That was determined by the U.S. Congress January 6, Committee, or congressional certification proceeding on January 6, 2021, finding that Trump triggered Section 3 of the 14th Amendment of the United S Constitution "disqualification clause" which states that an elected official is not eligible to assume public office if that person "engaged in insurrection or rebellion against" the United States, or had "given aid or comfort to the enemies thereof; and Colorado District Judge Sarah Wallace has ruled that former President Donald John Trump "engaged in an insurrection" on November 17, 2023.

As a result, he is ineligible to appear on the presidential primary ballot in Virginia. **It's a ban that-No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath . . . as an officer of the United States . . . to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.**

ARGUMENT

A. The Plaintiff is Entitled to a Temporary Injunction or Preliminary injunction.

While the Virginia Supreme Court has not determined which factors a court must consider when evaluating a motion for a temporary or preliminary injunction, circuit courts throughout Virginia have consistently applied the four factors laid out by the Supreme Court in *Winter v. Nat'l Res. Def. Council, Inc.*, 129 S. Ct. 365 (2008). See *Fame v. Allergy & Immunology, P.L.C.*, 91 Va. Cir. 66 (2015) (noting lack of Virginia precedent and applying Winter factors); *Seniors Coal., Inc. v. Seniors Found., Inc.*, 39 Va. Cir. 344, 350 (1996) (noting a lack of Virginia precedent and applying federal law). In accordance with that test, Virginia courts considering motions for temporary or preliminary injunctions consider whether the plaintiff has established: (1) a likelihood of success on the merits, (2) likelihood of irreparable harm in the absence of preliminary relief, (3) that the balance of the equities tips in favor of relief, and (4) that an injunction is in the public interest. *Winter*, 555 U.S. at 20. See also Va. Code § 8.01-628 ("No temporary injunction shall be awarded unless the court shall be satisfied of the plaintiff's equity."). Here, each of these requirements is easily satisfied and the Court should issue the requested injunction.

B. The Plaintiff is likely to succeed on the merits.

The Plaintiff alleges Trump is constitutionally ineligible under Section 3 of the 14th Amendment, that his improper or fraudulent FEC statement of candidacy, and declaration of candidacy deprive them the right to participate equally in secure, free and fair elections and elect representatives of their choice based on their race or color; that election officials breach or neglect of their duty to exclude Trump whose qualification petition is unconstitutional and indisputably prohibited interferes and violates the right to vote of the Plaintiffs; and as the result they have suffered (and, absent relief from this Court, will continue to suffer) injury to their voting rights under the Voting Rights Act, and Section 3 of the Fourteenth Amendments to the U.S. Constitution; Defendants' qualification of Trump upon a clearly unlawful nominating Petition that, that preclude his placement on the ballot under Virginia law. The Plaintiff is likely to succeed on all of these claims, and this factor weighs heavily in favor of granting the requested injunctive relief. See, e.g., *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) ("Likelihood of success on the merits "is the most important" Winter factor."); *Aamer v. Obama*, 742 F.3d 1023, 1038 (D.C. Cir. 2014) ("[T]he first and most important [Winter] factor [is] whether petitioners have established a likelihood of success on the merits."). Exhibit(s) P&A

C. Thus, Virginia Constitution and election law affirmatively protects the right to vote; if a candidate may qualify for the ballot based on brazen illegality, or upon a nominating petition that is clearly prohibited as a matter of law, that right—and, indeed, because the right to vote is “fundamental” precisely because it is “preservative of all rights,” *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886), all other rights—is illusory. See also *Commonwealth v. Willcox*, 111 Va. 849, 860 (1911) (“However fair the general election may be, if at that election men have no choice but to vote for candidates who have been nominated by fraudulent practices at primaries . . . the effect of the election must be the consummation of a fraud and the defeat of the will of the people.”); *Booker*, 95 Va. at 367 (“[T]he 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.”); see also *Burdick v. Takushi*, 504 U.S. 428, 441 (1992) (“[T]he right to vote is the right to participate in an electoral process that is necessarily structured to maintain the integrity of the democratic system”); *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) (“No right is more precious . . . than that of having a voice in the election of those who make the laws.”).

