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. ______________

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

In just over three weeks, Plaintiff Carroll Boston Correll, Jr., and other Virginia delegates to the Republican National Convention will be placed in jeopardy of criminal punishment for voting in accord with their consciences and party rules at the Convention. Section 545(D) of Title 24.2 of the Virginia Code requires that delegates to both of the major parties' national conventions cast their first-ballot vote for the primary winner. Correll, like many other Republicans, refuses to cast his first-ballot vote—or any other vote—for Virginia

primary winner Donald Trump because Correll believes that Trump is unfit to serve as President of the United States. Yet, if he does not vote for Trump, he faces criminal penalties, including fines and imprisonment. That is a clear violation of Correll's and other delegates' speech and associational rights under the First and Fourteenth Amendments. Indeed, the Supreme Court has rejected numerous state laws regulating party affairs, including one that similarly bound convention delegates, on precisely that basis. Correll therefore moves this Court, on behalf of himself and a putative class consisting of all other Virginia delegates to national party conventions, for relief from this unconstitutional enactment.

Background

Plaintiff Carroll Boston Correll, Jr. ("Correll"), is a long-time Republican Party leader and activist in the Commonwealth of Virginia. He has served on the Winchester Republican Committee, the Tenth Congressional District Republican Committee, and the Republican Party of Virginia Finance Committee. Verified Complaint ("Compl.") ¶ 5. He was elected at the Virginia Tenth District Republican Convention as a Virginia delegate to the Republican National Convention, which will take place in Cleveland, Ohio, on July 18–21, 2016. Compl. ¶¶ 5, 32. Correll has not yet determined for which candidate he will cast his vote for the Republican Party's 2016 presidential candidate. He has resolved, however, that he will not vote for Donald J. Trump, whom Correll believes is unfit to serve as President of the United States. A vote for Trump would violate the dictates of Correll's conscience. Compl. ¶ 21.

Yet Correll faces criminal prosecution and punishment under Virginia law for voting in accordance with his conscience. Section 545(D) of Title 24.2 of the Virginia Code ("Section 545(D)") provides, in its entirety, as follows:

> The State Board shall certify the results of the presidential primary to the state chairman. If the party has determined that its delegates and alternates will be selected pursuant to the primary, the slate of delegates and alternates of the candidate receiving the most votes in the primary shall be deemed elected by the state party unless the party has determined another method for allocation of delegates and alternates. If the party has determined to use another method

> for selecting delegates and alternates, those delegates and alternates shall be bound to vote on the first ballot at the national convention for the candidate receiving the most votes in the primary unless that candidate releases those delegates and alternates from such vote.

Under that provision, if a Virginia political party holds a presidential primary to determine the preferences of its members and then selects delegates through conventions, those delegates are required by Virginia law to vote, on the first ballot of the national convention, for the candidate who received the most votes in the primary. Violations of Section 545(D) are Class 1 misdemeanors. Va. Code § 24.2-1017; Va. Code § 24.2-1001. A Class 1 misdemeanor is subject to "confinement in jail for not more than twelve months and a fine of not more than $2,500, either or both." Va. Code § 18.2-11(a).

In this presidential election cycle, the Republican Party of Virginia and the Democratic Party of Virginia both held presidential primaries, but neither party determined that its delegates and alternatives would be selected pursuant to the primary. Compl. ¶ 16. Instead, the Republican Party of Virginia selected delegates and alternates through conventions, and the Democratic Party of Virginia selected delegates through a "caucus/convention process." Compl. ¶ 17. Accordingly, Virginia delegates to both major parties' national conventions are subject to binding under Section 545(D).

This means that Virginia delegates to the Democratic National Convention are required by Section 545(D) to vote for Hillary Clinton, who received 64.3 percent of votes in the Democratic primary. Compl. ¶ 18–19. And Virginia delegates to the Republican National Convention (including Correll) are required by Section 545(D) to vote for Donald Trump, who prevailed in the Republican primary with a slim plurality of 34.7 percent of votes. *Id.*

Not only does Virginia law require Correll to violate his conscience, it also requires him to violate state and national party rules. As required by the rules of the national party, the Republican Party of Virginia's rules allocate delegates in proportion to the votes cast in the primary, in conflict with the "winner-take-all" approach mandated by Section 545(D).

