

**UNITED STATES DISTRICT COURT
FOR THE 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

**ANSWER
TO COMPLAINT FOR INJUNCTIVE DECLARATORY RELIEF**

1. Defendants admit the first sentence of paragraph 1 of Plaintiffs' Complaint accurately recites the statement of Virginia Attorney General Mark R. Herring that appeared in an April 8, 2020 press release. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in the second sentence of paragraph 1 of Plaintiffs' Complaint. With respect to the allegations in the third sentence of paragraph 1, Defendants admit that as a result of the COVID-19 pandemic, there are absentee voters who believe they may not, and who in reality may not, safely have a witness present while completing their ballot. Defendants deny the remaining allegations in paragraph 1.

2. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations regarding Plaintiffs' motivations for bringing this action. With respect to the second sentence of paragraph 2 of Plaintiffs' Complaint, Defendants admit that based on current conditions and information, certain voters might be at higher risk for severe illness from COVID-19. Defendants admit that for these higher risk voters who live alone, the witness

requirement may place a burden on the ability to vote during the June 23 primary elections. Defendants deny the remaining allegations in paragraph 2.

3. Statements of the Centers for Disease Control and Prevention and the Virginia Department of Health and Governor Northam's Executive Order speak for themselves. Defendants deny any allegations in paragraph 3 that are inconsistent with those statements and orders.

4. Defendants admit that, based on current conditions and information, certain voters might be at higher risk for severe illness from COVID-19. Defendants admit that for these higher risk voters who live alone, the witness requirement may place a burden on the ability to vote during the June 23 primary elections. Defendants deny the remaining allegations in paragraph 4.

5. Defendants admit that voters at higher risk for severe illness from COVID-19 may believe that they are unable to fulfill the witness requirement of the absentee ballot for the June 23 primary elections because they deem the risk of contact with a third party is too high. Defendants admit, to the extent that certain voters at higher risk for severe illness from COVID-19 live alone in higher proportions, that the witness requirement may place a burden on their ability to vote during the June 23 primary elections. Defendants deny the remaining allegations in paragraph 5.

6. Defendants admit that, based on current conditions and information, certain voters might be at higher risk for severe illness from COVID-19. Defendants admit that Virginia has a history of voter discrimination with respect to African Americans and that discrimination in other areas of the economy may persist. Defendants deny the remaining allegations in paragraph 6.

7. Defendants admit the allegations in the first sentence of paragraph 7. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in the second sentence of paragraph 7.

8. Defendants admit that the impact of the witness requirement on voters at higher risk for severe illness from COVID-19 who live alone may be the disenfranchisement of those voters during the June 23 primary elections. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations with respect to the impact of the witness requirement on the degree of disenfranchisement that may be caused during other elections. Defendants deny the remaining allegations in paragraph 8.

9. Defendants deny the allegations in paragraph 9.

PARTIES

10. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 10.

11. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 11.

12. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 12.

13. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 13.

14. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 14.

15. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 15.

16. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 16.

17. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 17.

18. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 18.

19. Defendants admit the allegations in paragraph 19.

20. Defendants admit the allegations in paragraph 20.

21. Defendants admit the allegations in paragraph 21.

22. Defendants admit the allegations in paragraph 22.

23. Defendants admit the allegations in paragraph 23.

JURISDICTION AND VENUE

24. Paragraph 24 presents conclusions of law to which no response is required. Defendants do not challenge this Court's jurisdiction over this matter.

25. Paragraph 25 presents conclusions of law to which no response is required. Defendants do not challenge this Court's jurisdiction over this matter.

26. Paragraph 26 presents conclusions of law to which no response is required.

27. Paragraph 27 presents conclusions of law to which no response is required. Defendants do not challenge this matter being venued in the Western District of Virginia.

FACTS

Transmission of COVID-19 and Public Health Guidelines

28. Defendants admit the allegations in paragraph 28.

29. Defendants admit the allegations in paragraph 29.

30. Defendants admit the allegations in paragraph 30.

31. Defendants admit the allegations in paragraph 31.

32. Defendants admit the allegations in paragraph 32.

33. Defendants admit that there are voters at higher risk for severe illness from COVID-19. Defendants admit that Plaintiffs have accurately described the media reports referenced in paragraph 33. Defendants lack knowledge or information sufficient to form a belief about the remaining allegations in paragraph 33.

34. Defendants admit that Plaintiffs have accurately described the media reports referenced in paragraph 34. Defendants lack knowledge or information sufficient to form a belief about the remaining allegations in paragraph 34.

35. Defendants admit the allegations in paragraph 35.

36. Defendants admit the allegations in paragraph 36.

37. Defendants admit that in person activities, such a voting, increase the risk of the spread of the virus that causes COVID-19. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 37.

38. Defendants admit that Plaintiffs have accurately described the media reports referenced in paragraph 38. Defendants lack knowledge or information sufficient to form a belief about truth of the facts presented in the media reports relied upon in paragraph 38.

