

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

CARROLL BOSTON CORRELL, JR., on behalf
of himself and others similarly situated,

Plaintiff,

v.

MARK R. HERRING, in his official capacity
as Attorney General of the Commonwealth
of Virginia,

MARC ABRAMS, in his official capacity as
Commonwealth Attorney for the City of
Winchester,

JAMES B. ALCORN, in his official capacity
as Chairman of the Virginia State Board of
Elections,

CLARA BELLE WHEELER, in her official
capacity as Vice Chairman of the Virginia
State Board of Elections,

SINGLETON MCALLISTER, in her official
capacity as Secretary of the Virginia State
Board of Elections, and

EDGARDO CORTEZ, in his official capacity
as Commissioner of the Virginia
Department of Elections,

Defendants.

Civil No. _____

**MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Pursuant to Federal Rule of Civil Procedure 65(b), Plaintiff Carroll Boston Correll, Jr., hereby moves the Court to issue a Temporary Restraining Order and Preliminary Injunction enjoining Defendants, who are officials of the Commonwealth of Virginia, from enforcing a statutory provision, Code of Virginia § 24.2-545(D) (“Section 545(D)”), that imposes criminal penalties on a delegate to a national party convention who votes for a

candidate other than the one who received the most votes in the Virginia presidential primary.

Correll is a delegate to the Republican National Convention, which begins on July 18, 2016. Section 545(D) violates the First and Fourteenth Amendment rights of all Virginia delegates to the major parties' national conventions by barring them from voting in accord with their conscience, as well as party rules, for a party's nominee for President of the United States. Correll needs relief as soon as possible in advance of the Convention's July 18 start date. If Defendants are not enjoined before to that date, Correll and other Virginia delegates (who are members of a putative class Correll seeks to represent) will face the threat of criminal penalties for exercising their most fundamental rights at a time of enormous national political importance. The resulting injury constitutes *per se* irreparable injury. Defendants, by contrast, have no cognizable interest in enforcement of the challenged provision. Finally, the public interest strongly supports the right of party delegates, chosen by fellow party members, to vote their conscience when selecting the party's presidential nominee.

The Plaintiff is filing this motion concurrently with his complaint and has arranged for hand service of the complaint and motion on the Defendants, as well as courtesy copies of all pleadings via electronic mail, providing them notice of Plaintiff's motion. As "the potential incidental and consequential costs" of the requested injunction are zero, the Plaintiff respectively requests that the Rule 65(c) bond amount be set at one dollar. *See Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 421 n.3 (4th Cir. 1999). *See also International Controls Corp. v. Vesco*, 490 F.2d 1334 (2d Cir.1974) (approving district court's fixing bond amount at zero in the absence of evidence regarding likelihood of harm); *Hassay v. Mayor*, 955 F. Supp. 2d 505, 527 (D. Md. 2013) (in First Amendment case, setting security amount at one dollar).

In the event that the Court determines a hearing is necessary before ruling on Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction, the

Plaintiff requests that the Court schedule the hearing as promptly as possible and sufficiently in advance of the July 18 commencement of the Republican National Convention in order for the Plaintiff and class members to plan their participation in the Convention and, if necessary, to have the opportunity to see further judicial relief.

For the foregoing reasons, and as set forth in the accompanying Memorandum, this Motion for Temporary Restraining Order and Preliminary Injunction should be granted.

Dated: June 24, 2016

Respectfully submitted,

/s/ Mark W. DeLaquil
DAVID B. RIVKIN, JR. (pro hac vice
application forthcoming)
ANDREW M. GROSSMAN (pro hac vice
application forthcoming)
MARK W. DELAQUIL (VA. BAR # 68088)
RICHARD B. RAILE (VA. BAR # 84340)
BAKER & HOSTETLER LLP
1050 Connecticut Ave., N.W.
Suite 1100
Washington, D.C. 20036
Phone: (202) 861-1527
Facsimile: (202) 861-1783
mdelaquil@bakerlaw.com

*Attorneys for Plaintiff and the
Proposed Class*

CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2016, I am causing a copy of the foregoing motion and accompanying proposed order to be hand served on the following:

James B. Alcorn
Singleton McCallister
Clara Belle Wheeler
Virginia Department of Elections
Washington Building, First Floor
1100 Bank Street
Richmond, VA 23219

Mark R. Herring
Attorney General of the Commonwealth of
Virginia
Attorney General's Office
202 North Ninth Street
Richmond, Virginia 23219

I hereby certify that on June 27, 2016, I am causing a copy of the foregoing motion and accompanying proposed order to be hand served on the following:

Marc Abrams
Commonwealth Attorney for the City of Winchester
24 Rouss Avenue, Suite 200
Winchester, VA 22601

In addition, I hereby certify that on June 24, 2016, courtesy copies of the foregoing motion and accompanying proposed order will be served on all the above-listed Defendants by electronic mail.

/s/ Mark W. DeLaquil
MARK W. DELAQUIL (VA. BAR # 68088)
BAKER & HOSTETLER LLP
1050 Connecticut Ave., N.W.
Suite 1100
Washington, D.C. 20036
Phone: (202) 861-1527
Facsimile: (202) 861-1783
mdelaquil@bakerlaw.com