

# Exhibit A

**IN THE 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-NKM

**[PROPOSED] ANSWER OF  
INTERVENOR-DEFENDANTS  
REPUBLICAN PARTY OF VIRGINIA,  
INC., VINCENT E. FALTER, MILDRED H.  
SCOTT, AND THOMAS N. TURNER, JR.**

Proposed Intervenors, Republican Party of Virginia, Inc., MG Vincent E. Falter USA (ret.), Mildred H. Scott, and Thomas N. Turner, Jr., by counsel, submit the following Answer to Plaintiffs' Complaint (Doc. 1).

1. To the extent this paragraph states factual allegations; Intervenors lack knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required.

2. This paragraph is a legal conclusion to which no response is required.

3. Intervenors admit to the factual allegations in the first two sentences. Intervenors note in response to the third sentence that Governor Northam's order provides that it "will remain in place until June 10, 2020, unless amended or rescinded."<sup>1</sup> Intervenors further note that the Richmond Times Dispatch attributed to Governor Northam's spokeswoman Alena Yarmosky

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<sup>1</sup> Va. Executive Order No. 2020-55, [https://www.governor.virginia.gov/media/governorvirginiagov/executiveactions/EO-55-Temporary-Stay-at-Home-Order-Due-to-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/executiveactions/EO-55-Temporary-Stay-at-Home-Order-Due-to-Novel-Coronavirus-(COVID-19).pdf)

a statement that “the order doesn’t apply to ‘the operation of government,’ which she said includes operating in and participating in elections.”<sup>2</sup>

4. This paragraph is a legal conclusion to which no response is required.

5. The 2018 Current Population Survey speaks for itself, the remainder of this paragraph consists of legal conclusions to which no response is required.

6. This paragraph is a legal conclusion to which no response is required.

7. Intervenors admit to the statistical allegations in the first sentence. Intervenors deny other factual allegations.

8. Most of this paragraph is a legal conclusion to which no response is required. Intervenors admit that Virginia is one of only 11 states that require an individual submitting an absentee ballot to have a witness sign their ballot envelope, but notes that because absentee voting presents a higher risk of fraud than in-person voting, states impose a number of different integrity measures. Some states require a copy of the voter’s ID be returned with the absentee ballot,<sup>3</sup> or require both a copy of the voter’s ID and notary or witness signature on the returned absentee ballot.<sup>4</sup> Some states require proof of identification at the absentee ballot application phase,<sup>5</sup> some use signature matching to verify absentee ballot applications and/or returned

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<sup>2</sup> Mel Leonor, *Northam administration urges Virginians to vote absentee by mail; GOP questions timing of ‘stay-at-home’ order*, Richmond Times Dispatch, Mar. 31, 2020, [https://www.richmond.com/news/virginia/northam-administration-urges-virginians-to-vote-absentee-by-mail-gop-questions-timing-of-stay-at/article\\_a2db7528-2afa-5d5a-b018-826c97f984fb.html](https://www.richmond.com/news/virginia/northam-administration-urges-virginians-to-vote-absentee-by-mail-gop-questions-timing-of-stay-at/article_a2db7528-2afa-5d5a-b018-826c97f984fb.html).

<sup>3</sup> See ARK. CODE ANN. §7-5-409(b)(4)(A)(v) (2018).

<sup>4</sup> See ALA. CODE § §17-9-30(b), 17-11-7 (2019).

<sup>5</sup> WISC. STAT. §6.87 (2019) (unless specifically exempted, absentee ballot applicant must include proof of identification with the application), S.D. CODIFIED LAWS §12-19-2(2019) (requiring an absentee ballot application be accompanied by either a copy of the applicant’s ID or a notarized oath), KAN. STAT. ANN. §25-1122(b),(c) (2018) (requiring that a person applying in person for an absentee ballot show a valid ID, and that an absentee ballot application returned by mail include

absentee ballot,<sup>6</sup> and some have implemented various other rules designed to ensure electoral integrity in the absentee voting process.<sup>7</sup>

9. Intervenor deny that Plaintiffs are entitled to the relief requested in this paragraph.

### **PARTIES**

10. Intervenor lack knowledge or information sufficient to form a basis as to the truth of these allegations.

11. Intervenor lack knowledge or information sufficient to form a basis as to the truth of these allegations.

12. Intervenor lack knowledge or information sufficient to form a basis as to the truth of these allegations.

13. Intervenor lack knowledge or information sufficient to form a basis as to the truth of these allegations.

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either a valid Kansas driver's license number or a copy one of the specified alternative forms of identification).

