**VIRGINIA**

**IN THE CIRCUIT COURT OF RICHMOND CITY**

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| The Republican Party of Virginia,<br><br>*Plaintiff*,<br><br>*v.*<br><br>Christopher E. Piper, in his official capacity as the Commissioner of the Department of Elections; the Department of Elections; the Virginia State Board of Elections, Robert H. Brink, in his official capacity as the Chairman and member of the Virginia State Board of Elections, John O'Bannon, in his official capacity as Vice Chair and member of the Virginia State Board of Elections, Jamilah D. LeCruise, in her official capacity as Secretary and member of the Virginia State Board of Elections, Donald W. Merricks, in his official capacity as member of the Virginia State Board of Elections, and Angela Chiang, in her official capacity as member of the Virginia State Board of Elections,<br><br>*Defendants*. | **AMICUS BRIEF OF THE PUBLIC INTEREST LEGAL FOUNDATION IN SUPPORT OF NEITHER PARTY**<br><br>Case No. CL21003848-00 |



Rules exist for a reason. Some rules help ensure a level playing field. When it comes to elections, rules are necessary "if [elections] are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Storer v. Brown*, 415 U.S. 724, 730 (1974).

This case is about Virginia's ballot access rules. The parties debate several important rules. Yet there is one fundamental rule that has so far gone unmentioned, but which must be considered in any resolution of this matter — the Anti-Suspension Clause of the Constitution of Virginia. Va. Const. art. I, § 7.

In Virginia, the Legislative power is supreme to any act by an agency employee or even the Governor himself.

The Virginia Supreme Court utilized this Constitutional provision originally penned by George Mason in the original Virginia Constitution, and retained in every successive version to invalidate an election-related action of Governor McAuliffe. "The dominant role in articulation of public policy in the Commonwealth of Virginia rests with the elected branches." *Howell v. McAuliffe*, 788 S.E.2d 706, 710 (Va. 2016). Indeed, Virginia, perhaps given her historic role in advancing the rule of law both in the Colonies and across the English-speaking world, enacted Article I, Section 7 of the Constitution of Virginia which provides: "That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised."

The tumults associated with the exercise of unrestrained power were the ingredients that animated the entire separation of the colonies from England and seven years of the Revolutionary War. Prohibitions on a government's power to suspend or rewrite laws absent legislative action was no historical sideshow, but rather "an essential pillar of a constitutional republic." *Howell*, 788 S.E.2d at 720.

The Virginia Declaration of Rights drafted by contained this anti-suspension provision in Section 7. Virginia delegates to the ratification convention for the United States Constitution were troubled that the draft Constitution did not contain an anti-suspension provision. Even though the United States Congress has never enacted an anti-suspension provision, the Virginia Constitution has maintained one through successive Constitutions. *See* Va. Const. art. I, § 7 (1830); Va. Const. art. I, § 7 (1851); Va. Const. art. I, § 7 (1864); Va. Const. art. I, § 9 (1870);

Va. Const. art. I, § 7 (1902); Va. Const. art. I, § 7 (1971). *See generally*, *Howell*, 788 S.E.2d at 720-22.

In short, the Rule of Law is superior to the rule of men in the Commonwealth. If an action is required by a statute to obtain an end, that action is required to obtain that end.

The Virginia Supreme Court noted two circumstances that constitute the impermissible suspension of the laws. First, when an official in the executive branch sets "aside a generally applicable rule of law based solely upon his disagreement with it." *Howell*, 788 S.E.2d at 722. The second is "its expansive scope and generality." *Id.*

In *Howell v. McAuliffe*, the Governor of Virginia sought to issue a blanket Executive Order that re-enfranchised a subset of voters. The Virginia Supreme Court held that executive action contrary to the Virginia Constitution was not permitted and granted a writ of mandamus. *Howell*, 788 S.E.2d at 724; *see also Reed v. Va. Dept. of Elections*, No. CL20-622 (Cir. Ct. for Frederick County, 2020) (granting injunction against regulation requiring acceptance of absentee ballots that have no postmark).

The Foundation takes no position on the merits of the plaintiff's cause or the policies underlying Virginia's ballot access rules implicated here. The Foundation—as an impartial proponent of the rule of law and the equal and just execution of election contest rules—believes the Court must consider all relevant authorities in its disposition of this dispute. For that reason, the Foundation respectfully brings the Anti-Suspension Clause to the attention of the Court.

By _____
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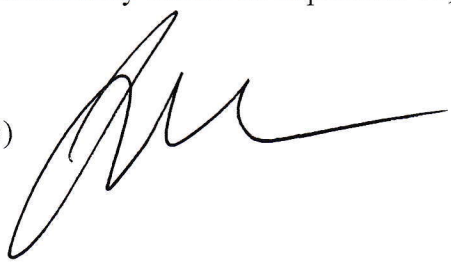
## CERTIFICATE OF SERVICE

I certify that the foregoing was electronically mailed on September 15, 2021 to the following:



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