

Virginia:

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

**REPUBLICAN NATIONAL COMMITTEE,
MATTHEW HURTT, and RITE PAC,**

Plaintiffs,

v.

Case No. CL26-2003

VIRGINIA STATE BOARD OF ELECTIONS, et al.,

Defendants.

ORDER

On August 5, 2026, came the parties, by counsel,¹ for a hearing on Defendants' Pleas in Bar based on Sovereign Immunity and Lack of Standing on Behalf of All Defendants and on Defendants' Demurrer on Behalf of All Defendants. The matter was **TAKEN UNDER ADVISEMENT**. The Court, having reviewed the filings of the parties and having heard their arguments thereon, after due consideration, **DECIDES** as follows.

RELEVANT FACTUAL BACKGROUND

Plaintiff, Republican National Committee ("RNC"), is the national committee for the Republican Party which supports Republican candidates and allocates resources to ensure electoral integrity in nationwide and statewide elections, including those in Virginia. Plaintiff, Matthew Hurt, is a registered voter in Arlington County, Virginia. Plaintiff, RITE PAC ("RITE PAC"), is a tax-exempt political organization that litigates on behalf of political candidates and committees with the stated mission to "protect the rule of law in elections throughout the United

¹ Lee E. Goodman, Esq. and Domenic P. Aulisi, Esq. counsel for Plaintiffs. Cullen D. Seltzer, Esq. and Heather Hays Lockerman, Esq., counsel for Defendant.

States.”² RITE PAC is affiliated with the Virginia nonprofit social welfare corporation Restoring Integrity and Trust in Elections (“RITE”), which has a similar focus on the rule of law in voting.

Defendant, Virginia State Board of Elections (“VSBE”), is a non-political agency of the Commonwealth which acts as Virginia’s primary body that oversees the proper administration of statewide elections. VSBE acts through its board members, including Defendants, John O’ Bannon, Rosalyn R. Dance, Georgia Alvis-Long, Christopher P. Stolle, and Sally Hudson.³ Defendant, Virginia Department of Elections (“ELECT”), maintains Virginia’s official voter roll and issues official guidance on voter registration. Defendant, Steven Koski, is the Commissioner of ELECT.⁴ Defendant, Eric L Spicer, serves as General Registrar for Fairfax County, Virginia.⁵

On April 2, 2026, Plaintiffs filed their Complaint, alleging that Va. Code § 24.2-452(1)(e) and Va. Code § 24.2-456 are unconstitutional⁶ as implemented in Virginia elections by Defendants because these statutes improperly permit people born outside of the United States and residing outside of the Commonwealth to register and vote in Virginia elections. While Plaintiffs concede that the Constitution of Virginia permits some qualified voters abroad to register and vote absentee, such as military and overseas citizens retaining a previously held Virginia domiciliary, Plaintiffs believe these statutory provisions unconstitutionally permit the Commonwealth to “create *bona fide* Virginia voters out of individuals who have never resided in Virginia, solely by reference to a parent’s historical voting eligibility.”⁷ The recognition of such voters, Plaintiffs argue, undermines electoral integrity and harms participating political parties and other Virginia voters. To remedy this alleged harm, Plaintiffs seek (1) a declaration that Va.

² Pl.’s Compl. ¶ 14.

³ Plaintiffs sued Defendants John O’ Bannon, Rosalyn R. Dance, Georgia Alvis-Long, Christopher P. Stolle, and Sally Hudson only in their official capacities as VSBE members.

⁴ Plaintiffs sued Defendant Koski only in his official capacity as Commissioner of ELECT.

⁵ Plaintiffs sued Defendant Spicer only in his official capacity as General Registrar.

⁶ Virginia Const., Article II, § 1 requires that each voter “shall be a resident of the Commonwealth and of the precinct where he votes.”

Code § 24.2-452(1)(e) and Va. Code § 24.2-456 are unconstitutional and void, (2) injunctive relief preventing Defendants from registering or issuing ballots to voters qualified under these statutes, and (3) that the Court compel Defendants to issue guidance to local election officials and update public websites on this matter.

