

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

**DEMOCRATIC PARTY OF VIRGINIA AND )  
DCCC, )**

*Plaintiffs,* )

v. )

**Case No. 3:21-CV-00756-HEH**

**ROBERT H. BRINK, JOHN O'BANNON, )  
JAMILAH D. LECRUISE, AND )  
CHRISTOPHER E. PIPER, )  
in their official capacities, )**

*Defendants,* )

**PUBLIC INTEREST LEGAL FOUNDATION, )**

*Proposed Intervenor-Defendant.* )

---

**[PROPOSED] INTERVENOR-DEFENDANT PUBLIC INTEREST LEGAL  
FOUNDATION'S ANSWER**

---

Proposed Defendant-Intervenor the Public Interest Legal Foundation ("Foundation"), by and through counsel, and without waiving any motions or defenses, hereby answers Plaintiffs' Complaint. (Doc.1.)

Many of the paragraphs in the Complaint state conclusions of law, to which no response is required. Many others make alleged factual claims that are outside the scope of the Foundation's knowledge, as a result, they can neither be admitted or denied by the Foundation and are thus deemed denied. Any other allegations not admitted are denied.

**NATURE OF THE ACTION**

1. Plaintiffs have been operating as a political party under these requirements for fifty years. After the 2021 election of a Republican Governor in the Commonwealth, and within days of a Democratic Attorney General being replaced, Plaintiffs are suddenly concerned with *alleged* reluctance of voters providing to them their full social security number. The Foundation denies that the Virginia Constitution's requirement to provide a full social security number ("SSN") to register to vote, *see* Va. Const. art. II § 2, or its procedures concerning its notice and cure procedures for absentee ballots violate federal law or the United States and Virginia Constitutions.

2. The Foundation denies that requiring the full SSN for voter registration unduly burdens the right to vote and denies that it violates Plaintiffs' right of speech or association, the Civil Rights Act, 52 USC § 10101(a)(2)(b) or the Privacy Act, 5 USC § 552a note.

3. Deny. Virginia has required individuals to provide their full SSN since at least 1971. Plaintiffs have been operating as a political party under these requirements for fifty years. After the 2021 election of a Republican Governor in the Commonwealth, and within days of a Democratic Attorney General being replaced, Plaintiffs are suddenly concerned with *alleged* reluctance of voters providing to them their full SSN. Plaintiffs have failed to allege any factual allegations to support this claim.

4. Deny the allegations contained in paragraph 4. *See* Response to paragraph 3.

5. Deny the allegations contained in paragraph 5.

6. Admit that Va. Code Ann. §§ 24.2-407.1, 24.2-416.5 prohibits the dissemination and use of SSN's. Deny Plaintiffs' characterization of the code.

7. Deny the allegations contained in paragraph 7. The Foundation notes that the U.S. Supreme Court just recently reaffirmed that "[a] State indisputably has a compelling interest in

preserving the integrity of its election process.” *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2347 (2021). Further, according to the Supreme Court, “it should go without saying that a State may take action to prevent election fraud without waiting for it to occur and be detected within its own borders.” *Id.* at 2348.

8 -14. Deny. Plaintiffs recently made an almost identical claim against the State of Arizona and failed. *See Ariz. Democratic Party v. Hobbs*, Nos. 20-16759, 20-16766, 2021 U.S. App. LEXIS 36129 (9th Cir. Dec. 8, 2021). In upholding Arizona’s election procedures against First and Fourteenth Amendment claims, the court determined that Arizona had “an important regulatory interest in reducing the administrative burden on poll workers, especially during the busy days immediately following an election.” *Ariz. Democratic Party v. Hobbs*, Nos. 20-16759, 20-16766, 2021 U.S. App. LEXIS 36129, at \*7 (9th Cir. Dec. 8, 2021). “In light of the minimal burden on the voter to sign the affidavit or to correct a missing signature by election day, the State’s interest sufficiently justifies the election-day deadline.” *Id.* “Reasonable regulation of elections...does require [voters] to act in a timely fashion if they wish to express their views in the voting booth.” *Burdick v. Takushi*, 504 U.S. 428, 438 (1992).