<sup>6</sup> See TENN. CODE ANN. §2-6-202(g) (2018) (Upon receipt by mail of the absentee ballot, the administrator shall open only the outer envelope and compare the voter's signature on the application with the voter's signature on the appropriate registration record.), MICH. COMP. LAWS §168.761 (2019) (The qualified voter file must be used to determine the genuineness of a signature on an application for an absent voter ballot.); see also TEX. ELEC. CODE ANN. §87.027 (2019) (providing for the use of a signature verification committee), KY. REV. STAT. ANN. §117.085(6) (2019) (requiring that the absentee ballot return envelope be signed by two witnesses if the voter signs the envelope with a mark instead of a signature).

<sup>7</sup> See, e.g., OKLA. STAT. TIT. 26, §14-108.1 (2019) (absentee ballot return envelopes must include an affidavit which the voter must sign and which must be witnessed by a notary, notary publics must maintain a log of all absentee ballot application for a single election for two years, and may not notarize more than 20 absentee ballot affidavits without the written approval of the secretary of the county election board).

14. Intervenor lack knowledge or information sufficient to form a basis as to the truth of these allegations.

15. Intervenor lack knowledge or information sufficient to form a basis as to the truth of these allegations.

16. Admitted.

17. Intervenor lack knowledge or information sufficient to form a basis as to the truth of these allegations.

18. Intervenor lack knowledge or information sufficient to form a basis as to the truth of these allegations.

19. Admitted.

20. Admitted.

21. Admitted.

22. Admitted.

23. Admitted.

### **JURISDICTION AND VENUE**

24. Intervenor admit that Plaintiff purports to bring this action under 42 U.S.C. §§ 1983 and 1988 and 52 U.S.C. § 10302.

25. Admitted.

26. Admitted.

27. Admitted.

### **FACTS**

#### **Transmission of COVID-19 and Public Health Guidelines**

28. Admitted.

29. Admitted.

30. Admitted.

31. Admitted.

32. Admitted.

33. Admitted.

34. Intervenors lack knowledge or information sufficient to form a basis as to the truth of these allegations.

35. Admitted.

36. Admitted.

37. The CDC's recommendations, which include minimizing direct contact and reducing crowd size at polling stations, speak for themselves. The factual allegations in the second sentence are admitted.

38. The conclusory statement in the first sentence is denied as none of the other factual allegations claim that COVID-19 was contracted at a polling place. The remaining factual allegations are admitted.

39. To the extent this paragraph states a legal conclusion, no response is required. To the extent this paragraph states a factual allegation, Intervenors lack knowledge or information sufficient to form a basis as to the truth of these allegations.

**COVID-19 in Virginia**

40. Intervenors admit that COVID-19 cases present a serious health issue in Virginia. Intervenors lack knowledge or information sufficient to form a basis as to the truth of these allegations.

41. The contents of statements issued by the Virginia Department of Health speak for themselves.

42. Intervenors lack knowledge or information sufficient to form a basis as to the truth of these allegations.

43. The contents of the Governor's statements speak for themselves.

44. The contents of the Governor's statements speak for themselves. Intervenors admit that schools in Virginia are closed indefinitely.

45. The contents of the Governor's statements speak for themselves.

46. The contents of the Governor's statements speak for themselves.

47. The contents of the Governor's statements speak for themselves.

48. Admitted.

49. Intervenors lack knowledge or information sufficient to form a basis as to the truth of these allegations.

50. Admitted.

51. The contents of statements issued by the Virginia Department of Elections speak for themselves.

52. The contents of the Governor's statements speak for themselves. Intervenors admit that the election originally scheduled for June 9, 2020, is now set to take place on June 23, 2020.

53. This Court's orders speak for themselves.

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

54. Intervenors lack knowledge or information sufficient to form a basis as to the truth of these allegations.

55. Intervenors lack knowledge or information sufficient to form a basis as to the truth of these allegations.

56. To the extent the paragraph states factual allegations, Intervenors lack knowledge or information sufficient to form a basis as to the truth of these allegations.