Compl. ¶ 22. Accordingly, the rules of the Republican Party of Virginia require delegates to the Republican National Convention to vote for candidates other than the primary winner, in violation of Section 545(D). *Id*. Because Section 545(D)'s "winner-take-all" mandate conflicts with the party rules, the Virginia delegation may be penalized at the Convention; under the rules prevailing at the 2012 Convention, Virginia could have lost half of its seats for this rules infraction. Compl. ¶ 23. In this way, Section 545(D) may prevent Correll and other Virginia delegates from being seated at all.

At the same time, the national party's rules have generally authorized a delegate to vote his conscience—that is, for the person he or she believes to be the best candidate. Compl. ¶ 24. That also conflicts with Section 545(D)'s "winner-take-all" mandate.

Concerned that he faces criminal liability for following his conscience or Republican Party rules, Correll contacted the Virginia Department of Elections to request an advisory opinion regarding the application of Section 545(D). Compl. ¶ 25. That request was referred to the Commonwealth Attorney for the city of Winchester, Defendant Marc Abrams. *Id*. Abrams responded via email to Correll's inquiry: "[T]he first rule of statutory construction dictates that we are to interpret words of a statute use the ordinary meaning of the language…. The plain meaning of…Va. Code §24.2-545(D) would appear clear." Compl. ¶ 27. Correll understands Abrams's response to indicate that voting for a candidate other than Donald Trump on the first ballot would constitute a violation of Virginia law. *Id*. Correll subsequently requested guidance from the Electoral Board, which in turn instructed him to contact the Department of Elections, which he did. Compl. ¶ 28. He has yet to receive a response. Compl. ¶ 29.

With the Republican National Convention quickly approaching, and faced with the threat of criminal punishment for voting as his conscience and party rules require, Correll brings this action seeking temporary, preliminary, and permanent relief from Section 545(D), on his own behalf and on behalf of other Virginia delegates to the major parties' national conventions.

<u>**Argument**</u>

"The standard for granting either a TRO or a preliminary injunction is the same." *Moore v. Kempthorne*, 464 F. Supp. 2d 519, 525 (E.D. Va. 2006) (citations omitted). In either instance, "Plaintiffs must demonstrate that (1) they are likely to succeed on the merits; (2) they will likely suffer irreparable harm absent an injunction; (3) the balance of hardships weighs in their favor; and (4) the injunction is in the public interest." *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 236 (4th Cir. 2014) (citation omitted).

I. The Plaintiff Is Likely To Prevail on the Merits Because Section 545(D) Tramples Virginia Delegates' Well-Recognized First Amendment Rights

Section 545(D) cannot stand because it infringes the speech and associational rights of Virginia delegates and does not achieve, in a narrowly tailored fashion, any compelling state interest. This law is sufficiently well-established that the United States Supreme Court struck down a nearly identical binding provision as violating the First and Fourteenth Amendments almost 35 years ago in *Democratic Party of the United States v. Wisconsin ex rel. La Follette*, 450 U.S. 107 (1981). The Supreme Court's subsequent cases on the speech and associational rights of political parties and their members only confirm that state attempts to bind the votes of delegates to parties' national conventions violate delegates' constitutional rights, while making clear that a state has little or no interest in enforcing such laws.

A. Legal Standard

"To assess the constitutionality of a state election law, [a court must] first examine whether it burdens rights protected by the First and Fourteenth Amendments." *Eu v. San Francisco Cnty. Democratic Central Committee*, 489 U.S. 214, 222 (1989). "If the challenged law burdens the rights of political parties and their members, it can survive constitutional scrutiny only if the State shows that it advances a compelling state interest and is narrowly tailored to serve that interest." *Id.* (citations omitted).

A. Section 545(D) Burdens the Correll's and Other Delegates' First and Fourteenth Amendment Rights

Section 545(D) plainly abridges the "associational freedom" that protects "[t]he ability of the members of a political party to select their own candidate." *Eu*, 489 U.S. at 230 (quotation marks and alterations omitted). Its enforcement thereby burdens Correll's First and Fourteenth Amendment rights.