### **JURISDICTION AND VENUE**

15-17. Admit that this Court has jurisdiction of the matters alleged in the Complaint.

### **PARTIES**

18. Admit that the Democratic Party of Virginia (“DPVA”) is a political party as defined by Va. Code § 24.2-101. As to the location of its headquarters, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent that the remaining allegations contained in this paragraph state factual allegations the

Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations.

19. Deny Plaintiffs' characterization of Virginia Election Code as it applies to absentee voting and the cure and notice deadlines, and the remaining allegations contained in paragraph 19. Furthermore, Plaintiffs have failed to allege one instance in which they have been hindered by the process for notice and curing absentee ballots.

20. Deny the allegations contained in paragraph 20.

21. Deny the allegations contained in paragraph 21.

22. Deny the allegations contained in paragraph 22.

23. To the extent that this paragraph states factual allegations the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations.

24. Admit.

25. Admit.

### **STATEMENT OF FACTS**

26. Deny the allegations contained in paragraph 26.

27. To the extent that this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. The Foundation denies the allegations contained in paragraph 27.

28. Deny the allegations contained in paragraph 28. The Virginia Const. art. II § 2 specifically states that a full SSN **if any**, is required to register to vote. Admit that the requirement applies to all methods of voter registration.

29. Deny the allegations contained in paragraph 29.

30. Deny the allegations contained in paragraph 30.

31. Denied. The “Privacy Act” speaks for itself.

32. Denied. The “Privacy Act” speaks for itself.

33. Deny Plaintiffs’ characterization of Virginia’s utilization of a full social security number for voter registration. Furthermore, Virginia does qualify for the grandfather provision, as it has required individuals to supply a full SSN, “**if any**” to register to vote and has “maintained a system of records” prior to 1975.

34. Deny the allegations contained in paragraph 34.

35. Admit that passage of the Privacy Act required Congressional action. Deny Plaintiffs’ characterizations and submit that the Act speaks for itself.

36. Deny the allegations contained in paragraph 36.

37. Admit that the Fourth Circuit recognized along with the rest of the country that a SSN’s confidentiality and misuse are significant. The Foundation notes however, that in *Greidinger v Davis*, 988 F.2d. 1344 (4th Cir. 1993), cited by Plaintiffs, the court was opining on a policy that allowed the registered voter list and the voter’s SSN to be obtained by request of both political parties and voters.

38-40. Admit that theft and misuse of another’s SSN can be serious in various ways. Deny Plaintiffs’ inflammatory characterizations contained in paragraphs 38 through 40.

41. Admit that many citizens are aware of the dangers of sharing their SSN’s. The Foundation notes Plaintiffs’ use of a study from 2014 predates their complaint by seven years. During which time, Plaintiffs have been registering voters in the Commonwealth and asking for their full SSNs.

42. Admit.

43. Admit, and the Foundation again notes that the full SSN has been required for a voter to register in the Commonwealth for “the past several decades” (since 1971) and that Plaintiffs have been recognized as a political party in the Commonwealth and registering voters for “the past several decades.”

44. To the extent that this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. The Foundation denies the allegations contained in paragraph 44.

45. To the extent that this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. The Foundation denies the allegations contained in paragraph 45.

46. To the extent that this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. The Foundation denies the allegations contained in paragraph 46. The Foundation notes that the U.S. Census bureau sends requests to each household in America and does not require that those answering the Census decennial questionnaire be U.S. citizens, many of whom do not have SSNs.

47. To the extent that this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. The Foundation denies the allegations contained in paragraph 47. Again, the Foundation submits that many non-citizens who receive U.S. Census questionnaires do not have SSNs.

48. To the extent that this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. The Foundation denies the allegations contained in paragraph 48.