D. The Virginia Constitution's affirmative guarantee of the right to vote, moreover, is self-executing, and gives right to a private right of action, under which its infringement may only be justified if shown to be "necessary to promote a compelling or overriding governmental interest." Pulliam v. Coastal Emergency Servs. of Richmond, Inc., 257 Va. 1, 20-21 (1999); see also Lafferty v. Sch. Bd. of Fairfax Cty., 293 Va. 354, 362 (2017) (even when a statute is silent, a private right of action may arise where "[t]he claimed right . . . implicate[s] [a] protected right under the Constitution of Virginia") (citation omitted); Robb v. Shockoe Slip Found., 228 Va. 678, 681 (1985) (explaining that, while not all constitutional provisions are self-executing and give right to a private right of action, those provisions contained within the Virginia Bill of Rights are typically self-executing).

It is inconceivable that the Commonwealth could have a "compelling or overriding governmental interest" that makes it necessary to keep a candidate on the ballot whose nomination papers are prohibited, no matter the injury done to fundamental voting rights.

E. It is inconceivable that the Commonwealth could have even a legitimate interest in doing so. Va. Const. art. 1 § 11; U.S. Const. Section 3 of the 14th Amendment.

F. In addition, even if the Court were to find (contrary to Pulliam, cited above) that the Plaintiff's claim under the existing State or federal law should be reviewed under some standard less demanding than strict scrutiny, the Plaintiff would still be highly likely to succeed on this claim.

Take, for example, the analysis that would be applied under the Anderson-Burdick test, applied to claims that a state has violated the right to vote implicit in the federal constitution. That balancing test requires a court to "weigh 'the character and magnitude of the asserted injury to the rights . . . that the plaintiff seeks to vindicate' against 'the precise interests put forth by the State as justifications for the burden imposed by its rule,' taking into account the extent to which those interests make it necessary to burden the plaintiff's rights.'" Burdick, 504 U.S. at 434 (quoting Anderson v. Celebrezze, 460 U.S. 780, 789 (1983)). On the one hand, the qualification and inclusion of a candidate on the ballot—where the candidate is qualified based on a petition process that is demonstrably amok in fraud—plainly infringes upon the fundamental right to vote, where the only rational conclusion is that indicted criminal defendant and insurrectionist Trump engaged in this illegitimate conduct with the goal and the hope that his inclusion on the ballot would siphon votes from formidable Republican challengers, by presenting voters with a false "choice" between the candidate

who illegitimately won the Republican Party's nomination, and a candidate whose name "Trump" is likely to be highly familiar to Republican-leaning voters, if only because he was the Republican nominee in 2016.

If this scheme is successful, it will serve to injure Republican voters both by diluting the voting power of those who are not successfully misled and cast their ballots for the legitimate Republican nominee, see *Jamerson v. Womack*, 26 Va. Cir. 145, 145 (1991), *aff'd* 244 Va. 506 (1992) (voter suffers injury where a law "dilute[s] voting power and diminish[es] the effectiveness of representation"), and by tricking other voters who would otherwise support the Republican nominee to cast their ballot for an unqualified candidate who lacks legitimate support among the rational law abiding electorate, but whose name they may recognize from the last election of former President Trump. It will also seriously and directly injure the Plaintiff.

Although it remains to be seen what interests Defendants may attempt to argue outweigh these harms, or could otherwise negate the clear public interest in fair and equitable elections not tainted by demonstrable and broad ranging illegitimacy, they cannot possibly provide the basis for finding that Plaintiff is not entitled to the injunction that it seeks under the present (highly unusual and alarming) circumstances.

Finally, Section 11(b) of the Voting Rights Act, 52 U.S.C. 52 U.S.C. § 10307(b), does not require proof that a defendant as Trump caused a voter to refrain from casting a ballot or to vote contrary to their preferences.

Intimidating or coercive conduct can impact voters beyond those who are directly affected. McLeod, 385 F.2d at 741 (“[T]he failure of...coercive acts to intimidate a few persons does not negative their general coercive effect.”). Section 11(b) also applies equally to prohibit an “attempt to intimidate, threaten, or coerce” as it does to the completed act. 52 U.S.C. § 10307(b) (emphasis added); see Wohl II, 512 F. Supp. 3d at 516. In other words, the statute constrains successful, unsuccessful, and in-progress attempts to coerce, intimidate, or threaten alike.

Accordingly, because each of the requirements for entitlement to an injunction under Winter are easily met, the Plaintiff respectfully request that the Court grant their Motion to compel The Commonwealth Defendants to comply with the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, United States Constitution and the Virginia Election law to enjoin Donald John Trump access to the ballot and promptly issue the requested injunctive relief and grant such other and further relief as is just and equitable.

