

Virginia:

In the Circuit Court of the City of Richmond, John Marshall Courts Building

DAWN JONES,

Plaintiff,

v.

VIRGINIA DEPARTMENT OF
ELECTIONS, et al.,

Defendants.

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Case No.: CL23-1337

OPINION AND ORDER

On March 27, 2023, the parties appeared, by counsel, on Plaintiff's Petition for a Temporary Restraining Order, Preliminary Injunction, and Petition for Writ of Mandamus. Upon consideration of the evidence presented and the arguments of the parties, the Court **FINDS** and **RULES** as follows:

FACTUAL BACKGROUND

At issue before this Court are certain actions taken by Plaintiff in her capacity as the chairperson of the Seventeenth Senate District Legislative District Committee ("17th SD LDC") and actions taken by the State Board of Elections ("SBE"), the Virginia Department of Elections ("ELECT"), and Susan Beales, Commissioner of the Virginia Department of Elections ("Commissioner") (collectively, "the Commonwealth").

The 17th SD LDC for the Republican Party of Virginia ("RPV") is comprised of the following localities: Suffolk; Isle of Wight; Franklin and Southampton, who share a local committee; Brunswick; Portsmouth; Dinwiddie; Greenville; Emporia; and Chesapeake. Each locality's vote is weighted, with Suffolk having a voting weight of 34.4%; Isle of Wight 28.1%; Franklin/Southampton 14.8%; Brunswick 6.8%; Portsmouth 5.5%; Dinwiddie 4.6%; Greenville 4%; Emporia 1.6%; and Chesapeake 0.3%.

The evidence established that on December 27, 2022, the 17th SD LDC voted to select its 2023 Senate candidate via convention. At the time of this meeting, Plaintiff was both the chair of the Suffolk committee for the RPV and was chair of the 17th SD LDC.

Thereafter, on February 25, 2023, the Second Congressional District of RPV met and purported to remove Plaintiff from the position of Suffolk chair. Plaintiff, at that point, was still the 17th SD LDC chair. Plaintiff maintains that her removal from the Suffolk committee chair was an *ultra vires* action contrary to the RPV rules of procedure, called the Plan of Organization of the Republican Party of Virginia (“Plan” or “Party Plan”).¹

After the allegedly improper removal of Plaintiff from the Suffolk chair position, the 17th SD LDC met again on March 1, 2023, and ultimately voted to determine the nomination of the 17th Senate candidate by primary.² After voting to determine the method of nomination, Plaintiff notified the SBE that the 17th SD LDC would proceed by primary. The SBE accepted notice of the primary via Formsite, the site it uses to gather nomination method information.

On March 9, 2023, the SBE and Commissioner issued its Order outlining the list of districts using the primary method for nomination. Included on that list was Senate District 17. The Order specifically noted that for the localities authorized to use the primary method of nomination, including Senate District 17, “a notice in proper form [had] been received from the appropriate authority”

¹ The evidence shows that at this meeting, the Second Congressional District Committee appointed Steve Trent as the new Suffolk Committee Chair.

² At this meeting, the evidence suggests Plaintiff refused to recognize Mr. Trent as the Suffolk Committee Chair. Mr. Trent subsequently left the meeting before the vote was held. The Commonwealth, through its affidavit from the RPV chair, contends that no quorum was present at the time of the this vote, rendering the meeting and subsequent vote invalid.

On March 10, 2023, the SBE and Commissioner issued a new Order listing the districts who elected to use the primary method of nomination. Noticeably, on this list, Senate District 17 was not indicated as having chosen a primary. Plaintiff alleges that the Commonwealth surreptitiously and without notice to Plaintiff promulgated the new Order after pressure from high-ranking members of the RPV.

The Commonwealth indicated that it removed Senate District 17 from the list of primary districts based upon the information provided to it by Richard Anderson, chairman of the RPV, who informed the Commonwealth that the vote held on March 1, 2023 was not in accordance with the Party Plan and was, therefore, improper notice. Based on this information, the Commissioner issued a “corrected order” and transmitted such order to the parties.

Plaintiff now petitions this Court for a Writ of Mandamus to compel the Commonwealth to issue a new Order to properly reflect the decision of the 17th SD LDC and the notice of its chairman to hold a primary.

ANALYSIS

Standing

At the outset, the Commonwealth argues that Plaintiff does not have standing to pursue her claim in this Court. The Commonwealth argues that the properly injured party is the RPV itself, and Plaintiff is not entitled to maintain her action on behalf of RPV.

As the Supreme Court of Virginia has noted, “standing can be established if a party alleges he or she has a ‘legal interest’ that has been harmed by another’s actions.” *Howell v. McAuliffe*, 292 Va. 320, 330 (2016). “[A] litigant has standing if he has a ‘sufficient interest in the subject matter of the case so that the parties will be actual adversaries and the issues will be fully and faithfully developed.’” *Id.* at 332 (quoting *Cupp v. Board of Supervisors*, 227 Va. 580, 589 (1984)).

This Court is satisfied that Plaintiff has a sufficient interest in the subject matter of the case and is satisfied that the parties have fully developed the facts at issue. As the chairperson of the 17th SD LDC and the person who is authorized to give notice to the SBE as to the decision to hold a primary, this Court finds that Plaintiff does have standing to pursue her claim.