49-53. To the extent that these paragraphs state factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. The Foundation denies the allegations contained in paragraphs 49-53. To the extent that the allegations are accurate, the Foundation submits that the only relevant breach of security to Plaintiffs' claims would be a breach of Virginia's statewide voter database. Plaintiffs' allegations in paragraph 53 illustrate that an alleged attempt to infiltrate the Commonwealth's voting system were unsuccessful. There has never been a recorded infiltration into the Commonwealth's voter registration database. Plaintiffs' allegations in paragraph 53 are irrelevant.

54. To the extent that this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. The Foundation denies the allegations contained in paragraph 54.

55. Deny the allegations contained in paragraph 55.

56. Deny the allegations contained in paragraph 56.

57. Deny the allegations contained in paragraph 57.

58. Deny the allegations contained in paragraph 58.

59. To the extent that this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. The Foundation denies the allegations contained in paragraph 59.

60. To the extent that this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. The Foundation denies the allegations contained in paragraph 60.

61. To the extent that this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. The Foundation denies the allegations contained in paragraph 61.

62. To the extent that this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. The Foundation denies the allegations contained in paragraph 62.

63. To the extent that this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. The Foundation denies the allegations contained in paragraph 63.

64. Deny the allegations contained in paragraph 64.

65. Deny the allegations contained in paragraph 65.

66. Deny the allegations contained in paragraph 66.

67. Deny the allegations contained in paragraph 67.

68. To the extent that this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. The Foundation denies the allegations contained in paragraph 68.

69. To the extent that this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. The Foundation denies the allegations contained in paragraph 69. The Foundation submits that the case to which Plaintiffs cite, *S.C. Democratic Party, et al. v. Andino, et al.*, No. 3:19-cv-03308-JMC, 2020 WL 410120 (D.S.C. Jan. 24, 2020), resulted in a consent decree. There was no determination on the merits of the Plaintiffs' claims.



70. To the extent that this paragraph states factual allegations and not Plaintiffs' conclusions of law, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. The Foundation denies the allegations contained in paragraph 70.

71. Deny the allegations contained in paragraph 71.

72. Deny the allegations and assumptions contained in paragraph 72.

73. Deny the allegations and Plaintiffs' characterization of HAVA implications.

74. Deny the allegations contained in paragraph 74.

75. Deny the allegations contained in paragraph 75.

76. Admit that Va. Code Ann. §24.2-416.1 grants eligibility to vote absentee in person or by mail to all registered voters in the Commonwealth.

77. Deny the allegations contained in paragraph 77.

78. Deny the allegations contained in paragraph 78 and characterizations of the Absentee voting requirements in the Commonwealth.

79. Admit that Virginia's Code does allow for the correction of certain information that would void a ballot if not corrected.

80. Admit that Virginia's Code does allow for the curing of specific defects that would otherwise result in rejection. Deny Plaintiffs' characterization of the process.

81. Admit that there is a deadline for curing deficiencies in absentee ballots of noon on the Friday after the election and that uncured ballots will not be counted.

82. Admit that Va. Code § 24.2-709.1(c) provides that notice of a deficiency in an absentee ballot will be provided by the Registrar to the voter if the absentee ballot is received by the Friday before the election.

83. Admit.

84. Admit.

85. Admit.

86. Admit that voters whose deficient ballot ballots is received after the Friday before the election are not noticed and provided an opportunity to cure the deficiency. Deny the Plaintiffs' characterizations contained in paragraph 86.

87. To the extent that this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. The Foundation denies the allegations contained in paragraph 87. Va. Code Ann. § 24.2-709.1(c) does not provide discretion to local registrars to cure absentee ballots received after the Friday before election day, nor do Plaintiffs allege any specific factual basis for this allegation.

88. Deny each of the allegations, characterizations and conclusions of law contained in paragraph 88.

89. To the extent that this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations.

90. The Foundation denies the Plaintiffs' conclusions of law contained in paragraph 90.

91. Deny Plaintiffs' characterization of the Commonwealth's absentee vote cure procedures as well as the conclusions of law regarding its interests, and all allegations contained in paragraph 91.

