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AT LYNCHBURG, VA
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2/17/2021
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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

On February 10, 2021, the Plaintiffs and State Defendants filed a joint motion to amend the partial consent decree and judgment and sought expedited consideration of that motion. Dkts. 127, 128. The previous partial consent decree and judgment approved by the Court enjoined enforcement of the witness signature requirement for the November 3, 2020 elections. Dkt. 110. The Court approved an amendment extending that relief to the January 5, 2021 special elections for the Second and Ninetieth Virginia House of Delegates Districts. Dkt. 126. The parties now seek to extend the same relief to a March 23, 2021 special election for the Thirty-Eighth Virginia State Senate District. Dkt. 127. No opposition has been filed. In light of the continuing COVID-19 pandemic in Virginia and nation-wide, the Court will approve the amended agreement.

On May 5, 2020, this Court approved Plaintiffs' and State Defendants' partial consent decree and judgment, in which the State Defendants agreed not to enforce the witness signature requirement for absentee ballots cast in the June primaries. Dkt. 68. On August 21, 2020, this Court approved a successive partial consent decree and judgment that granted the same relief in the November elections. Dkt. 110. The Court made clear then that the "agreement is limited in duration

and scope to elections and ballot measures for a single date: November 3, 2020” and “does not address any future election.” Dkt. 109 at 10.

In approving and issuing a consent decree and judgment, the court must examine the agreement’s terms to ensure that it is (1) “fair, adequate, and reasonable,” and (2) not “illegal, a product of collusion, or against the public interest.” *United States v. North Carolina*, 180 F.3d 574, 581 (4th Cir. 1999). Just as for the partial consent decrees approved for the June primaries, November elections, and January special elections, this standard has been met here.

The settlement agreement’s terms are fair, adequate, and reasonable. As in the prior consent decrees and first amendment, the proposed removal of the witness requirement for those who cannot safely comply is limited—here, to one upcoming special election. And as before, Plaintiffs continue to plead a probable violation of federal law. *See* Dkts. 69 at 13–19; 109 at 15–16. The witness signature requirement continues to burden “a substantial and discrete class of Virginia’s electorate while the pandemic rages on, and this burden is not justified by the value of that requirement as an anti-fraud measure in [the] face of the risk posed by COVID-19.” Dkt. 109 at 15.

Indeed, the risk posed by COVID-19 has only increased over the past few months. By mid-August, when the Court approved the prior consent decree, the Virginia Department of Health had recorded more than 110,000 confirmed or probable cases of COVID-19 as well as 9,000 hospitalizations and 2,400 deaths due to the virus. *Id.* at 3–4. By mid-December, when the Court approved the first amendment, those numbers had risen substantially to over 310,000 cases, 17,000

hospitalizations, and 4,700 deaths. Dkt. 126 at 2. Today, Virginia has seen more than 550,000 cases, 23,000 hospitalizations, and 7,000 deaths due to COVID-19.¹

And the specific localities that make up the Thirty-Eighth District have acutely felt COVID-19's impact. For example, the Cumberland Plateau Health District, which consists of Buchanan, Dickensen, Russell, and Tazewell Counties, all of which are within the Thirty-Eighth District, has seen more than 7,000 cases, 300 hospitalizations, and 80 deaths from COVID-19.² Similarly, Pulaski County and the City of Radford, also within the Thirty-Eighth District, have together had more than 4,000 cases, 100 hospitalizations, and 50 deaths.³ In addition, on January 27, 2021, Governor Northam extended Executive Order 72, which instituted a modified stay-at-home order, through the end of February based on Virginia's high COVID-19 test positivity rate and high rates of new COVID-19 cases and ICU hospitalizations.⁴

Nor is the settlement agreement "illegal, a product of collusion, or against the public interest." The Court presumes that settlement negotiations were conducted in good faith and that the resulting agreement was not the product of fraud or collusion. Dkt. 109 at 21. No one contends or offers evidence suggesting that the parties colluded in reaching the proposed amendment to the consent decree and judgment. And given the impact of COVID-19 on voters' ability to cast their

¹ Va. Dep't of Health, *COVID-19 in Virginia: Cases*, <https://www.vdh.virginia.gov/coronavirus/coronavirus/covid-19-in-virginia-cases/> (last visited Feb. 17, 2021).

