



SENT VIA POSTAL MAIL AND EMAIL

May 1, 2020

Mr. Douglas B. Robelen  
Clerk of the Court  
Supreme Court of Virginia  
100 N. 9th Street  
Richmond, VA 23219

Subject: Letter of Support for Arlington County Board Petition Seeking  
Extension of Special Election Date Pursuant to Virginia Code  
Section 24.2-603.1

Dear Mr. Robelen:

On behalf of the Arlington County Democratic Committee and as a registered voter in Arlington, Virginia, enclosed please find my letter of support for the petition submitted by the Arlington County Board on May 1, 2020, seeking an extension of the date set for the Arlington County Board Special Election pursuant to Virginia code section 24.2-603.1.

If you have any questions concerning this letter, please contact me at [chair@arlingtondemocrats.org](mailto:chair@arlingtondemocrats.org) or 703-528-8588. Thank you for your consideration of this letter.

Sincerely,

A handwritten signature in blue ink that reads "Jill Caiazzo".

Jill Caiazzo  
Chair, Arlington County Democratic Committee

**IN THE SUPREME COURT OF VIRGINIA**  
**IN RE: CHANGE IN DATE OF SPECIAL ELECTION TO FILL**  
**VACANCY ON ARLINGTON COUNTY BOARD**

**LETTER OF SUPPORT FOR ARLINGTON COUNTY BOARD**  
**PETITION SEEKING EXTENSION OF SPECIAL ELECTION DATE**  
**PURSUANT TO VIRGINIA CODE SECTION 24.2-603.1**

On behalf of the Arlington County Democratic Committee (“Arlington Democrats”)<sup>1</sup> and as a registered voter in Arlington, Virginia, I am writing to express support for the petition submitted by the Arlington County Board pursuant to section 24.2-603.1 of the Virginia Code (the “Petition”), seeking postponement of the July 7, 2020 special election to fill the Arlington County Board seat now vacant as a result of the death of Erik Gutshall. **In particular, when acting upon the Petition, I respectfully request that this court exercise its equitable powers to grant at least a two-month extension of the special election to a date that is sufficient for political parties, such as the Arlington Democrats, to safely run vote-by-mail nomination processes open to the public during this time of public health crisis.**

Background

On April 24, 2020, pursuant to Virginia code section 15.2-705, Arlington Circuit Court Judge Newman issued a writ setting July 7, 2020 as the date for the special election to fill the seat on the Arlington County Board that is now vacant due to Erik Gutshall’s death. By order of the Arlington Electoral Board pursuant to Virginia code section 24.2-510, political parties, including the Arlington Democrats, must nominate their candidates for the special election by May 8, 2020. Both the July 7 and May 8 dates are the last possible dates permitted by the respective code provisions.

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<sup>1</sup> The Arlington County Democratic Committee is the official county organization for the Democratic Party of Virginia.

The resulting 14-day window for political parties to conduct their nominating processes is aggressive even under normal circumstances. During a pandemic involving unprecedented social distancing measures, it is impossible for a political party to safely run a nominating process open to the public in this amount of time.

Arlington Democrats' experience, which I have personally observed, indicates that approximately two months are needed to conduct an open nomination process using vote-by-mail, which is the voting method recommended by the Centers for Disease Control and Prevention during the current pandemic.<sup>2</sup> In particular, Arlington Democrats currently is facilitating a county-wide vote-by-mail process with respect to a different elective office race, and we have observed the following: approximately three weeks is needed for voters to request ballots; approximately three weeks are needed to process and mail the ballots to voters; approximately a week is needed to ensure ballots are returned; and approximately a week is needed to count the votes.

Arlington Democrats has both the resources and the will to hold an open vote-by-mail nomination process for the Arlington County Board special election over a two-month period.<sup>3</sup> However, given the two-week nomination period mandated by the Virginia code notwithstanding the pandemic, Arlington Democrats instead has been forced to initiate a closed nomination process limited to the leadership of the Arlington Democrats which will conclude on May 6, 2020.<sup>4</sup> The rules adopted by the Arlington Democrats to govern this process<sup>5</sup> expressly

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<sup>2</sup> See Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19) Recommendations for Election Polling Locations, *available at* [www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html](http://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html).

<sup>3</sup> See Arlington Democrats, Special Election Webpage, *available at* [arlingtondemocrats.org/vote/special-election](http://arlingtondemocrats.org/vote/special-election) (“Arlington Democrats is prepared to transform this nomination process into a vote-by-mail process open to all Democratic registered voters in Arlington if the nomination period is extended to encompass a two-month period.”).

<sup>4</sup> See *id.*

<sup>5</sup> See Rules for the Arlington County Democratic Committee Unassembled (Virtual) Caucus for Nomination of a Candidate in the Arlington County Board Special Election to be Held on July 7, 2020 at section 8, *available at* [arlingtondemocrats.org/wp-content/uploads/2020/04/2020-CB-Special-Election-Rules-final.pdf](http://arlingtondemocrats.org/wp-content/uploads/2020/04/2020-CB-Special-Election-Rules-final.pdf).

envision the transformation of the closed nomination process into a vote-by-mail nomination process open to the public -- if the special election timeline is timely<sup>6</sup> and sufficiently extended to permit Arlington Democrats to run such an open process.