Respectfully Submitted,

Dated: December 18, 2023


MR. ROY L. PERRY-BEY

CERTIFICATION OF SERVICE

I hereby certify that on this 18th day of December 2023, a true copy of the foregoing was mailed postage paid USPS to Colby M. May, American Center for Law & Justice, 201 Maryland Avenue, NE Washington, DC 20002, David A. Warrington, Dillion Law Group Inc. 2121 Eisenhower Avenue, Suite 608 Alexandria, Virginia 22314, and Travis S. Andrews, Assistant Attorney General, Office of the Attorney General 202 North Ninth Street, Richmond, Virginia 23219.


MR. ROY L. PERRY-BEY

Declaration of Candidacy for President of the United States

Things to know before you sign: This form must be notarized or signed by 2 witnesses. See below for more details. Submit this to the Department of Elections with your Petitions of Qualified Voters.



A. Tell us about the candidate

Candidate name Trump Donald
 Last Name First Name
John W.E.C. - 8 2023
 Middle Name Suffix
 Address where you live _____
 Street number
 City State Zip Code
 Address where the campaign gets mail _____
 Address
 City State Zip Code
 Campaign contact information _____
 Email Address Phone number

4:20 pm

B. What election do you want to participate in?

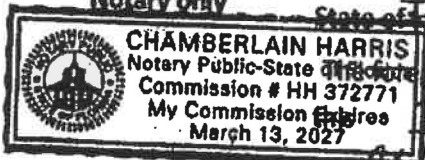
Date and type Primary Election on March 5, 2024 OR General Election on November 5, 2024
 Party affiliation Democratic Republican Independent

C. In the presence of a notary or 2 witnesses, sign and date the declaration

Sign and date I do hereby declare myself to be a candidate for President of the United States. Furthermore, if I am a primary candidate and am defeated in the primary, I understand that my name is not to be printed on the ballots to be used in the succeeding general election for the same office.

X [Signature] 11 / 29 / 2023
Candidate Signature Date

D. Have notary/authorized officer OR 2 registered, qualified voters witness the signature.



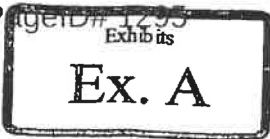
Notary only State of Florida County/City of Palm Beach
 going instrument was subscribed and sworn before me by:
9 am day of November, 2023.
 X [Signature] Commission number: HH 372771 March 13, 2027
 Signature of Notary or authorized Officer Registration Number Commission Expiration Date

Witness 1 (Must be a qualified voter in Virginia)

Name _____
 Full Address _____

Witness 2 (Must be a qualified voter in Virginia)

Witness signature X
 Name _____
 Full Address _____
 Witness signature X



FEC FORM 2

STATEMENT OF CANDIDACY

FILING FEC-1661552

1. DONALD J. TRUMP

NOTE: Address is different than previously reported

P.O. BOX 13570
ARLINGTON, VA 22219

2. Identification Number: P80001571

3. Party: Republican Party

4. Office Sought: President

5-6. State & District of Candidate: _____ - 0

DESIGNATION OF PRINCIPAL CAMPAIGN COMMITTEE

7. I hereby designate the following named political committee as my Principal Campaign Committee for the 2024 election(s).

**DONALD J. TRUMP FOR PRESIDENT 2024
FEC ID #: Coo828541**

P.O. BOX 13570
ARLINGTON, VA 22219

DESIGNATION OF OTHER AUTHORIZED COMMITTEES

8. I hereby designate the following named committee, which is NOT my principal campaign committee, to receive and expend funds on behalf of my candidacy.

TRUMP SAVE AMERICA JOINT FUNDRAISING COMMITTEE

FEC ID #: Coo770941

P.O. BOX 13570
ARLINGTON, VA 22219

DECLARATION OF INTENT TO EXPEND PERSONAL FUNDS (House or Senate Only)

9. I intend to expend personal funds exceeding the threshold amount (see 11 C.F.R. 400.9) by

9A. **0.00** for the primary election, and

9B. **0.00** for the general election

Signed as: DONALD J. TRUMP

Signed by the candidate on: 11/15/2022

Filed: 11/15/2022

(End FEC FORM 2)

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Federal Election Commission (800) 424-9530 In Washington (202) 694-1100

For the hearing impaired, TTY (202) 219-3336 Send comments and suggestions about this site to: webmanager@fec.gov.