

IN THE UNITED STATES DISTRICT COURT
 FOR THE WESTERN DISTRICT OF VIRGINIA
 ROANOKE DIVISION

AARON LUCIANI,)	
)	
Plaintiff,)	Civil Action No. 7:20CV401
)	
v.)	<u>ORDER</u>
)	
VIRGINIA STATE BOARD OF)	By: Hon. Glen E. Conrad
ELECTIONS, <u>et al.</u> ,)	Senior United States District Judge
)	
Defendants.)	
)	

This matter is before the court on plaintiff Aaron Luciani’s motion for an emergency preliminary injunction and/or temporary restraining order against the Virginia State Board of Elections and certain officers of the Commonwealth of Virginia sued in their official capacities (collectively, the “Board of Elections”). Luciani seeks to appear on the 2020 general election ballot as an independent candidate for the United States House of Representatives in Virginia’s 6th Congressional District. He contends that the combination of the outbreak of the COVID-19 virus and Virginia Governor Ralph Northam’s response to the outbreak have made it impossible for him to satisfy the signature requirements for appearing on the ballot.

The COVID-19 virus appeared in the United States in early 2020. The Centers for Disease Control and Prevention website notes that the virus may result in severe complications for those infected. To avoid the risk of infection, the agency recommends that individuals stay at least six feet away from people who are not members of their households. See Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19), How to Protect Yourself and Others*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

On March 30, 2020, Governor Northam entered a “stay at home order,” which initially restricted public movement and gathering, except for very limited purposes, until June 10, 2020.

See Commonwealth of Virginia, Office of the Governor, Exec. Order No. 55, *Temporary Stay at Home Order Due to Novel Coronavirus (COVID-19)* (Mar. 30, 2020), [https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-55-Temporary-Stay-at-Home-Order-Due-to-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-55-Temporary-Stay-at-Home-Order-Due-to-Novel-Coronavirus-(COVID-19).pdf). That order has since been amended, but still places restrictions on public gatherings. See, e.g., Commonwealth of Virginia, Office of the Governor, Exec. Order No. 65, *Phase Two Easing of Certain Temporary Restrictions Due to Novel Coronavirus (COVID-19)* (June 5, 2020), [https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-65-and-Order-Of-Public-Health-Emergency-Six---AMENDED---Phase-Two-Easing-of-Certain-Temporary-Restrictions-Due-to-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-65-and-Order-Of-Public-Health-Emergency-Six---AMENDED---Phase-Two-Easing-of-Certain-Temporary-Restrictions-Due-to-Novel-Coronavirus-(COVID-19).pdf); Commonwealth of Virginia, Office of the Governor, Executive Actions, <https://www.governor.virginia.gov/executive-actions/> (last visited July 29, 2020).

Among other requirements, Virginia requires that independent or minor party candidates for the United States House of Representatives submit candidate petitions containing 1,000 signatures from qualified voters in order to appear on general election ballots. Va. Code Ann. § 24.2-506(A)(2). A qualified witness for each signature is required. Id. § 24.2-506(A). Virginia also provides a statutory deadline for these candidates to submit their petitions: the applicable deadline for Luciani was June 9, 2020 at 7:00 p.m. See Va. Code Ann. § 24.2-507 (providing that “[f]or a general election in November,” the “declarations of candidacy and the petitions therefor shall be filed . . . by 7:00 p.m. on the second Tuesday in June”).

Proceeding pro se, Luciani filed this action on July 13, 2020, alleging that Virginia’s requirements for appearing on the November 2020 general election ballot violate the First and Fourteenth Amendments in light of the ongoing COVID-19 pandemic and Governor Northam’s

orders. See Constitution Party of Virginia v. Virginia State Bd. of Elections, No. 3:20-CV-349, 2020 WL 4001087 (E.D. Va. July 15, 2020) (concluding that the signature requirements set forth in the Virginia Code §§ 24.2-506, 24.2-543 failed strict scrutiny in that case). He filed the instant motion on the same day.

Counsel for the Board of Elections appeared in this action, but did not submit a written opposition to Luciani's motion. The court held a hearing on the motion via teleconference on July 29, 2020, at which both sides presented argument. During that hearing, Luciani confirmed that he would be satisfied if he received the same relief ordered by Judge John A. Gibney, Jr. after a bench trial in the United States District Court for the Eastern District of Virginia. Constitution Party of Virginia, 2020 WL 4001087, at *1 (enjoining the defendants from enforcing the signature requirements as applied to the plaintiffs; and, inter alia, extending the deadline for candidates for the U.S. House of Representatives to August 1, 2020 at 7:00 p.m. and holding that those candidates need only submit 35 percent of the total signatures required). For the reasons stated during the hearing, it is hereby

ORDERED

that Luciani's motion, ECF No. 3, is **GRANTED IN PART**. The court hereby **ENJOINS** enforcement of the signature requirements as to Luciani in this election cycle as follows:

1. The deadline for Luciani to submit the petition signatures required to appear on the general election ballot as a candidate for the U.S. House of Representatives is extended to August 1, 2020 at 7:00 p.m. See Va. Code Ann. § 24.2-507.
2. The Board of Elections must lower the signature requirements for Luciani to 35 percent of the total petition signatures required by Virginia Code § 24.2-506(A)(2).
3. In all other respects, the court declines to enjoin enforcement of Virginia's signature

requirements.

This order shall apply only to the plaintiff, and nothing in this order shall be construed as granting any rights to any prospective candidate aside from the plaintiff in this action. The parties shall bear their own costs.

The Clerk is directed to send copies of this order to Luciani and all counsel of record.

DATED: This 30th day of July, 2020.

A handwritten signature in black ink, appearing to read "J. Course". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Senior United States District Judge