"There can no longer be any doubt that freedom to associate with others for the common advancement of political beliefs and ideas is a form of 'orderly group activity' protected by the First and Fourteenth Amendments. The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom." *Cousins v. Wigoda*, 419 U.S. 477, 487 (1975) (quoting *Kusper v. Pontikes*, 414 U.S. 51, 56–57 (1973)) (alteration omitted).

Thus, in *Cousins*, the Court refused to enforce an Illinois law requiring the seating of delegates selected in accordance with state law at the Democratic National Convention. It began with the principle that "[t]he National Democratic Party and its adherents enjoy a constitutionally protected right of political association" under the First and Fourteenth Amendments. *Id*. at 487; *see also id*. at 491 (Rehnquist, J., concurring) ("The right of members of a political party to gather in a national political convention in order to formulate proposed programs and nominate candidates for political office is at the very heart of the freedom of assembly and association which has been established in earlier cases decided by the Court."). Applying that fundamental principle, the Court had no trouble concluding that an injunction which blocked the seating of one group of delegates, in favor of seating another group in accordance with the Illinois law, burdened the former's rights. *Id*. at 489.

The Supreme Court applied the same approach when it refused to enforce Wisconsin's delegate-binding law in *Democratic Party of the United States v. Wisconsin ex rel. La Follette*, 450 U.S. 107 (1981). Wisconsin's law, like Virginia's here, bound delegates chosen after the primary "to vote at the National Convention" in accord with the results of the primary. *Id*.

at 112. Again, the Court had no difficulty finding that the Wisconsin law burdened the First and Fourteenth Amendment rights of the Democratic Party and its members through the "imposition of voting requirements upon those who, in a separate process [from the primary], are eventually selected as delegates." *Id*. at 125. Indeed, the Court recognized that imposition as a "substantial intrusion into the associational freedom of the members of the National Party." *Id*. (footnote omitted).

Subsequently, the Supreme Court has held that the associational rights of party members are burdened when a state mandates the selection of candidates through either closed or blanket primaries. *See Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 217 (1986) (closed-primary mandate was an "impingement upon the associational rights of the Party and its members"); *California Democratic Party v. Jones*, 530 U.S. 567, 575–76 (2000) (recognizing "the special place the First Amendment reserves for, and the special protection it accords, the process by which a political party selects a standard bearer who best represents the party's ideologies and preferences" and holding that blanket-primary mandate impinges members' associational rights) (quotation marks omitted). Going beyond mere burden, the Court recognized in these cases that "[t]he members of a recognized political party unquestionably have a constitutional right to select their nominees for public office." *Id*. at 576 (quotation marks omitted).

Finally, the Supreme Court in *Eu v. San Francisco Democratic Central Committee*, 489 U.S. 214 (1989), recognized the burden inherent in California's regulation of party speech endorsing candidates and parties' organization. As to the former, the Court explained: "Barring political parties from endorsing and opposing candidates not only burdens their freedom of speech but also infringes upon their freedom of association," as well as that of their members, because it imposes limitations on the ability of members "to band together to advance their views." *Id*. at 224–25. That injury was exacerbated because it affected the candidate-selection process, "at the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power." *Id*. at 224 (quotation

marks omitted). Likewise, California's regulation of party structure and leadership "burden[ed] the associational rights of political parties and their members," because they impinge the party's "discretion in how to organize itself, conduct its affairs, and select its leaders." *Id*. at 230–31.

Under these precedents, it is beyond dispute that Section 545(D) burdens the associational and speech rights of Virginia delegates like Correll. Section 545(D) binds national-convention delegates to vote for a particular candidate, the very thing that *Democratic Party of the United States* held to constitute a burden on parties and their members. Likewise, as in *Democratic Party* and *Cousins*, Section 545(D)'s binding effect conflicts with party rules, constituting a burden on that basis, as well. As with the laws rejected in *Tashjian*, *California Democratic Party*, and *Eu*, Section 545(D) intrudes "on the process by which a political party selects a standard bearer who best represents the party's ideologies and preferences," constituting a burden on that basis. *California Democratic Party*, 530 U.S. at 575–76. And, as in *Eu*, Section 545(D) restricts Correll's ability to join with others for the purpose of advancing their view that Donald Trump is not a suitable nominee through the party convention ballot process, burdening both his speech and associational rights. 489 U.S. at 224–24.[1]

