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AT LYNCHBURG, VA
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

LEAGUE OF WOMEN VOTERS
OF VIRGINIA, *et al.*,

Plaintiffs,

v.

VIRGINIA STATE BOARD
OF ELECTIONS, *et al.*,

Defendants.

CASE No. 6:20-cv-00024

ORDER

JUDGE NORMAN K. MOON

Before the Court is the Joint Motion for Entry of Partial Consent Judgment and Decree, Dkt. 35 (“Joint Motion”), submitted by Plaintiffs League of Women Voters of Virginia, Katherine D. Crowley, Erikka Goff, and Seijra Toogood and Defendants Virginia State Board of Elections and, in their official capacities, its Chairman (Robert H. Brink), Vice-Chair (John O’Bannon), and Secretary (Jamilah D. LeCruise), as well as the Commissioner of the Virginia Department of Elections (Christopher E. Piper) (“State Defendants”).

For the reasons set forth in the accompanying Memorandum Opinion, the Court hereby **GRANTS** the Joint Motion, Dkt. 35, and **APPROVES** the proposed Partial Consent Judgment and Decree, Dkt. 35-1, which shall be attached to, and incorporated in, this Order.

It is so **ORDERED**.

The Clerk of the Court is directed to send a certified copy of this Order and the accompanying Memorandum Opinion to all counsel of record.

Entered this day of 5th May, 2020.


NORMAN K. MOON
SENIOR UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Lynchburg Division

LEAGUE OF WOMEN VOTE
VIRGINIA; KATHERINE
CROWLEY; ERIKKA GOFI
SEIJRA TOOGOOD,

6:20-cv-00024-NKM

Plaintiffs,

v.

VIRGINIA STATE BOARD OF
ELECTIONS; ROBERT H. BRINK,
JOHN O'BANNON, and JAMILAH D.
LECRUISE, in their official capacities as
Chairman, Vice-Chair, and Secretary of
the Virginia State Board of Elections,
respectively; and CHRISTOPHER E.
PIPER, in his official capacity as
Commissioner of the Virginia Department
of Elections,

Defendants.

PARTIAL CONSENT JUDGMENT AND DECREE

1. Whereas on March 12, 2020, Virginia Governor Ralph S. Northam issued Executive Order 51 (EO 51) in which he declared a state of emergency in Virginia in response to the spread in Virginia of a respiratory illness (COVID-19) caused by a novel coronavirus.

2. Whereas, on March 30, 2020, in Executive Order 55 (EO 55), Governor Northam directed that, subject to limited exceptions, “[a]ll individuals in Virginia shall remain at their place of residence, except as provided below by this Order and Executive Order 53.” ¶ 1. EO 55’s restrictions will remain in place until June 10. *Id.* at p. 3.

3. Whereas on April 13, 2020, researchers from the University of Virginia’s

Biocomplexity Institute summarized their research in a presentation to Virginia's Secretary of Health and Human Resources entitled "Estimation of COVID-19 Impact in Virginia." *See* UVA Biocomplexity Institute PowerPoint presentation, <https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/Combined-PPT-April-13.pdf>. The researchers predict that if current restrictions were lifted on April 30, infection rates would begin to climb earlier than if the restrictions remained in place until June 10. *See id.* at p. 8-18. These researchers also predict that if current restrictions remain in place through June 10, COVID-19 cases in Virginia will likely not peak until approximately August. *See id.* at p. 15-16.

4. Whereas on April 17, 2020, Plaintiffs League of Women Voters of Virginia, Katherine D. Crowley, Erika Goff, and Seijra Toogood ("Plaintiffs") filed a complaint against the above-named Defendants challenging enforcement during the ongoing public health crisis caused by the spread of a novel coronavirus, SARS-CoV-2, of Virginia's requirement that every voter filling out an absentee ballot must open, mark, and refold their ballot in the presence of a witness, and then have the witness sign their ballot envelope (the "witness requirement"). Among other relief requested, the Complaint sought to enjoin enforcement of the witness requirement (as stated in Va. Code § 24.2-706 and § 24.2-707 and as interpreted by 1 Va. Admin. Code 20-70-20(B)) for as long as public health officials continue to recommend social distancing practices due to the risk of community transmission of COVID-19, the respiratory disease caused by SARS-CoV-2. ECF No. 1 at 33.

5. Whereas on April 21, 2020, Plaintiffs filed a motion for preliminary injunction requesting this Court prohibit the above-named Defendants from enforcing the witness requirement for all Virginia voters for the primary election to be held on June 23, 2020 ("June Primary"), and for all subsequent elections in Virginia until such time as in-person interactions

required by compliance with the witness requirement no longer pose a risk to public health and personal safety. Plaintiffs' motion further requested that Defendants be ordered to issue guidance instructing election officials to count otherwise validly cast absentee ballots missing a witness signature and conduct a public information campaign in conjunction with city and county election officials about the elimination of the requirement.

6. Whereas federal guidelines state: “[e]veryone should . . . avoid close contact” by “stay[ing] home as much as possible” and “put[ting] distance between yourself and other people.” Centers for Disease Control and Prevention, *Coronavirus Disease 2019: How to Protect Yourself & Others*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> (last visited Apr. 27, 2020). And whereas other federal guidelines “[e]ncourage voters to use voting methods that minimize direct contact.” Centers for Disease Control and Prevention, *Recommendations for Election Polling Locations: Interim guidance to prevent spread of coronavirus disease 2019 (COVID-19)*, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (last visited Apr. 26, 2020).

