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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 December 18, 2020, 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. 118, 119.¹ On December 23, 2020, the parties filed a second joint motion to amend the partial consent decree and judgment. Dkt. 125. The previous partial consent decree and judgment approved by the Court enjoined enforcement of the witness signature requirement for Virginia's November 3, 2020 elections. The parties seek to extend that relief to the January 5, 2021 special elections for the Second and Ninetieth Districts for the Virginia House of Delegates. Dkt. 125. No opposition has been filed. In view of the surging COVID-19 pandemic in Virginia and nationwide, 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

¹ The parties also sought relief for special elections for local office in February 2021. After the Court expressed doubts that Plaintiffs established standing with respect to those elections, Dkt. 124, the parties submitted the current iteration of the consent decree and judgment, Dkt. 125-1, which addresses only the January special elections for the Second and Ninetieth Districts for the House of Delegates.

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 and November election, this standard has been met here.

The settlement agreement’s terms are fair, adequate, and reasonable. As in the prior consent decrees, the proposed removal of the witness requirement for those who cannot safely comply is limited to a handful of upcoming special elections. 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. Today, those numbers have doubled to over 310,000 cases, 17,000 hospitalizations, and 4,700 deaths.² And the specific localities that

² Va. Dep’t of Health, *COVID-19 in Virginia: Cases*, <https://www.vdh.virginia.gov/coronavirus/coronavirus/covid-19-in-virginia-cases/> (last visited Dec. 22, 2020).

make up the Second and Ninetieth Districts have acutely felt COVID-19's impact. Prince William County and Stafford County, parts of which constitute the Second District, have seen more than 27,000 cases, 1,300 hospitalizations, and 200 deaths from COVID-19.³ Similarly, Norfolk City and Virginia Beach City, parts of which constitute the Ninetieth District, have had more than 21,000 cases, 1,100 hospitalizations, and 200 deaths.⁴ In addition, on December 10, Governor Northam issued Executive Order 72 instituting a modified stay-at-home order and prohibiting “public and private in-person gatherings of more than 10 individuals who do not live in the same residence,” except for religious services and educational instruction.⁵

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 ballots safely, the settlement agreement is not against the public interest. *See* Dkt. 122-2 (Declaration of Barbara Sears, a member of the League of Women Voters of Virginia and a registered voter within the Ninetieth District who is a cancer survivor at risk for serious

³ Va. Dep't of Health, *COVID-19 in Virginia: Locality*, <https://www.vdh.virginia.gov/coronavirus/coronavirus/covid-19-in-virginia-locality/> (last visited Dec. 22, 2020).

⁴ *Id.*

⁵ Commonwealth of Va. Office of the Governor, *Executive Order 72 and Order of Public Health Emergency 9: Commonsense Surge Restrictions and Certain Temporary Restrictions Due to Novel Coronavirus (COVID-19)*, Dec. 10, 2020, [https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-72-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-and-Order-of-Public-Health-Emergency-Nine-Common-Sense-Surge-Restrictions-Certain-Temporary-Restrictions-Due-to-Novel-Coronavirus-(COVID-19).pdf) (last visited Dec. 22, 2020).

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 January special elections are coming up in just a few weeks. 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, these special elections were only recently set pursuant to writs of election the Governor issued on December 1 and 8, 2020.⁶ The short time period between the announcement of the special elections and their 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).

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,"

⁶ Commonwealth of Va. Exec. Dep't, *House of Delegates Ninetieth District Writ of Election*, Dec. 1, 2020, <https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/12.1.2020-HOD90-Writ-of-Election.pdf> (last visited Dec. 22, 2020); Commonwealth of Va. Exec. Dep't, *House of Delegates Second District Writ of Election*, Dec. 8, 2020, <https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/2020---HOD-02-Special-Election.pdf> (last visited Dec. 22, 2020).

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 second joint motion to amend the partial consent decree and judgment, Dkt. 125, and **APPROVES** the parties’ proposed consent decree and judgment, which does not address any election beyond the January 5, 2021 special elections for the Virginia House of Delegates. The proposed consent decree and judgment shall be attached to, and incorporated in, this Order. The Court **TERMINATES** the first motion to amend the partial consent decree and judgment, Dkt. 118, and motion to expedite consideration of that motion, Dkt. 119.

It is so **ORDERED**.

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

Entered this 23rd day of December 2020.


NORMAN K. MOON
SENIOR UNITED STATES DISTRICT JUDGE