² Va. Dep't of Health, *COVID-19 in Virginia: Locality*, <https://www.vdh.virginia.gov/coronavirus/coronavirus/covid-19-in-virginia-locality/> (last visited Feb. 17, 2021).

³ *Id.*

⁴ Va. Off. of the Governor, *Executive Order Amended Number 72 and Order of Public Health Emergency 9: Commonsense Surge Restrictions, Extension of Certain Temporary Restrictions Due to Novel Coronavirus (COVID-19)*, Jan. 27, 2021, [https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-72-AMENDED-and-Order-of-Public-Health-Emergency-Nine-Common-Sense-Surge-Restrictions-Certain-Temporary-Restrictions-Due-to-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-72-AMENDED-and-Order-of-Public-Health-Emergency-Nine-Common-Sense-Surge-Restrictions-Certain-Temporary-Restrictions-Due-to-Novel-Coronavirus-(COVID-19).pdf) (last visited Feb. 17, 2021).

ballots safely, the settlement agreement is not against the public interest. *See* Dkts. 127 at 3; 127-3 (Declaration of Frances Steigerwald, a member of the League of Women Voters of Virginia and a registered voter in Pulaski County, within the Thirty-Eighth District, who is a 74-year-old woman living by herself and suffering from medical conditions that place her at high risk of complications from COVID-19 and fears being unable to cast her absentee ballot safely if the witness signature requirement is not waived).

The Court is mindful that the March special election is just a month away. Federal district courts generally should not change the status quo on the eve of an election. *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205, 1207 (2020) (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam)); *Andino v. Middleton*, ___ S. Ct. ___, 2020 WL 5887393 at *1 (U.S. Oct. 5, 2020) (citing *Purcell* in staying in part district court’s injunction of South Carolina’s witness requirement for absentee ballots where the State had decided to “retain that requirement during the COVID-19 pandemic”). But any concerns about timing here are counterbalanced by several factors. First, this special election was only recently set following State Senator A. Benton Chafin, Jr.’s death in January of this year.⁵ Just as for the January special elections, the short time period between the announcement of the special election and its occurrence should not preclude relief. Second, “[t]he status quo is one in which the [witness signature] requirement has not been in effect, given the rules used in [Virginia’s] last election[s], and many [Virginia] voters may well hold that belief.” *See Republican Nat’l Comm. v. Common Cause R.I.*, ___ S. Ct. ___, 2020 WL 4680151 (U.S. Aug. 13, 2020).

⁵ Commonwealth of Va. Exec. Dep’t, *State Senate Thirty-Eighth District Writ of Election*, Jan. 12, 2021, <https://www.governor.virginia.gov/media/governorviriniagov/executive-actions/Senate-District-38-Writ-of-Election.pdf> (last visited Feb. 17, 2021).

Finally, “here, the state election officials support the [consent] decree, and no state official has expressed opposition.” *Id.* As the Supreme Court recently noted, the Constitution “principally entrusts the safety and the health of the people to the politically accountable officials of the States,” and “[w]hen those officials undertake to act in areas fraught with medical and scientific uncertainties, their latitude must be especially broad.” *Andino*, ___ S. Ct. ___, 2020 WL 5887393 at *1 (citing *S. Bay United Pentecostal Church v. Newsom*, 590 U.S. ___, ___, 140 S. Ct. 1613, 1613–14 (2020)) (internal quotation marks, citations, and alterations omitted). The State Defendants here are politically accountable state officials acting in the midst of a rapidly developing pandemic. The Court finds that they have not acted outside the bounds of that latitude afforded them in determining not to enforce the witness signature requirement as one way to address the public health exigency created by COVID-19. *Id.*

Because the same constitutional justifications and pandemic conditions that supported the prior consent decrees are also present here, the Court **GRANTS** the joint motion to amend the partial consent decree and judgment, Dkt. 127, and **APPROVES** the parties’ second amendment to the consent decree and judgment, which addresses only the March 23, 2021 special election for the Thirty-Eighth Virginia State Senate District. The proposed consent decree and judgment shall be attached to, and incorporated in, this Order. The Court **TERMINATES** the motion to expedite consideration of the joint motion, Dkt. 128.

It is so **ORDERED**.

The Clerk of Court is directed to send a copy of this Order to all counsel of record.

Entered this 17th day of February, 2021.



NORMAN K. MOON
SENIOR UNITED STATES DISTRICT JUDGE