92. Admit that Virginia has a notice and cure provision elicited in Va. Ann. Code § 24.2-709.1(c). Deny Plaintiffs' characterizations.

93. Deny the allegations contained in paragraph 93, and Plaintiffs' conclusions of law regarding any burden imposed upon the Commonwealth.

94. Deny the allegations and conclusions alleged in paragraph 94.

**CLAIMS FOR RELIEF**

95. Deny the allegations contained in paragraph 95.

96. Deny the allegations contained in paragraph 96.

97. Deny the allegations contained in the Complaint. The Foundation also submits that the correct analysis for the Plaintiffs' First Amendment claim is not a strict scrutiny analysis, but the *Anderson Burdick* analysis. *See Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 224 (4th Cir. 2020) (applying the *Anderson Burdick* analysis to a First Amendment claim involving assisting voters with filling out absentee ballot request forms.)

98. Deny the allegations contained in paragraph 98.

99. Deny the allegations contained in paragraph 99.

100. Deny the allegations contained in paragraph 100.

101. Deny the allegations contained in paragraph 101.

102. Deny that the allegations contained in Count 1 are subject to a strict scrutiny analysis. *See Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 224 (4th Cir. 2020) (applying the *Anderson Burdick* analysis to a First Amendment claim involving assisting voters with filling out absentee ballot request forms.)

103. Deny the allegations contained in paragraph 103.

104. Deny the allegations contained in paragraph 104.

105. Deny the allegations contained in paragraph 105.

106. Deny the allegations contained in paragraph 106.

107. Deny the allegations contained in paragraph 107.

108. Deny the allegations contained in paragraph 108. Furthermore, the Foundation submits that Plaintiffs' "fear that the SSN requirement will deter and chill their first Amendment rights is insufficient to support a claim. The Commonwealth of Virginia has been requiring the entire SSN since 1971. Plaintiffs have been operating within the Commonwealth under that requirement. Yet, after fifty years, the Plaintiffs now "fear" that they **may** suffer a First Amendment injury.

109. Deny the allegations contained in paragraph 109.

110. Deny the allegations contained in paragraph 110.

**Plaintiffs Are Absolutely Barred From Bringing an Action**

**Pursuant to 52.U.S.C. 10101(a)(2)(B)**

111- 118. Denied. The Foundation submits that Plaintiffs have no authority to bring a private right of action pursuant to 52 U.S.C. § 10101(a)(2)(B). The Voting Rights Act provides that no one acting under color of law may deny the right of any individual to vote in any election because of an error or omission on a registration application or voting ballot if the error or omission is not material in determining whether the individual is qualified to vote. 52 U.S.C.S. § 10101(a)(2)(B). Section 10101(c) states that when any person has deprived another of any right or privilege secured by § 10101(a), the Attorney General may institute *for the United States* a civil action or other proper proceeding for preventive relief. The negative implication of Congress's provision for enforcement by the Attorney General is that the statute does not permit private rights of action. *See Northeast Ohio Coalition for the Homeless v. Husted*, 837 F.3d. 612, 618 (6th. Cir. 2016) (*cert denied* June 19, 2017). Deny allegations contained in paragraph 111 through 118.

119. Deny the allegations contained in paragraph 119.

120. Admit.

121. Admit.

122. Deny the allegations contained in paragraph 122.

123. Deny the allegations contained in paragraph 123.

124. Deny the conclusions of law contained in paragraph 124.

125. Deny the allegations contained in paragraph 125.

126. Denied. Plaintiffs' due process claim should be evaluated using the *Anderson Burdick* framework. *See Ariz. Democratic Party v. Hobbs*, Nos. 20-16759, 20-16766, 2021 U.S. App. LEXIS 36129, at \*37-38 (9th Cir. Dec. 8, 2021); *Richardson v. Tex Sec'y of State*, 978 F.3d 220, 233-35 (5th Cir. 2020) and *New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1282 (11th Cir. 2020). Plaintiffs have not alleged that the burden of signing the affidavit falls disproportionately on a discrete group of voters, thereby implicating heightened constitutional concerns. The law here neutrally and non-discriminatorily applies to all voters equally. *See Ariz. Democratic Party v. Hobbs*, Nos. 20-16759, 20-16766, 2021 U.S. App. LEXIS 36129, at \*26-27 (9th Cir. Dec. 8, 2021).

