

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

LEAGUE OF WOMEN VOTERS OF VIRGINIA, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 6:20-cv-00024
)	
VIRGINIA STATE BOARD OF ELECTIONS, et al.,)	
)	
Defendants.)	

**DEFENDANTS’ MEMORANDUM REGARDING
PROPOSED JOINT AMENDED CONSENT DECREE**

Throughout this proceeding, Virginia elections officials have worked diligently to ensure that all qualified Virginians have a free, fair, and safe opportunity to vote despite the challenges presented by the ongoing COVID-19 pandemic. In order to do so, State Defendants entered into consent decrees with Plaintiffs for the June 23 primary, Dkt. 68, and the November 3 general and special elections, Dkt. 110, to enjoin enforcement of the witness requirement under Va. Code §§ 24.2-706 and 24.2-707 (the witness requirement).

Plaintiffs and State Defendants have again found a solution to address the ongoing pandemic conditions while protecting voters’ ability to vote safely and fairly, Dkt. 118, in accordance with the Fourth Circuit’s “strong policy” of fostering efforts by parties to jointly resolve disputes “to advantage the parties and to conserve scarce judicial resources.” *Okie Int’l Co. v. Old Dominion Footwear, Inc.*, No. 6:13-CV-00012, 2014 WL 176770, at *1 (W.D. Va. Jan. 16, 2014) (internal citations and quotations omitted). Pursuant to this Court’s order of December 18, 2020, State Defendants submit this memorandum to provide further information in support of the Joint Motion to Amend the Partial Consent Judgment And Decree (the Joint Motion). Dkt. 118.

State Defendants address the Court's first topic. Plaintiffs, in a separate memorandum, will address the Court's second and third topics.

ARGUMENT

In its first topic, the Court asked the parties to the proposed consent decree to explain “[w]hat instructions have already been sent out to voters requesting absentee ballots for these upcoming elections, and attach[] to the filing(s) examples of exhibits of any such instructions[.]” Order to Respond, Dkt. 120. The State Defendants have been committed to providing prompt, thorough instructions and conducting public outreach to voters and local elections officials under the terms of the past two consent decrees.¹ The State Defendants will disseminate instructions relating to the witness requirement upon issuance of this Court's order relating to whether the witness requirement is in effect with respect to the January and February 2021 special elections to ensure that affected voters and localities are fully informed.

Absentee instruction forms

Each absentee ballot package contains certain materials and instructions: (1) an outgoing envelope, (2) an envelope to return the absentee envelope, (3) an absentee ballot, which is contained in an outer envelope, and (4) a form that instructs the voter how to complete and submit their absentee ballot.²

Ballot packages for the January 5, 2021 special election in House of Delegates District 2 (encompassing Prince William County and Stafford County) will be sent to voters beginning the

¹ Following the November 3 election, the instructions on the Department's website relating to a witness signature not being required were removed.

² An example of the instructional form sent with ballot packages for the November 3, 2020 election is attached as Exhibit A, and an example of that form sent to uniformed and overseas voters is attached as Exhibit B. An example of the form sent to uniformed and overseas voters who received their absentee ballot materials electronically for the November 3, 2020 election is attached as Exhibit C.

week of December 21, 2020. Ballot packages for the January 5, 2021 special election in House of Delegates District 90 (encompassing the City of Norfolk and Virginia Beach City) were available to be sent December 14, 2020 in Virginia Beach City³ and began being sent December 18, 2020 in the City of Norfolk⁴. Ballot packages for the January 5, 2021 special elections in Prince William County and Stafford County will begin to be mailed the week of December 21, 2020. Ballot packages for the February 2, 2021 special elections in King William County began being mailed on December 18, 2021.⁵ Ballot packages for the February 9, 2021 special election in Southampton County will begin to be mailed the week of December 21, 2020. If this Court enters the Amended Consent Decree, revised instructions will immediately be sent to these voters.⁶

Electronic and press outreach

The State Defendants' webpage regarding absentee voting makes clear that, for the November 3, 2020 election *only*, a witness was not required.⁷ Upon any relevant order of the Court, that information will promptly be updated for the January and February special elections

³ With respect to Virginia Beach City, no ballot packages have been sent as of December 21, 2020, as there have been no applications thus far from voters for the January 5, 2021 special election.

⁴ With respect to the City of Norfolk, approximately 183 ballot packages have been sent or e-mailed as of December 21, 2020.

⁵ With respect to King William County, approximately 60 ballot packages have been sent or e-mailed as of December 21, 2020.

⁶ An example of the instructional form sent with ballot packages for the January 5, 2021 election is attached as Exhibit D, and an example of that form sent to uniformed and overseas voters is attached as Exhibit E. An example of the form sent to uniformed and overseas voters who received their absentee ballot materials electronically for the January 5, 2021 election is attached as Exhibit F.

⁷ Virginia Dept. of Elections, *Absentee and Early Voting* (Dec. 21, 2020), <https://www.elections.virginia.gov/casting-a-ballot/absentee-voting/>. A PDF of this webpage is attached as Exhibit G.

accordingly. The State Defendants will also publish a press release and provide information to voters on its social media accounts.

Communication with general registrars and voters

The State Defendants have instructed the general registrars of the localities with special elections in January and February that the witness requirement remains in effect at this time. To date, State Defendants are not aware of any voter who has directly contacted the State Defendants via e-mail regarding the witness requirement for the January and February special elections.

* * *

The State Defendants' number one concern is in ensuring that every Virginian's right to vote freely, fairly, and safely is protected during this unprecedented pandemic. No Virginian should be placed in the tenuous position of having to choose between their health and their right to vote. Cognizant of this Court's holdings that "[a]pplying the witness requirement during this pandemic would impose a serious burden on the right to vote," Dkt. 69 at 1, and that entry of the prior consent decree "would permit the State Defendants to avoid the likely unconstitutional application of a state law," Dkt. 109 at 21, State Defendants seek again to avoid a situation wherein voters may be forced choose between their health and the right to vote. See Dkt. 109 at 18-19 ("Taking an unusual and in fact unnecessary chance with your life is a heavy burden to bear simply to vote.") (quoting *Common Cause RI v. Gorbea*, No. 20-1753, 2020 WL 4579367, at *2 (1st Cir. Aug. 7, 2020), *aff'd* No. 20A28, 2020 WL 4680151 (U.S. Aug. 13, 2020)). State Defendants believe the proposed consent decree is an appropriate means to reach this result.

CONCLUSION

The Joint Motion to Amend the Partial Consent Judgment and Decree should be granted.

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/s/ Carol L. Lewis

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CERTIFICATE OF SERVICE

Pursuant to Local Rule 7(g)(3), I hereby certify that on December 21, 2020, I will file this document electronically through the Court's CM/ECF system, which will effect service on all counsel who have appeared.

/s/ Carol L. Lewis

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