7. Whereas on April 24, 2020, Governor Northam released “Forward Virginia,” (Blueprint), explaining the metrics that must be in place to begin relaxing measures implemented to slow the spread of COVID-19. *Forward Virginia PowerPoint* <https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/Slide-Deck-4-24-2020-.pdf>. Phase One of the Blueprint will begin when, among other factors, the percentage of positive COVID-19 tests decreases over a fourteen day period. *See id.* As of April 27, 2020, the percentage of positive tests continued to increase. *See id.*

8. Whereas pursuant to Va. Code § 24.2-612, absentee voting must be available 45 days prior to the June Primary, or Saturday, May 9, 2020. For localities whose general registrar's offices are closed on Saturday, absentee ballots must be available on May 8, 2020.

9. Whereas in light of the data that supports the Plaintiffs' concerns for their safety if they are required to interact with others in order to cast their ballot in the June Primary, Plaintiffs and Defendants (collectively, the "Consent Parties") agree that an expeditious resolution of this matter for the June Primary, in the manner encompassed by the terms of this Consent Decree, is in the best interests of the health, safety, and constitutional rights of the citizens of the Commonwealth of Virginia, and therefore in the public interest.

10. Whereas the Consent Parties further agree that no eligible voter should have to choose between casting a ballot that will count and placing their own health at risk.

11. Whereas Defendants agree not to enforce the witness requirement for the June Primary for absentee voters who believe they may not safely have a witness present while completing their ballot.

12. Whereas Plaintiffs agree to withdraw their April 21, 2020, motion for preliminary injunction upon entry of this Partial Consent Judgment and Decree.

13. Whereas the Consent Parties agree that entry of this Consent Decree does not affect the viability of Plaintiffs' claims under the First and Fourteenth Amendments to the Constitution, or Section 2 of the Voting Rights Act, with respect to enforcement of the witness requirement in any subsequent elections after the June Primary.

14. Whereas Plaintiffs agree to a waiver of any entitlement to damages, fees, including attorneys' fees, expenses, and costs, that may have accrued as of the date of the entry of this order, with respect to the claims raised by Plaintiffs in this action, provided, however, that

Plaintiffs reserve their rights to seek costs and attorneys' fees on their claims in the event of material non-compliance by Defendants with the terms and conditions of this Consent Decree.

15. Whereas the Court finds that it has subject matter jurisdiction over the Consent Parties and that the Partial Consent Judgment and Decree is fair, adequate, and reasonable and not illegal, a product of collusion, or against the public interest, because such agreement 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. It does give appropriate weight to Defendants' expertise and public interest responsibility in the area of election administration.

16. Whereas Plaintiffs made a sufficiently strong showing on the merits of the claim, as shown in their complaint and motion for preliminary injunction, to further support the fairness, adequacy, and reasonableness of this Partial Consent Judgment and Decree.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED FOR THE REASONS STATED ABOVE IN PARAGRAPHS 1-16 THAT:

1. For the Primary elections scheduled for June 23, 2020, Defendants shall not enforce the requirement, as stated in Va. Code § 24.2-706 and § 24.2-707, that absentee voters who believe that they may not safely have another individual present to witness the voter open, mark, and refold their ballot, and then have that that individual sign the absentee ballot envelope next to the voter's statement and signature.

2. Defendants shall issue guidance instructing all relevant city and county election officials to count all absentee ballots in the June primary that are otherwise validly cast but missing a witness signature.

3. Defendants shall issue updated instructions to include with all absentee ballots as provided in Va. Code. § 24.2-706—or issue guidance instructing all relevant city and county election officials to modify or amend the printed instructions accompanying each absentee ballot—to inform voters that any absentee ballot cast in the June Primary without a witness signature will not be rejected on that basis and specifically informing voters in bold print that they may disregard the witness signature line on the absentee ballot envelope if they believe they may not safely have a witness present while completing their ballot.

4. Defendant Commissioner of Elections shall take additional reasonable steps to inform the public that the witness requirement will not be enforced for the June Primary for those absentee voters who believe they may not safely have a witness present while completing their ballot, and issue guidance instructing all relevant city and county election officials to do the same.

5. Plaintiffs will withdraw their motion for a preliminary injunction.

6. In accordance with the terms of this Consent Decree, the Consent Parties shall each bear their own fees, expenses, and costs incurred as of the date of this Order, with respect to all claims raised by Plaintiffs against the Defendants.


NORMAN K. MOON
SENIOR UNITED STATES DISTRICT JUDGE

Dated: May 5, 2020

/s/ Davin M. Rosborough
Davin M. Rosborough (VSB # 85935)
Dale E. Ho*
Sophia Lin Lakin*
Theresa J. Lee*

MARK R. HERRING
Attorney General of Virginia
By: /s/ Carol L. Lewis
CAROL L. LEWIS (VSB #92362)
MICHELLE S. KALLEN (VSB #93286)

Adriel I. Cepeda-Derieux*
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Tel.: (212) 549-2500
drosborough@aclu.org
dho@aclu.org
slakin@aclu.org
tlee@aclu.org
acepedaderieux@aclu.org

Vishal Agraharkar (VSB #93265)
Eden Heilman (VSB #93554)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF AMERICA, INC.
701 E. Franklin Street, Suite 1412
Richmond, Virginia 23219
Phone: (804) 644-8080
Fax: (804) 649-2733
vagraharkar@acluva.org
eheilman@acluva.org

Attorneys for Plaintiffs

*Admitted *pro hac vice*

HEATHER HAYS LOCKERMAN (VSB #65535)
Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219
804-692-0558 (telephone)
804-692-1647 (facsimile)
clewis@oag.state.va.us

*Attorneys for Robert H. Brink, John O'Bannon,
Jamilah D. LeCruise and Christopher E. Piper in
their official capacities, and the Virginia State
Board of Elections*