

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

LEAGUE OF WOMEN VOTERS OF
VIRGINIA; KATHERINE D.
CROWLEY; ERIKKA GOFF; and
SELJRA TOOGOOD,

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.

Case No. 6:20-cv-00024-NKM

**PLAINTIFFS' UNOPPOSED MOTION FOR EXPEDITED BRIEFING SCHEDULE ON
THEIR MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs respectfully request that the Court enter an expedited briefing schedule for their preliminary injunction motion seeking to enjoin Virginia's absentee ballot witness requirement for Virginia's June 23 primary and any future elections affected by the COVID-19 pandemic. Specifically, Plaintiffs request that Defendants' response to the preliminary injunction be due in seven days, on Tuesday, April 28, with Plaintiffs' reply due three days later, on Friday, May 1, and that the Court schedule a hearing on the preliminary injunction during the first full week of May or at the earliest other available date. Defendants have consented to this briefing schedule.

Plaintiffs seek this schedule due to the need for a ruling sufficiently in advance of Virginia's June 23 primary and June 16 absentee ballot request receipt deadline to provide time for affected voters to seek their absentee ballots without the cloud of the witness requirement looming, as well as to minimize voter confusion.

For Plaintiffs and many thousands of other Virginia voters who live by themselves, they will be forced to forego voting in the June primary because of their need to stay at home and keep social distance and thus the impossibility of finding a witness for their ballot. *See* ECF No. 17-4 (Declaration of Erikka Goff) ¶ 9; ECF No. 17-5 (Declaration of Seijra Toogood) ¶ 9. An order granting the preliminary injunction at any point before the absentee ballot applications must be received at 5 pm on June 16 will certainly provide some relief. But the earlier voters burdened by the witness requirement learn about whether or not the witness requirement will remain in effect, the better the chance they have to request a ballot and participate in the election should the Court rule in Plaintiffs' favor and grant the preliminary injunction.

Additionally, the timing of a ruling significantly affects the planning of Plaintiff League of Women Voters of Virginia (the "League"). The continued presence of the witness requirement means the League must continue preparing to educate voters about this requirement and begin to figure out how it can try to assist affected members, knowing that such efforts will still put only a small dent in the harm caused by the requirement. *See* ECF No. 17-6 (Declaration of Debora Wake) ¶ 9. The more time the League has to plan for its public outreach and assistance efforts, the more effective they will be if needed. Conversely, if the Court rules in Plaintiffs' favor but without enough time to change the language on the absentee ballot instructions for some voters, the League will also benefit from more time to educate any such voters that the requirement no longer remains in effect.

An earlier ruling on Plaintiffs’ motion will help prevent voter confusion. If the Court grants relief before most absentee ballots are sent to voters, election officials will have the opportunity to amend the instructions that accompany them and inform voters that a witness is no longer required. As this Court has held, it was appropriate and preferable to rule sooner rather than days before an election because of the disruption “[s]triking down the Act ‘on the eve of [an] election’” would cause. *Fitzgerald v. Alcorn*, 285 F. Supp. 3d 922, 943 (W.D. Va. 2018), *aff’d sub nom. 6th Cong. Dist. Republican Comm. v. Alcorn*, 913 F.3d 393 (4th Cir. 2019) (quoting *Miller v. Brown*, 462 F.3d 312, 321 (4th Cir. 2006)); *see also Purcell v. Gonzalez*, 549 U.S. 1, 7 (2006) (explaining that the risk of confusion to voters from a court’s election-related decision “will increase” as the “election draws closer”). Indeed, when the Supreme Court recently stayed a district court’s ruling extending Wisconsin’s statutory period to submit absentee ballots past the election date, it was largely because—in addition to their discomfort with the post-election extension—the district court’s order came only “five days before the scheduled election,” increasing the risk for voter confusion. *Republican Natl. Comm. v. Democratic Natl. Comm.*, No. 19A1016, 2020 WL 1672702, at *1 (U.S. Apr. 6, 2020).

Because of the benefit to Virginia voters in terms of easing the burdens caused by the witness requirements and avoiding voter confusion, Plaintiffs respectfully request the Court hold a hearing on the preliminary injunction during the first full week of May or the earliest other available date, and enter the following briefing schedule on their preliminary injunction motion or otherwise shorten the briefing schedule contemplated by Local Rule 11(c)(1):

- **Defendants’ Response Brief due: Tuesday, April 28, 2020**
- **Plaintiffs’ Reply Brief due: Friday, May 1, 2020**

Dated: April 21, 2020

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Respectfully submitted,

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**Admitted *pro hac vice*

CERTIFICATE OF SERVICE

I certify that on April 21, 2020, I served a copy of the foregoing Motion for Expedited Briefing Schedule on Plaintiffs' Motion for a Preliminary Injunction on Counsel for Defendants via e-mail, as agreed to by Defendants' Counsel in writing per Federal Rule of Civil Procedure 5(b)(2)(E).

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