In effect, Section 545(D) strips Correll of his ability to exercise discretion in his associations with the Party in the crucial expressive activity of selecting the Party's presidential candidate. Correll's association with the Republican Party is an expressive association, one in which he interacts with the Party as a delegate for the purposes of influencing the Party's decisions and joining with other Party members to achieve political goals. *See Eu*, 489 U.S. at 224–25; *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984) ("implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with oth-

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[1] All of these interests are shared by both parties and their members alike. "Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents." *Democratic Party of the United States*, 450 U.S. at 122 (quoting *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957)). Notably, both the petitioners and the respondents in *Cousins* were delegates. 419 U.S. at 478–79.

ers in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends"). Section 545(D) directly burdens his ability to associate with the Republican Party in these ways, by restricting his ability to influence the Party as he sees fit and to achieve political goals that he supports in the manner that he believes to be most effective, particularly with respect to the selection of the Party's nominee and standard-bearer, and that is authorized by party rules. Indeed, it may prevent him from participating in the Convention at all. *See* Compl. ¶ 23. Section 545(D) punishes this core associational and expressive activity and thereby constitutes a "substantial intrusion into the associational freedom" and speech rights guaranteed to Correll and other delegates by the First Amendment. *Democratic Party of the United States*, 450 U.S. at 126.

C. Section 545(D) Is Not Supported by Any Compelling State Interest

Virginia cannot possibly meet its burden to show that enforcement Section 545(D) is supported by a compelling interest.

First, Virginia's interest in protecting the integrity of its electoral process is not compelling in the context of the parties' presidential nominating process. The Supreme Court held as much when it rejected a similar attempt by a state to influence a party's national convention through regulation of a state party's delegates:

> The States themselves have no constitutionally mandated role in the great task of the selection of Presidential and Vice-Presidential candidates. If the qualifications and eligibility of delegates to National Political Party Conventions were left to state law each of the fifty states could establish the qualifications of its delegates to the various party conventions without regard to party policy, an obviously intolerable result. Such a regime could seriously undercut or indeed destroy the effectiveness of the National Party Convention as a concerted enterprise engaged in the vital process of choosing Presidential and Vice-Presidential candidates—a process which usually involves coalitions cutting across state lines. The Convention serves the pervasive national interest in the selection of candidates for national office, and this national interest is greater than any interest of an individual State.

Cousins, 4198 U.S. at 489–90 (quotation marks and footnotes omitted). Thus, it concluded, a state's "interest in protecting the integrity of its electoral process cannot be deemed compel-

ling in the context of the selection of delegates to the National Party Convention." *Id*. at 491. *See also Anderson v. Celebrezze*, 460 U.S. 780, 794–95 (1983) ("[T]he State has a less important interest in regulating Presidential elections than statewide or local elections, because the outcome of the former will be largely determined by voters beyond the State's boundaries.").

Second, Virginia cannot justify Section 545(D) as protecting its interests in the primary-election process, such as "preserving the overall integrity of the electoral process, providing secrecy of the ballot, increasing voter participation in primaries, and preventing harassment of voters," because Section 545(D) primarily regulates delegates' conduct at national conventions, not primary elections. *Democratic Party of the United States*, 450 U.S. at 124–25. That was the conclusion of the Supreme Court when Wisconsin argued that such interests supported its delegate-binding law. As the Court explained: "[A]ll those interests go to the conduct of the Presidential preference primary—not to the imposition of voting requirements upon those who, in a separate process, are eventually selected as delegates. Therefore, the interests advanced by the State do not justify its substantial intrusion into the associational freedom of members of the National Party." *Id*. at 125 (footnotes omitted).

Third, both *Cousins* and *Democratic Party of the United States* reject the view that any state interest in giving effect to primary votes could possibly override the First and Fourteenth Amendment rights of parties and their members. *See 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."). *See also 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). Accordingly, the argument that such an interest is "compelling" in these circumstances is foreclosed to Virginia.