57. The contents of the Governor's statement speak for themselves. To the extent this paragraph states factual allegations, Intervenors lack knowledge or information sufficient to form a basis as to the truth of these allegations.

58. To the extent the paragraph states factual allegations, Intervenors lack knowledge or information sufficient to form a basis as to the truth of these allegations.

59. To the extent this paragraph states factual allegations; Intervenors lack knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required.

**Virginia's Absentee Voting Process and Witness Requirement**

60. The contents of Va. Code § 24.2-700 speak for themselves; the remainder of this paragraph are legal conclusion to which no response is required.

61. Admitted.

62. The contents of statements issued by the Department of Elections speak for themselves.

63. Admitted.

64. The contents of Va. Code §§ 24.2-701 and 24.2-709 speak for themselves.

65. The contents of Va. Code § 24.2-701 speak for themselves.

66. The contents of Va. Code § 24.2-706 speak for themselves.

67. The contents of Va. Code § 24.2-707 speak for themselves.



68. The contents of Va. Code § 24.2-707 speak for themselves.

69. The contents of Va. Code § 24.2-711 speak for themselves.

70. The contents of 1 VA. Admin. Code 20-70-20(B) speak for themselves.

71. The contents of 1 VA. Admin. Code 20-70-20(B) speak for themselves; the remainder of this paragraph are legal conclusions to which no response is required.

72. The contents of Va. Code § 24.2-711.1 speak for themselves; the remainder of this paragraph are legal conclusions to which no response is required.

**Virginia's witness requirement will deny large numbers of Virginians the right to vote yet provides only marginal benefits for election integrity**

73. Admitted.

74. Intervenors deny that voters “have no safe means to have an individual witness and sign their ballot envelope.” Intervenors admit the other factual allegations in this paragraph.

75. Denied.

76. Intervenors lack knowledge or information sufficient to form a basis as to the truth of these allegations.

77. Intervenors admit to the statistics regarding registered voters and election turnout. Intervenors lack knowledge or information sufficient to form a basis as to the truth of the remainder of the allegations in this paragraph.

78. Intervenors deny that those who vote in person or find a witness for an absentee ballot necessarily risk their health as it is possible to do either while observing social distancing and other safeguards. The 2018 Current Population Survey speaks for itself. Intervenors deny that applying the Survey's population percentage to the population of registered voters or the voters who wish to participate in either the primary or general election is a valid statistical approach.

79. To the extent this paragraph states a legal conclusion, no response is required. To the extent this paragraph states factual allegations; Intervenors lack knowledge or information sufficient to form a basis as to the truth of these allegations.

80. Intervenors lack knowledge or information sufficient to form a basis as to the truth of these allegations.

81. The contents of statements made by the CDC speak for themselves.

82. The first sentence of this paragraph consists of legal conclusions to which no response is required. Reports issued by Maryland and North Carolina speak for themselves.

83. This paragraph consists of legal conclusions to which no response is required.

84. This paragraph consists of legal conclusions to which no response is required.

85. Intervenors admit that protecting election integrity and preventing improper use of absentee ballots are valid government interests. Controls on the absentee ballot process are among the most important safeguards for election integrity because of the broad, bipartisan and nonpartisan, consensus that the occurrence of vote fraud is highest among votes cast by mail.<sup>8</sup>

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<sup>8</sup> See, e.g., “Absentee ballots remain the largest source of potential voter fraud.” Building Confidence In U.S. Elections, *Report of the Commission on Federal Election Reform* (Sept. 2005), at 46, [https://web.archive.org/web/20070609115256/http://www.american.edu/ia/cfer/report/full\\_report.pdf](https://web.archive.org/web/20070609115256/http://www.american.edu/ia/cfer/report/full_report.pdf) (accessed Apr. 22, 2020).

“It is no surprise that in going back to the 1980s I couldn’t find a single example where an election was arguably stolen with [] impersonation fraud. In contrast, I could find examples just about every year somewhere in the country of absentee ballot fraud schemes used to try to swing (sometimes successfully) an election.” Rick Hasen, “Good Example of Why Large Scale Impersonation Voter Fraud is So Hard to Pull Off,” (Nov. 2, 2014), <https://electionlawblog.org/?p=67807> (accessed Apr. 22, 2020).