127. Denied. Plaintiffs' due process claim should be evaluated using the *Anderson Burdick* framework. *See Ariz. Democratic Party v. Hobbs*, Nos. 20-16759, 20-16766, 2021 U.S. App. LEXIS 36129, at \*37-38 (9th Cir. Dec. 8, 2021); *Richardson v. Tex Sec'y of State*, 978 F.3d 220, 233-35 (5th Cir. 2020) and *New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1282 (11th Cir. 2020). Plaintiffs have not alleged that the burden of signing the affidavit falls disproportionately on a discrete group of voters, thereby implicating heightened constitutional concerns. The law here neutrally and non-discriminatorily applies to all voters equally. *See Ariz.*

*Democratic Party v. Hobbs*, Nos. 20-16759, 20-16766, 2021 U.S. App. LEXIS 36129, at \*26-27 (9th Cir. Dec. 8, 2021).

128. Deny the allegations contained in paragraph 128.

129. Deny the allegations and legal conclusions that are contained in paragraph 129.

130. Denied. Virginia Ann. Code § 24.2-709.1(c) was added in 2021 and made it easier for some voters to affect their vote. To the extent that Plaintiffs argue that extending a deadline for one category of voters requires the same extension for a separate, distinct category of voters, the State rationally has distinguished between those categories. The Constitution permits, and even encourages, States to experiment by making it easier for some to vote. *Short v Brown*, 895 F.3d 671, 679 (9th Cir. 2018). The Constitution does not mandate that the expanded access to the ballot box be extended equally to another, distinct category of voters. *See Ariz. Democratic Party v. Hobbs*, Nos. 20-16759, 20-16766, 2021 U.S. App. LEXIS 36129, at \*40-41 (9th Cir. Dec. 8, 2021).

131. Deny the allegations contained in paragraph 131.

132. Deny the Plaintiffs' allegations and conclusions of law contained in paragraph 132.

133. Deny the allegations contained in paragraph 133.

134. Deny the allegations contained in paragraph 134. *See Ariz. Democratic Party v. Hobbs*, Nos. 20-16759, 20-16766, 2021 U.S. App. LEXIS 36129 (9th Cir. Dec. 8, 2021).

135. Deny the allegations contained in paragraph 134. *See Ariz. Democratic Party v. Hobbs*, Nos. 20-16759, 20-16766, 2021 U.S. App. LEXIS 36129 (9th Cir. Dec. 8, 2021).

136. Deny the allegations and conclusions of law contained in paragraph 136.

137. Deny the allegations and conclusions of law contained in paragraph 137.

138. Plaintiffs have failed to allege a Paragraph 138.

139. Deny the allegations contained in paragraph 139.

140 – 143. Deny the allegations and conclusions of law contained in paragraphs 140-143.

**Inadequate Facts Alleged**

Federal Rule of Civil Procedure requires a showing of entitlement to relief. Such a showing cannot be made by mere “labels and conclusions” or “a formulaic recitation of the elements of a cause of action.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The Complaint is riddled with factual allegations that, even if true, do not entitle Plaintiffs to relief under either of the Counts alleged.

Respectfully submitted,

/s/ J. Christian Adams  
J. CHRISTIAN ADAMS, VSB No. 42543  
Public Interest Legal Foundation  
1729 King Street  
Suite 350  
Alexandria, Virginia 22314  
Telephone: (703) 963-8611  
adams@publicinterestlegal.org  
*Counsel for Intervenor-Defendant Public Interest  
Legal Foundation*