### Equitable and Legal Considerations

In making a request for equitable relief in the form of a two-month extension of the July 7, 2020 Arlington County Board special election, I respectfully draw this court's attention to the following important equitable and legal considerations in support of the Petition.

1. The “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.”<sup>7</sup> Consistent with this principle, the U.S. Supreme Court has struck down state laws that unduly infringe upon the associational rights of political parties.<sup>8</sup>
2. In this case, the Virginia code provisions establishing an aggressive nomination timeline for a special election unduly infringe upon the associational rights of Arlington political parties during a pandemic. While these code provisions may pass constitutional muster in ordinary times, as applied in the current extraordinary circumstances of a pandemic, they are overly prescriptive and constitutionally infirm. The compressed timeline for the nomination process dictated by Virginia code section 15.2-705 effectively disenfranchises thousands of Arlington voters who wish to participate in their parties’ respective nomination contests.

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<sup>6</sup> Voting in the current closed nomination process will conclude on May 6, 2020, and the Democratic nominee will be determined shortly thereafter. Only an extension of the special election timeline granted prior to 7:00 pm EDT on May 6, 2020 will prevent the Democratic nominee from being determined pursuant to the current closed nomination process.

<sup>7</sup> *Kusper v. Pontikes*, 414 U.S. 51, 56-57 (1973).

<sup>8</sup> *See, e.g., Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 (1986), *Eu v. San Francisco County Democratic Central Committee*, 489 U.S. 214 (1989), *California Democratic Party v. Jones*, 530 U.S. 567 (2000).

3. “[C]ourts considering a challenge to state election laws ‘must weigh the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate against the precise interests put forward by the State as justifications for the burden imposed by its rule, taking into consideration the extent to which those interests make it necessary to burden the plaintiffs rights.’”<sup>9</sup> In this case, the state -- in the form of the Arlington County Board -- has affirmatively eschewed any interest in the aggressive special election timeline, through the Petition seeking an extension of this date until November 2, 2020 for sound public policy reasons.

To the extent that a state interest may exist beyond that expressed by the Arlington County Board, such an interest presumably would lie in the orderly administration of elections. However, the requested two-month extension of the special election is modest and does not significantly impact this state interest. Indeed, the extension may further the orderly administration of elections, insofar as the Arlington Registrar may benefit from having additional time between the primary election scheduled for June 23, 2020 and the special election. In any event, such a minor impact on the special election timeline clearly is outweighed by the inability of political parties to run nomination processes open to the public under the current special election timeline during a pandemic.

Another possible state interest may lie in the prompt filling of elected positions that are vacated mid-term. Here again, a mere two-month delay does not significantly impact this state interest. Further, the Commonwealth of Virginia regularly accepts such a modestly extended timeline for special elections pursuant to Virginia code section 24.2-226, which is the code provision applicable to special elections for most local offices. While that code section does not apply to Arlington’s form of county government, the state’s tolerance for an extended special election timeline for the filling of other important local elected offices across the Commonwealth indicates that it does not have a strong interest in maintaining the aggressive special election timeline set forth in Virginia code section 15.2-705.

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<sup>9</sup> *Florida Democratic Party v. Scott*, 215 F.Supp.3d 1250, 1256 (N. Dist. Fl. 2016) (quoting *Burdick v. Taskushi*, 504 U.S. 428, 434 (1992)).

4. In recent weeks, Virginia courts have repeatedly found that equitable adjustments to the Virginia code provisions governing elections have been necessary in light of the current pandemic. For example, in *Omari Faulkner for Virginia v. Virginia Department of Elections*, the Circuit Court of the City of Richmond concluded that ballot petition requirements which are reasonable under ordinary circumstances impose a “significant” burden on candidates for elected office during the current pandemic, “as it precludes them from freely associating at the highest level with the political party of their choice.”<sup>10</sup> The court therefore applied strict scrutiny in its constitutional analysis and ultimately granted relief from the specific ballot petition requirement set by Virginia code.

Similarly, in *League of Women Voters of Virginia v. Virginia State Board of Elections*, the U.S. District Court for the Western District of Virginia found that it was appropriate to order the waiver of absentee ballot witness requirements during the current pandemic.<sup>11</sup> In doing so, the court observed that its order “preserves the constitutional right to vote of Plaintiffs and other Virginia voters while promoting public health during a pandemic and does so without harming the integrity of Virginia’s elections.”<sup>12</sup>

While not binding on this court, these precedents support the seriousness of the current request and strongly signal that equitable relief is appropriate in this case.

## Conclusion

On behalf of the Arlington Democrats and as a registered voter in Arlington, Virginia, I respectfully request that this court exercise its equitable powers to enable all Arlington voters to safely participate in the open nominating processes of their chosen political parties, by granting at least a two-month extension of the July 7, 2020 Arlington County Board special election in response to the Petition.

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<sup>10</sup> *Omari Faulkner for Virginia v. Virginia Dep’t of Elections*, Circuit Court of the City of Richmond Order dated March 25, 2020 at page 3.

<sup>11</sup> *See League of Women Voters of Virginia v. Virginia State Bd. of Elections*, U.S. District Court for the Western District of Virginia Order dated April 27, 2020.

<sup>12</sup> *Id.* at 5.

Thank you for your consideration of this letter and for your honorable service to our Commonwealth.

Sincerely,



Jill Caiazzo  
Chair, Arlington County Democratic Committee

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Date: May 1, 2020