Fourth, more "creative" state interests like advancing "party stability" and "democratic management of the political party's internal affairs" are also insufficient to trump Correll's core, First-Amendment-protected speech and associational rights. *See Eu*, 489 U.S. at 227–28, 232–33.

Particularly in this context—the regulation of delegates to a national party convention to select presidential and vice-presidential candidates—the interests that Virginia might invoke as supporting Section 545(D) have all been held insufficient to justify similar or lesser intrusions on speech and associational rights. For that reason, Section 545(D) fails First Amendment muster and cannot be lawfully enforced.

D. Section 545(D) Is Not Narrowly Tailored

Even if Section 545(D) were found to further a compelling state interest in giving effect to primary votes, it would still be unlawful and unenforceable because it is not narrowly tailored to further that interest. *See California Democratic Party*, 530 U.S. at 585–86. Section 545(D) does not actually protect primary voters; it does the opposite, by awarding all delegates to the primary winner, no matter how many primary voters cast their ballots for other candidates. That leads to circumstances like the present one where 65 percent of Virginia Republican primary voters chose a candidate other than Trump, but Section 545(D) obligates 100 percent of Virginia Republican delegates to vote against those primary voters' selections on the first convention ballot. The statute is also a poor fit for any asserted enfranchisement interest because it applies only to the first ballot of a national convention, thereby authorizing even bound delegates to disregard voter preferences on any subsequent ballots—the very circumstance where individual delegate votes are likely to make the biggest difference. Likewise, Section 545(D) leaves delegates free to disregard voters' will entirely if the primary winner releases his delegates or if the delegates are selected in a primary as a candidate-allied slate.

In short, the statute's arbitrariness renders it unconstitutional.

II. The Plaintiff and Other Delegates Will Suffer Irreparable Injury—Violation of First Amendment Rights—Absent Immediate Injunctive Relief

As a practical matter, it would be difficult to conceive of a more clear-cut case of irreparable injury than that suffered by Correll and other Virginia delegates: if Correll votes his conscience, or is required by party rules to vote for a candidate other than Trump, he violates Section 545(D), a criminal offense. That injury will be consummated in several weeks' time during the Republican National Convention. His only alternatives are to forego participation in the convention entirely or to vote against his conscience for Trump, in either instance sacrificing his associational and speech rights in a manner that could never remedied—once the votes are recorded and the party's presidential candidate chosen, that's that.

As a legal matter, this kind of First Amendment injury satisfies the irreparable injury requirement. "[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)); *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 520–21 (4th Cir. 2002) (same). Thus, the Fourth Circuit has recognized that likelihood of success on the merits of the First Amendment claim generally suffices to prove irreparable injury meriting injunctive relief. *WV Ass'n of Club Owners & Fraternal Servs., Inc. v. Musgrave*, 553 F.3d 292, 298 (4th Cir. 2009). That is because, among other reasons, "monetary damages are inadequate to compensate for the loss of First Amendment freedoms." *Legend Night Club v. Miller*, 637 F.3d 291, 302 (4th Cir. 2011); *see also id*. (injunctive relief particularly warranted where, as here, the threatened injury "constituted direct penalization, as opposed to incidental inhibition of First Amendment rights") (quotation marks omitted).

III. The Balance of Hardships Favors the Plaintiff Because Defendants Have No Cognizable Interest in Enforcing the Challenged Statutory Provision

Correll and other Virginia delegates have a substantial interest in exercising their First Amendment rights by participating, unencumbered by state-law diktat, in "the vital process of choosing Presidential and Vice-Presidential candidates." *Cousins*, 419 U.S. at 490.

By contrast, a state like Virginia "is in no way harmed by issuance of an injunction that prevents the state from enforcing unconstitutional restrictions." *Legend Night Club v. Miller*, 637 F.3d 291, 302–03 (4th Cir. 2011); *see also Giovani Carandola*, 303 F.3d at 521 (similar); *Newsom*, 354 F.3d at 261 (similar). Virginia also has no interest in enforcing Section 545(D), in particular, given that "[t]he States themselves have no constitutionally mandated role in the great task of the selection of Presidential and Vice-Presidential candidates." *Cousins*, 419 U.S. at 490. Indeed, the Supreme Court in *Democratic Party of the United States* specifically held that, whatever a state's interest in "the conduct of the Presidential preference primary," it has little or no interest to support "the imposition of voting requirements upon those who, in a separate process, are eventually selected as delegates." 450 U.S. at 125. And yet that is what Virginia seeks to do here.

