

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 ca-
pacity 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 Depart-
ment of Elections,

Defendants.

Civil No. _____

**(PROPOSED) ORDER GRANTING MOTION FOR
TEMPORARY RESTRAINING ORDER**

Plaintiff Carroll Boston Correll, Jr., has filed a Verified Class Complaint for Injunctive and Declaratory Relief and moved for both a temporary restraining order and a preliminary injunction enjoining enforcement of Va. Code § 24.2-545(D). Having considered the Complaint, motion, and memorandum of law filed in support, the Court finds as follows:

Findings

1. This Court has jurisdiction over the subject matter of this case and jurisdiction over Defendants.
2. Venue lies properly within this District.
3. The Plaintiff is likely to prevail on the merits of his First Amendment claims.
4. The Plaintiff has been elected as a delegate to the Republican National Convention.
5. The Plaintiff objects, on conscience grounds, to casting a convention ballot for the winner of Virginia's Republican preference primary, Donald Trump.
6. Va. Code § 24.2-545(D), by its terms, requires all Virginia delegates to both parties' national conventions, including the Plaintiff, to vote for the primary winner on the first convention ballot.
7. Violation of Va. Code § 24.2-545(D) is a Class 1 misdemeanor under Virginia law, punishable by imprisonment and fines. Va. Code § 24.2-1017; Va. Code § 24.2-1001; Va. Code § 18.2-11(a).
8. Va. Code § 24.2-545(D) burdens the associational and speech rights of national convention delegates, including the Plaintiff. *See Eu v. San Francisco County Democratic Central Committee*, 489 U.S. 214, 230 (1989) ("The ability of the members of a political party to select their own candidate unquestionably implicates an associational freedom.") (quotation marks and alterations omitted); *Cousins v. Wigoda*, 419 U.S. 477, 487 (1975) ("The National Democratic Party and its adherents enjoy a constitutionally protected right of political association" under the First and Fourteenth Amendments.); *Democratic Party of the United States v. Wisconsin ex rel. La Follette*, 450 U.S. 107, 125 (1981) (holding that a similar binding statute constituted a "substantial intrusion into the associational freedom of the members of the National Party").
9. Va. Code § 24.2-545(D) is not supported by any compelling state interest. *See Cousins*, 419 U.S. at 489–90 (no state interest in regulating national party conventions); *Democratic Party of the United States*, 450 U.S. at 124–25 (binding laws do not impli-

cate state interests in administering elections); *Cousins*, 419 U.S. at 489 (rejecting, in the context of a national convention, Illinois’s asserted “interest in protecting the integrity of its electoral processes and the right of its citizens under the State and Federal Constitutions to effective suffrage”); *Democratic Party of the United States*, 450 U.S. at 122 (“Here, the members of the National Party, speaking through their rules, chose to define their associational rights by limiting those who could participate in the processes leading to the selection of delegates to their National Convention.”); *California Democratic Party*, 530 U.S. at 583 (rejecting argument that state’s interest in ensuring “the right to an effective vote” supported blanket primary for state government elections).

10. Va. Code § 24.2-545(D) is not narrowly tailored to advance any state interest in giving effect to primary votes.
11. Enforcement of Va. Code § 24.2-545(D) will irreparably injure the First Amendment rights of national convention delegates, including the Plaintiff. “[T]he Supreme Court has explained that ‘loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.’” *Newsom ex rel. Newsom v. Albemarle Cnty. Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).
12. The balance of hardships strongly favors the Plaintiff, because Defendants, as Virginia officials, have no interest in enforcing a statutory provision that is likely unconstitutional and that attempts to regulate national party conventions. *Legend Night Club v. Miller*, 637 F.3d 291, 302–03 (4th Cir. 2011).
13. The public interest strongly favors the Plaintiff. “[I]t is always in the public interest to protect First Amendment liberties.” *Legend Night Club v. Miller*, 637 F.3d 291, 302–03 (4th Cir. 2011) (quoting *Joelner v. Vill. of Wash. Park*, 378 F.3d 613, 620 (7th Cir. 2004)).

14. The Plaintiff has provided written and electronic notice to Defendants of their claims and requests for relief.
15. Emergency, *ex parte* relief is warranted in this instance, because the injury to the Plaintiff and other delegates to the Republican National Convention will occur no later than July 18, 2016, when the Convention begins. Providing relief at this time, shortly in advance of the Convention, is necessary to clarify delegates' rights as they plan their Convention attendance and participation and to allow the Republican National Party and other interested parties to take account of such relief. Failure to provide relief will compromise these processes, thereby causing immediate and irreparable injury.
16. Those irreparable injuries merit issuance of a temporary restraining order on an *ex parte* basis. Thus, even if Defendants had not received notice of this proceeding, such relief would be warranted due to that irreparable injury.
17. Relief to all members of the putative Class, consisting of all Virginia delegates to the 2016 Republican and Democratic national conventions, is warranted as a matter of equity, because they are all similarly situated to the Plaintiff and are threatened with the same injury to their First Amendment rights. Such relief is also necessary to protect the First Amendment right of the Plaintiff, as a member of the Republican Party and delegate, to associate freely with other members and delegates.
18. Enjoining enforcement of Va. Code § 24.2-545(D) will impose no costs or damages on Defendants.

Order

Having found that the Plaintiff has satisfied the standard for emergency equitable relief, the Court hereby ORDERS:

1. That the Plaintiff's Motion for a Temporary restraining order is GRANTED;

2. Defendants, their agents, officers, employees, successors, and all persons acting in concert with each or any of them from implementing, enforcing, or giving any effect to Section 545(D) of Title 24.2 of the Virginia Code;
3. Security is set in the amount of one dollar; this Temporary Restraining Order shall not take effect until the Plaintiff tenders to the clerk of the court \$1 cash, or a bond for \$1 in a form approved by the clerk of court, in compliance with Rule 65(c);
4. This order shall expire 14 days from its time of entry unless extended by this Court;
5. Defendants shall, within five days of this Order, respond to the Plaintiffs' motion for a preliminary injunction; the Plaintiff shall file a reply, if any, in support of his motion within four days of the filing of the response;
6. The Plaintiff's motion for a preliminary injunction shall be set for hearing at the earliest possible time following conclusion of briefing.

Dated this ____ day of June, 2016, at _____ a.m./p.m.

United States District Judge