On May 4, 2026, Defendants filed both their Demurrer on Behalf of All Defendants (“Demurrer”) and their Pleas in Bar Based on Sovereign Immunity and Lack of Standing on Behalf of All Defendants (“Plea in Bar”). On June 10, 2026, Defendants filed a Memorandum in Support of Defendants’ Demurrer, as well as a Memorandum in Support of Defendants’ Plea in Bar Based on Sovereign Immunity and a Memorandum in Support of Defendants’ Plea in Bar Based on Standing (collectively, “Memoranda in Support”). Plaintiffs filed responsive Briefs in Opposition to both the Demurrer and Plea in Bar on July 10, 2026. Subsequently, Defendants filed Reply Briefs in Support of their Demurrer and for each Plea in Bar argument on July 23, 2026. The Court heard the matter on August 5, 2026, and took the matter under advisement.

PLEA IN BAR STANDARD

“A plea in bar asserts a single issue, which, if proved, creates a bar to a plaintiff’s recovery.” *Hawthorne v. VanMarter*, 279 Va. 566, 577 (2010). “The party asserting a plea in bar carries the burden of proof.” *Cooper Indus., Inc. v. Melendez*, 260 Va. 578, 594 (2000). “The issue raised by a plea in bar may be submitted to the circuit court for decision based on a discrete body of facts identified by the parties through their pleadings, or developed through the presentation of evidence supporting or opposing the plea.” *Hawthorne v. VanMarter*, 279 Va. at 577. “Where no evidence is taken in support of the plea, the trial court, and the appellate court upon review, must rely solely upon the pleadings in resolving the issue presented and the facts

⁷ Pl.’s Compl. ¶ 7.

stated in the motion for judgment are deemed true.” *Tomlin v. McKenzie*, 251 Va. 478, 480 (1996).

DISCUSSION

1. PLEA IN BAR

Defendants assert that two issues create a bar to Plaintiffs’ recovery: (1) sovereign immunity, and (2) standing. The following arguments were presented in Defendant’s Plea in Bar and Memoranda in Support and heard on August 5, 2026.

A. Plea of Sovereign Immunity

Defendants argue that Defendants VSBE and ELECT, as agencies of the Commonwealth, “absent an express statutory or constitutional provision waiving sovereign immunity, [...] are immune from liability for the tortious acts or omissions of their agents and employees.” *Rector & Visitors of the Univ. of Va. v. Carter*, 267 Va. 242, 244 (2004). Furthermore, Defendants collectively maintain that the individual Defendants sued in their official capacities likewise enjoy “whatever immunity the sovereign may be entitled to claim.” *Hinchey v. Ogden*, 226 Va. 234, 238 (1983). Defendants assert that “the court is without subject matter jurisdiction to adjudicate the claim” in this case as a result of their sovereign immunity because the General Assembly has not “explicitly and expressly” waived this immunity by statute. *Afzall v. Commonwealth*, 273 Va. 226, 230 (2007); *see also Commonwealth v. Luzik*, 259 Va. 198 (2000). Defendants further maintain that Article II Section 1 of the Virginia Constitution is not self-executing and thus does not overcome Defendants’ enjoyment of sovereign immunity. *Gray v. Va. Secy. of Transp.*, 276 Va. 93, 102 (2008).

In Plaintiffs' Brief in Opposition, Plaintiffs argue that sovereign immunity does not bar their Complaint. First, Plaintiffs claim that Article II Section 1 of the Virginia Constitution is self-executing because of its repeated use of the word "shall," which directly establishes voter qualifications without requiring supplemental legislation from the General Assembly to be enforced. Va. Const. art. II, § 1. Additionally, Plaintiffs contend that sovereign immunity does not protect Defendants in the enforcement of unconstitutional statutes like Va. Code § 24.2-452(1)(e) and Va. Code § 24.2-456. *Gray v. Va. Secy. of Transp.*, 74 Va. Cir. 30 (2007); *see also Howell v. McAuliffe*, 292 Va. 320, 351 (2016).

According to Article II, Section 1 of the Virginia Constitution, "each voter shall be a citizen of the United States, shall be eighteen years of age, shall fulfill the residence requirements set forth in this section, and shall be registered to vote pursuant to this article." Va. Const. art. II, § 1. The residence requirements prescribe that "each voter shall be a resident of the Commonwealth and of the precinct where he votes. Residence, for all purposes of qualification to vote, requires both domicile and a place of abode." *Id.* This constitutional provision further notably provides that "the General Assembly may provide for persons who are employed overseas, and their spouses and dependents residing with them, and who are qualified to vote except for relinquishing their place of abode in the Commonwealth while overseas, to vote in the Commonwealth." *Id.*

The Uniform Military and Overseas Voters Act (UOCAVA) incorporates into the statutory definition of a "covered voter" that "an overseas voter" born abroad is eligible to vote in the Commonwealth if "(1) the last place where a parent or legal guardian of the voter was, or under this chapter would have been, eligible to vote before leaving the United States is within this state; and (2) the voter has not previously registered to vote in any other state." Va. Code §

24.2-452(1)(e). Furthermore, an overseas voter eligible pursuant to this provision “shall use and must be assigned to [...] the address of the last place of residence in this state of the parent or legal guardian of the voter. If that address is no longer a recognized residential address, the [overseas] voter must be assigned an address for voting purposes.” Va. Code § 24.2-456.