Accordingly, the harm to Correll clearly outweighs Defendants' non-existent interest in enforcing Section 545(D).

IV. The Public Interest Requires an Injunction

"[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)). *See also Giovani Carandola*, 303 F.3d at 521 (similar); *Newsom*, 354 F.3d at 261 ("Surely, upholding constitutional rights serves the public interest."). More specifically, as the Fourth Circuit has observed, "The public interest is better served by following binding Supreme Court precedent and protecting the core First Amendment right of political expression." *Id*. (quotation marks and alteration omitted).

The public interest is particularly acute because this case concerns a state's attempt to regulate a national convention to choose a major party's presidential and vice-presidential candidates. "The Convention serves the pervasive national interest in the selection of candidates for national office, and this national interest is greater than any interest of an individual State." *Cousins*, 419 U.S. at 490. Delegates the Republican *National* Convention are tasked with choosing candidates for offices of *national* leadership, and should be able to address that task with the nation's interests in mind, free from the parochial restrictions of a single state.

V. The Court Should Provide Relief to All Members of the Putative Class Consisting of Virginia Delegates

Plaintiff Correll brings this action on his own behalf and on behalf of a putative class of Virginia delegates to the major parties' conventions. Because all members of the putative class are identically situated to Correll, and therefore face the same threat of enforcement and same First Amendment injuries, the Court should enjoin all enforcement of Section 545(D) at this time to protect their rights and advance the public interest.

"'[A] district court may, in its discretion, award appropriate classwide injunctive relief prior to a formal ruling on the class certification issue based upon either a conditional certification of the class or its general equity powers.'" *Rodriguez v. Providence Community Corrections, Inc.*, 2015 WL 9239821, *6 (M.D. Tenn. 2015) (quoting *Thomas v. Johnston*, 557 F. Supp. 879, 917 (W.D. Tex. 1983). *See* Newberg on Class Action § 4:30 n.8.5 (citing cases). Such relief is typically entered where, as here, the challenged conduct of the defendants is "directed generally against a class of persons." *Lee v. Orr*, 2013 WL 6490577, *2 (N.D. Ill. 2013) (quoting *Illinois League of Advocates for the Developmentally, Disabled v. Illinois Dep't of Human Services*, 2013 WL 3287145, *3 (N.D. Ill. 2013)).

In this instance, the Court should rely on its equity powers to enjoin any enforcement of Section 545(D), which applies exclusively to members of the putative class. This would provide timely relief to all members of the putative class in advance of the major parties' na-

tional conventions, without abridging any party's rights—after all, delegates would remain free to vote for any candidate they wish, consistent with party rules, including the candidates who won the Virginia primaries.

Moreover, such relief is necessary to make relief for Correll fully effective, in two respects. First, as a delegate and Republican Party member, Correll's rights are directly abridged by state binding laws that conflict with party rules, as does Section 545(D). *See Democratic Party of United States*, 450 U.S. at 126 (holding similar binding rule unconstitutional based on its "substantial intrusion into the associational freedom of members of the National Party"). Second, binding other delegates abridges Correll's ability to fully and reciprocally associate with those delegates as they engage in the joint task of choosing the Party's candidates.

In the alternative, the Plaintiff respectfully requests that the Court conditionally certify the class only for purposes of temporary and preliminary relief, based on the Class Allegations contained in the Complaint; appoint Plaintiff's counsel as interim counsel; and enter classwide relief. For the reasons explained above, such class-wide relief is necessary to vindicate the rights of class members, including absent class members, in advance of the major parties' national conventions.

Conclusion

For the foregoing reasons, the Court should enter a temporary restraining order or preliminary injunction enjoining enforcement of Section 545(D) of Title 24.2 of the Virginia Code.

Dated: June 24, 2016

Respectfully submitted,

/s/ Mark W. DeLaquil
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CERTIFICATE OF SERVICE

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

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

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

/s/ Mark W. DeLaquil
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