39. Defendants admit that Plaintiffs have accurately described the media reports referenced in paragraph 39. Defendants lack knowledge or information sufficient to form a belief about truth of the facts presented in the media reports relied upon in paragraph 39. Defendants deny the remaining allegations in paragraph 39.

COVID-19 in Virginia

40. Defendants admit the allegations in paragraph 40.
41. Defendants admit the allegations in paragraph 41.
42. Defendants admit the allegations in paragraph 42.
43. Defendants admit the allegations in paragraph 43.
44. Defendants admit the allegations in paragraph 44.
45. Defendants admit the allegations in paragraph 45.
46. Defendants admit the allegations in paragraph 46.
47. Defendants admit the allegations in paragraph 47.
48. Defendants admit the allegations in paragraph 48.
49. Defendants admit the allegations in paragraph 49.
50. Defendants admit the allegations in paragraph 50.
51. Defendants admit the allegations in paragraph 51.
52. Defendants admit the allegations in paragraph 52.
53. Defendants admit the allegations in paragraph 53.

COVID-19's Impact on African American Virginians in Light of Ongoing and Historical Discrimination

54. Defendants admit that, based on current conditions and information, certain voters might be at higher risk for severe illness from COVID-19. Defendants admit that Plaintiffs have accurately described the media report referenced in paragraph 54. Defendants lack knowledge or information sufficient to form a belief about truth of the facts presented in the media report relied upon in paragraph 54.

55. Defendants admit that, based on current conditions and information, certain voters might be at higher risk for severe illness from COVID-19. Defendants admit that Plaintiffs have accurately described the media reports referenced in paragraph 55. Defendants lack knowledge

or information sufficient to form a belief about truth of the facts presented in the media reports relied upon in paragraph 55.

56. Defendants admit that, based on current conditions and information, certain voters might be at higher risk for severe illness from COVID-19. Defendants admit that Plaintiffs have accurately described the media report referenced at footnote 45 of Plaintiffs' Complaint. Defendants lack knowledge or information sufficient to form a belief about truth of the facts presented in the media report relied upon in paragraph 56.

57. Defendants admit the allegations in paragraph 57.

58. Defendants admit the allegations in paragraph 58.

59. Defendants admit the allegations in paragraph 59.

Virginia's Absentee Voting Process and Witness Requirement

60. Defendants admit the allegations in paragraph 60.

61. Defendants admit the allegations in paragraph 61.

62. Defendants admit the allegations in paragraph 62.

63. Defendants admit the allegations in paragraph 63.

64. Defendants admit the allegations in paragraph 64, with respect to non-military voters. Defendants deny the allegations in paragraph 64 to the extent that they apply to military voters whose ballots are received after the close of polls under Va. Code § 24.2-709(B).

65. Defendants admit the allegations in paragraph 65 regarding the absentee ballot application process. Defendants deny that the absentee ballot application process is described at Virginia Code § 24.2-701(B)(1).

66. Defendants admit the allegations in paragraph 66.

67. Defendants admit the allegations in paragraph 67.

68. Defendants admit the allegations in paragraph 68.

69. Defendants admit the allegations in paragraph 69.

70. Defendants admit the allegations in paragraph 70.

71. Defendants admit the allegations in paragraph 71.

72. Defendants admit the allegations in paragraph 72.

Virginia's witness requirement will deny large numbers of Virginians the right to vote vet (sic) provides only marginal benefits for election integrity

73. Defendants admit the allegations in paragraph 73.

74. Governor Northam's Executive Orders No. 53 and 55 speak for themselves, and Defendants deny any allegations in paragraph 74 that are inconsistent with those orders.

75. Defendants admit that any individual of any age or race, including those without preexisting conditions, is susceptible to COVID-19 and that person to person contact increases the risk of transmission of the virus. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 75.

76. Defendants admit that enforcement of the witness requirement for the June 23 primary elections will likely prevent thousands of eligible Virginians from casting ballots. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 76.

77. Defendants admit the allegations in the first three sentences in paragraph 77. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 77.

78. With respect to the first sentence of paragraph 78, Defendants deny any allegations that are inconsistent with the data from the 2018 Current Population Survey.

Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 78.

79. Defendants admit that any individual of any age or race, including those without preexisting conditions, is susceptible to COVID-19 and that person to person contact increases the risk of transmission of the virus. Defendants deny any remaining allegations in paragraph 79.

80. Defendants lack knowledge or information sufficient to form a belief about the trust of the remaining allegations in paragraph 80.

81. Defendants admit that certain voters might be at higher risk for severe illness from COVID-19. With respect to the conclusions drawn from statements of the Centers for Disease Control and Prevention, the statements speak for themselves. Defendants deny any remaining allegations in paragraph 81.

82. Defendants admit that certain voters might be at higher risk for severe illness from COVID-19. With respect to the conclusions drawn from media reports, the reports speak for themselves. Defendants deny any remaining allegations in paragraph 82.