The Doctrine of sovereign immunity is “a rule of social policy, which protects the state from burdensome interference with the performance of its governmental functions and preserves its control over state funds, property, and instrumentalities.” *Hinchey v. Ogden*, 226 Va. 234, 240 (1983). Additionally, sovereign immunity serves further purposes such as: “protecting the public purse, providing for smooth operation of government, eliminating public inconvenience and danger that might spring from officials being fearful to act, assuring that citizens will be willing to take public jobs, and preventing citizens from improperly influencing the conduct of governmental affairs through [...] vexatious litigation.” *Messina v. Burden*, 228 Va. 301, 308 (1984).

To effectuate sovereign immunity in practice, “because the Commonwealth can act only through individuals, the doctrine applies not only to the state, but also to certain government officials.” *Gray v. Va. Secy. of Transp.*, 276 Va. 93, 102 (2008); *Id.* Sovereign immunity for the Commonwealth or its officers can be waived by an express statutory provision or by the self-executing nature of a provision of the Constitution of Virginia. *Afzall v. Commonwealth*, 273 Va. 226, 230 (2007); *Gray v. Va. Secy. of Transp.*, 276 Va. 93, 103 (2008). A constitutional provision is “self-executing” when it (1) “expressly so declares,” (2) is contained “in bills of rights,” (3) is “merely declaratory of common law,” (4) “specifically prohibit[s] particular conduct,” (5) is “of a negative character,” or “supplies a sufficient rule by means of which the

right given may be employed and protected, or the duty imposed may be enforced.” *Gray v. Va. Secy. of Transp.*, 276 Va. 93, 103-04 (2008).

The Court **FINDS** that Defendants enjoy sovereign immunity in this matter, leaving this Court without subject matter jurisdiction. The General Assembly has not passed any statute that “explicitly and expressly” waives Defendants’ sovereign immunity. *Afzall v. Commonwealth*, 273 Va. 226, 230 (2007). Furthermore, Article II Section 1 of the Virginia Constitution is not self-executing; it does not “expressly” declare that it is self-executing, it does not exist within the Bill of Rights, it is not “merely declaratory of common law,” it does not “specifically prohibit particular conduct,” it is not “of a negative character,” and it does not provide a rule regarding how the “right given may be employed and protected, or the duty imposed may be enforced.” *Gray v. Va. Secy. of Transp.*, 276 Va. 93, 103-04 (2008). Therefore, Article II Section 1 does not waive Defendants’ sovereign immunity. *Id.* at 103.

B. Plaintiffs’ Lack of Standing

As a result of its ruling on the Plea in Bar, the Court need not decide on the issue of standing raised by the Plea in Bar.

2. DEMURRER

As a result of its ruling on the Plea in Bar, the Court need not decide the remaining issues on demurrer.

RULING

Having found that Defendants did not waive sovereign immunity via statutory waiver or via the self-execution of Article II Section 1 of the Virginia Constitution, the Court **SUSTAINS** Defendants' Special Plea in Bar.

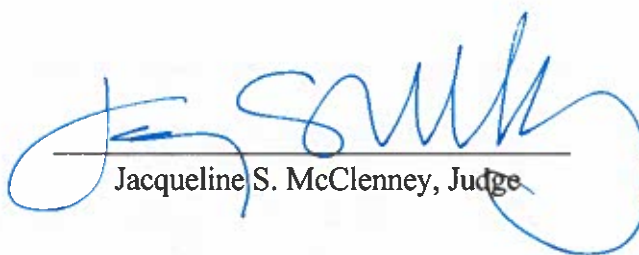
The Clerk is **DIRECTED** to forward a certified copy of this Order to the parties.

The Court **DISPENSES** with the parties' endorsements pursuant to Rule 1:13.

It is so **ORDERED**.

ENTER:

9/8/2016


Jacqueline S. McClenney, Judge