Mandamus

To be entitled to mandamus, a petitioner must have no other adequate remedy at law, *Howell*, 292 Va. at 351, and must establish that the public official is required to perform “a purely ministerial duty imposed upon him by law.” *Id.* (quoting *In re Horan*, 271 Va. 258, 258 (2006)). These requirements essentially reflect a three-part requirement such that the petitioner “must demonstrate: (1) a clear right to the relief sought; (2) a legal duty [on the] part of the respondent to act; and (3) the lack of an adequate remedy at law.” *Democratic Party of Va. v. Piper*, 102 Va. Cir., 478, *8 (Richmond City Cir. Ct. Sept. 6, 2018).

At the outset, this Court finds that Plaintiff has satisfied the first and third requirements. As to the first requirement, Plaintiff, as chairperson of the 17th SD LDC, is duly authorized to notice a primary for Senate District 17 and therefore has a clear right to ask the Court to compel SBE to comply with its resulting duties under Va. Code § 24.2-517. Further, with respect to the third requirement, the Court agrees that no money damages could substitute for a lawful elections process.

As to the second requirement, this Court must determine if the provisions of Va. Code §§ 24.2-516 and 517 impose a legal duty. *See id.* (quoting *City of Richmond v. Hayes*, 212 Va. 428, 429 (1971)) (noting that mandamus lies to compel a purely ministerial duty and that “[a] ministerial act is an act that one performs in obedience to a legal mandate and in a prescribed manner, without regard to his own judgment as to the propriety of the act to be done.”).

In determining if mandamus lies, the Court must look to the plain language of the statutes at issue, Va. Code §§ 24.2-516 and 517, which outline the procedure for ordering a primary.

Under Va. Code § 24.2-516, the parties of the Commonwealth notify the SBE of who its chairmen are. When determining the method of nomination,

Each chairman shall file timely written notice with the Board whether or not a primary has been adopted and identify each office for which a primary has been adopted. The requirement to notify the Board of the adoption of a direct primary shall be satisfied when the Board receives by the deadline (i) written notice from the appropriate party chairman or (ii) a copy of the written notice from an incumbent officeholder to his party chairman of the incumbent's selection, pursuant to § 24.2-509, of the primary as the method of nomination.

§ 24.2-516 (emphasis added).

Thereafter,

The State Board *shall* order the holding of a primary election in any county, city, or other district of the Commonwealth in which it is notified pursuant to § 24.2-516 that a primary is intended to be held.

§ 24.2-517 (emphasis added).

To understand the provisions of §§ 24.2-516 and 517 in context, the Court must look to §§ 24.2-508 and 509. Section 24.2-508 notes that “[e]ach political party shall have the power to” make internal rules and procedures and take certain actions, including providing for the nomination of its candidates. Section 24.2-509(a) thereafter provides that “[t]he duly constituted authorities of the state political party shall have the right to determine the method by which a party nomination . . . for any statewide office shall be made.” When read together, these statutes make it clear that the government is not entitled to involve itself in intraparty matters. The Commonwealth, however, would have this Court interpret the statutes to require the Court to determine who is, and who is not, a “duly constituted authority” of the RPV by reviewing whether the party has adhered to its own processes. The Court declines to do so.

Rather, this Court need only look to the plain language of §§ 24.2-516 and 517, which outline a prescribed action and response. Once the chairman of a district submits proper notice calling for a primary, the SBE “shall order the holding of a primary election . . .” § 24.2-517. It is well settled in the Commonwealth that the term “shall” is interpreted as imposing a mandatory act and “is inconsistent with, and excludes, the idea of discretion” absent a different, fairly manifest intent. *Andrews v. Shepherd*, 201 Va. 412, 414 (1959) (quoting 80 C.J.S, Shall). It is undisputed that Plaintiff was the proper chairperson designated to give notice for the 17th SD LDC. Upon receipt of such facially valid notice, the SBE was required to order the method of nomination chosen. The statute, by its terms, does not allow the Commonwealth to investigate further in any capacity. To do so would undermine the statutory wall that exists between the government and the workings of the political parties of the Commonwealth.

The Court finds that the Commonwealth’s attempt to present the myriad of intraparty politics obfuscates the actual issue presented to the Court, which is if proper notice was given, was such notice honored? The Court finds that Plaintiff, as the duly appointed chair of the 17th SD LDC was entitled by her position to give notice to the SBE that Senate District 17 was to determine its nomination by primary. The Court finds that in failing to order a primary for Senate District 17, the SBE and the Commissioner violated their ministerial duty requiring them to order such primary.

CONCLUSION

For all the reasons stated above, the Court **GRANTS** Plaintiff’s Petition for a Writ of Mandamus and **ORDERS** the Virginia Department of Elections, the State Board of Elections, and Susan Beals, Commissioner of the Virginia Department of Elections, to order the holding of a

primary election for the Republican Party for Senate District 17 and send such notice ordering the primary to the secretary of the electoral board.

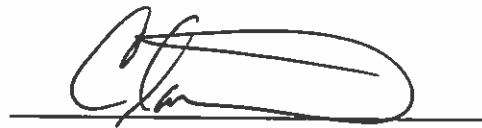
Having so ordered, Plaintiff's requests for a Temporary Restraining Order and Preliminary Injunction are moot.

Pursuant to Rule 1:13 of the Supreme Court of Virginia, the Court dispenses with the parties' endorsement of this Order.

The Clerk is directed to forward a certified copy of this Order to all the parties.

It is so **ORDERED**.

ENTER: 3/29/2023

A handwritten signature in black ink, appearing to read 'C. Cardwell', is written over a horizontal line.

Claire G. Cardwell, Judge