“[W]hen there has been significant voter fraud in recent U.S. elections, it has been through the absentee ballot process, not in-person voting.... No such problem has yet developed in the western states (Washington, Oregon, and Colorado) that now use VBM for all their elections, but we still ought to be concerned about the potential for fraud that VBM introduces.” Richard Pildes, “How Democrats Should Reform Elections in the States,” *The American Prospect* (Jan.

Intervenors deny that maintaining the witness requirement during this pandemic fails to serve that interest. To the extent this paragraph states other legal conclusion, no response is required.

86. Denied. Virginia's absentee ballot procedures work together to achieve the valid government interest in protecting election integrity. Likewise, other states have a combination of absentee ballot procedures, some similar to Virginia's, others different, to vindicate their interest in protecting election integrity.

87. Intervenors admit that there are other safeguards that work in conjunction with the witness signature requirement to vindicate the government interest in protecting election integrity, and otherwise deny the allegations of Paragraph 87.

88. The contents of Va. Code § 24.2-710 speak for themselves, presenting one of the safeguards that work together to vindicate the government interest in protecting election integrity.

89. The contents of Va. Code § 24.2-706 speak for themselves, presenting one of the safeguards that work together to vindicate the government interest in protecting election integrity.

90. The contents of Va. Code § 24.2-1004 speak for themselves, presenting one of the safeguards that work together to vindicate the government interest in protecting election integrity.

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22, 2020), <https://prospect.org/power/democrats-reform-elections-states/> (accessed Apr. 23, 2020).

It has been widely believed "that absentee voting is much more susceptible to illegal activity than voting in person at the polling place." Sal H. Lee, *Judicial Review of Absentee Voting Laws: How Courts Should Balance State Interests Against the Fundamental Right to Vote Going Forward*, 105 IOWA L. REV. 799, 805 (2020) (citing William T. McCauley, *Comment, Florida Absentee Voter Fraud: Fashioning an Appropriate Judicial Remedy*, 54 U. MIAMI L. REV. 625, (2000)). (<https://ilr.law.uiowa.edu/assets/Uploads/ILR-105-2-Lee.pdf>)

91. The contents of Va. Code § 24.2-1016 speak for themselves, presenting one of the safeguards that work together to vindicate the government interest in protecting election integrity.

92. The contents of Va. Code § 24.2-1012 speak for themselves, presenting one of the safeguards that work together to vindicate the government interest in protecting election integrity.

93. Denied.

94. This paragraph consists of legal conclusions to which no response is required.

### **CLAIMS FOR RELIEF**

#### **COUNT I**

95. This paragraph states a legal conclusion to which no response is required.

96. Denied.

97. Denied.

98. Denied.

#### **COUNT II**

99. Section 2 of the Voting Rights Act speaks for itself.

100. This paragraph consists of legal conclusions to which no response is required.

101. Denied.

102. Denied.

103. Denied.

### **ADDITIONAL DEFENSES**

104. Plaintiffs have failed to state a claim upon which relief can be granted.

105. Plaintiffs lack standing to pursue some or all of their claims.

106. Plaintiffs' claims are barred, in whole or by part, by the doctrines of estoppel, waiver, and/or laches.

107. Proposed Intervenors reserve the right to assert additional affirmative defenses uncovered during the course of discovery and otherwise in this litigation.

**PRAYER FOR RELIEF**

Proposed Intervenor-Defendants deny that Plaintiffs are entitled to their requested relief, and pray that this Court dismiss the Complaint with prejudice, at Plaintiffs' cost, and grant to Proposed Intervenor-Defendants such other and further relief to which they are entitled at law or in equity.

Dated: April 24, 2020

Respectfully submitted,

*/s/ Christopher M. Marston*

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*Counsel for Proposed Intervenors*

**CERTIFICATE OF SERVICE**

I hereby certify that on April 24, 2020, I caused the foregoing to be filed with the United States District Court for the Western District of Virginia via the Court's CM/ECF system, which will serve all registered users.

/s/ Christopher M. Marston  
*Counsel for Proposed Intervenors*