83. With respect to the June 23 primary elections, Defendants admit that voters at higher risk for severe illness from COVID-19 may believe that they are unable to fulfill the witness requirement of the absentee ballot because they deem the risk of contact with a third party is too high and, that, accordingly, these voters may decide to not cast a ballot. Defendants deny the allegations in paragraph 83 with respect to any elections but the June 23 primary elections.

84. Defendants admit that only as a result of the current pandemic and only for the June 23 primary elections, the burden placed on voters at higher risk of contracting COVID-19

who live alone outweighs the enforcement of the witness requirement. Defendants admit that Virginia has a history of voter discrimination with respect to African Americans and that discrimination in other areas of the economy may persist. Defendants deny the remaining allegations in paragraph 84.

85. Defendants admit that only as a result of the current pandemic and only for the June 23 primary elections, the burden placed on voters at higher risk of contracting COVID-19 who live alone outweighs the enforcement of the witness requirement. Defendants deny any remaining allegations in paragraph 85.

86. Defendants admit the allegations in the first sentence of paragraph 86. With respect to the conclusions drawn from the chart cited in footnote 57 of Plaintiffs' Complaint, the chart speaks for itself. Defendants deny any remaining allegations in paragraph 86.

87. Defendants admit the allegations in paragraph 87.

88. Defendants admit the allegations in paragraph 88.

89. Defendants admit the allegations in paragraph 89.

90. Defendants admit the allegations in paragraph 90.

91. Defendants admit the allegations in paragraph 91.

92. Defendants admit the allegations in paragraph 92.

93. Defendants admit that with respect to the June 23 primary elections, the burden that high risk voters living alone believe would be placed on them by abiding by the witness requirement outweighs the utility inherent in the witness requirement in light of other measures present to ensure election integrity. Defendants also admit that Virginia law does not require witnesses to identify themselves by printing their name or providing any other information and

Board regulations instruct election officials to accept ballots even where the witness signature is illegible. Defendants deny any remaining allegations in paragraph 93.

94. Defendants admit that only as a result of the current pandemic and only for the June 23 primary elections, the burden placed on voters at higher risk of contracting COVID-19 who live alone outweighs the enforcement of the witness requirement. Defendants deny any remaining allegations in paragraph 94.

CLAIMS FOR RELIEF

COUNT I

Violation of the Fundamental Right to Vote 42 U.S.C. § 1983, First and Fourteenth Amendments to the U.S. Constitution

95. Defendants deny any allegations in paragraph 95 that are inconsistent with the cited authority.

96. Defendants admit that only as a result of the current pandemic and only for the June 23 primary elections, the burden placed on voters at higher risk of contracting COVID-19 who live alone outweighs the enforcement of the witness requirement. Defendants deny any remaining allegations in paragraph 96.

97. Defendants admit that only as a result of the current pandemic and only for the June 23 primary elections, the burden placed on voters at higher risk of contracting COVID-19 who live alone outweighs the enforcement of the witness requirement. Defendants deny any remaining allegations in paragraph 97.

98. Defendants deny the allegations in paragraph 98.

COUNT II

Violations of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301

99. Defendants deny any allegations in paragraph 99 that are inconsistent with the cited authority.

100. Defendants deny any allegations in paragraph 100 that are inconsistent with the cited authority.

101. Defendants admit that only as a result of the current pandemic and only for the June 23 primary elections, the burden placed on voters at higher risk of contracting COVID-19 who live alone outweighs the enforcement of the witness requirement. Defendants deny any remaining allegations in paragraph 101.

102. Defendants admit that only as a result of the current pandemic and only for the June 23 primary elections, the burden placed on voters at higher risk of contracting COVID-19 who live alone outweighs the enforcement of the witness requirement. Defendants admit that Virginia has a history of voter discrimination with respect to African Americans and that discrimination in other areas of the economy may persist. Defendants deny the remaining allegations in paragraph 102.

103. Defendants admit that only as a result of the current pandemic and only for the June 23 primary elections, the burden placed on voters at higher risk of contracting COVID-19 who live alone, regardless of race, outweighs the enforcement of the witness requirement. Defendants deny any remaining allegations in paragraph 103.

104. Defendants deny that Plaintiffs are entitled to any of the relief requested in the WHEREFORE clause following paragraph 103, except with respect to the relief accorded pursuant to the Consent Decree entered by the Court on May 5, 2020.

105. Defendant has not knowingly or intentionally waived any applicable defenses, and it reserves the right to assert and rely upon other applicable defenses that may become

available or apparent during discovery in this matter. Defendant reserves the right to amend or seek to amend its answer and/or affirmative defenses.

MARK R. HERRING
Attorney General of Virginia

/s/ Heather Hays Lockerman

MICHELLE S. KALLEN (VSB #93286)
CAROL L. LEWIS (VSB #92362)
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

CERTIFICATE OF SERVICE

Pursuant to Local Rule 7(g)(3), I hereby certify that on May 11, 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/ Heather Hays Lockerman

Heather Hays Lockerman
Counsel for Defendants, *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*