

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

DEMOCRATIC PARTY OF VIRGINIA and  
DCCC,

Plaintiffs,

v.

ROBERT H. BRINK, in his official capacity as the  
Chairman of the Board of Elections; JOHN  
O'BANNON, in his official capacity as Vice Chair  
of the Board of Elections; JAMILAH D.  
LECRUISE, in her official capacity as the  
Secretary of the Board of Elections; and  
CHRISTOPHER E. PIPER, in his official capacity  
as the Commissioner of the Department of  
Elections,

Defendants,

v.

REPUBLICAN PARTY OF VIRGINIA,

Intervenor-Defendant.

Civil Action No. 3:21-CV-756

**JOINT RULE 26(F) DISCOVERY REPORT**

1. Pursuant to Federal Rule of Civil Procedure 26(f) and the Court's March 3, 2022, Scheduling Order, ECF Nos. 53 and 53-1, the parties to the above-captioned matter conferred on March 8, 2022. This report is submitted to the Court for use in connection with the preliminary pretrial conference.

2. **Initial Disclosures.** The parties agree to submit Rule 26(a)(1) initial disclosures on or before March 22, 2022, as required by Rule 26(a)(1)(C).

3. **Discovery Plan.** Pursuant to Rule 26(f)(3), the parties jointly propose to the Court the following discovery plan:

Plaintiffs anticipate seeking discovery on the following subjects:

- a. Any governmental interests purportedly advanced by Virginia’s requirement that voter registration applicants disclose their full nine-digit social security number (the “Full SSN Requirement”) to register to vote, *see* Va. Const. art. II, § 2, and evidence regarding the same;
- b. The legislative intent behind the Full SSN Requirement, if any;
- c. The effects of the Full SSN Requirement on Plaintiffs, their members, constituents, and supporters, and those similarly situated;
- d. The use of the Full SSN Requirement prior to and since the enactment of the Privacy Act;
- e. The origins of the Full SSN Requirement;
- f. Any governmental interests purportedly advanced by Virginia’s notice and cure procedures for absentee voters (the “Notice and Cure Process”), and evidence regarding the same;
- g. The effects of the Notice and Cure Process on Plaintiffs, their members, constituents, and supporters, and those similarly situated;
- h. How the Full SSN Requirement and Notice and Cure Process are currently implemented;
- i. Any administrative burdens from modifying the Notice and Cure Process and the Full SSN Requirement;

- j. Intervenor-Defendant's specific interests in the Notice and Cure Process and Full SSN Requirement; and
- k. Intervenor-Defendant's contentions concerning the integrity of the electoral process, the administrative burdens of changing the current Notice and Cure Process, and any harm to Intervenor-Defendant; candidates from changing the Notice and Cure Process and Full SSN Requirement.

Defendants and Intervenor-Defendant anticipate seeking discovery on the following subjects:

- a. The name, purpose, and headquarter location of each group or individual affiliated with Plaintiffs that conduct voter registration drives or facilitate voter registration;
- b. All records kept by any group or individual described in subsection (a) relating to any such drive conducted by or voter registration activity facilitated by the group or individual;
- c. How Plaintiffs interact with, coordinate the activities of, or oversee groups and individuals described in subsection (a) relating to any such drive conducted by or voter registration activity facilitated by those groups and individuals;
- d. Information relating to individuals who did not register to vote or who were deterred from registering to vote because of the Full SSN Requirement;
- e. Information relating to the increased cost and slower pace of voter registration activities due to the Full SSN Requirement;
- f. Information related to voter drives that were cancelled due to the social security number requirement;
- g. Information relating to the burden posed by the social security number requirement on the ability to vote;

- h. Information about the burden posed by the notice and curing requirement on the ability to vote;
- i. Information relating to the effectiveness of voter registration drives at driving voter turnout;
- j. Information relating to Plaintiffs' voter registration activities and how they have dealt with the Full SSN Requirement since its inception;
- k. Information relating to reluctance to register to vote in Virginia versus other states that do not have the Full SSN Requirement;
- l. Information relating to the claim that vendors are reluctant to participate in voter registration drives in Virginia;
- m. Information relating to the effect of the social security number requirement on volunteer recruitment and retention;
- n. Information regarding canvassers or other volunteers facing prosecution or other personal liability related to the social security number requirement;
- o. Information relating to the time and resources that have allegedly been diverted to lessen the alleged impacts on voter registration and absentee voting cure processes as alleged in the Complaint;
- p. Information relating to individuals who were unable to cure their deficient absentee ballots under the Notice and Cure Process;
- q. Localities applying their discretion to notify "sub-four-day voters" differently from other localities;
- r. Materials or information produced or published by Plaintiffs to notify voters of the Full SSN Requirement;

- s. Materials or information produced or published by Plaintiffs to notify voters of how voter personally identifiable information, including social security numbers, is protected by groups or individuals conducting voter registration drives or facilitating voter registration;
- t. Materials or information produced or published by Plaintiffs to notify voters of how voter personally identifiable information, including social security numbers, is protected by the Commonwealth Defendants;
- u. Materials or information produced or published by Plaintiffs to notify voters of the Notice and Cure Process;
- v. Administrative and security protocols of Plaintiffs relating to the collection and protection of voter personally identifiable information, including social security numbers, when conducting voter registration drives or facilitating voter registration;
- w. Information relating to cyber attacks against any voter registration system, including any information relating to tampering with voter registration;
- x. Information about malevolent actors obtaining and/or using social security numbers collected as part of the voter registration process;
- y. Information regarding the inadvertent disclosure of social security numbers relating to voter registration;
- z. Information relating to voter registration drives over the past 12 years and the numbers of voters successfully registered each year in the Commonwealth of Virginia by the Plaintiffs;

- aa. Information relating to the claim that the Full SSN Requirement has a disparate impact on certain populations;
- bb. Information relating to the claim that certain voters do not know their Full SSN.
- cc. Information about the impact of the social security number requirement on the ability of Plaintiffs to associate with voters who would support Democratic candidates;
- dd. Information about the effect of the social security number requirement on the electoral prospects of Democratic candidates; and
- ee. Information about the effect of the notice and curing process on the electoral prospects of Democratic candidates.

The inclusion of any topic listed above is not meant to waive any parties' ability to object to any discovery ultimately sought.

Disclosure or discovery of electronically stored information should be handled as follows:

As required by the Court's March 3, 2022 Scheduling Order, the parties discussed issues relating to disclosure or discovery of electronically stored information ("ESI") and agree to the following: (1) the parties may seek ESI regarding any of the subject matters outlined above; (2) disclosure or production of ESI will generally be limited to data reasonably available to the parties in the ordinary course of business; (3) the parties do not anticipate seeking data beyond what is reasonably available in the ordinary course of business; (4) the parties agree to produce ESI in native format where feasible; (5) the parties represent that they have taken reasonable measures to preserve potentially discoverable data from alteration or destruction; (6) the parties will comply with Federal Rule of Civil Procedure 26(b)(5)(B) regarding the inadvertent production of

privileged information; and (7) the parties do not at this time anticipate that any other problems will arise in connection with electronic or computer-based discovery.

Issues of privilege should be handled as follows:

The parties stipulate to allow for the claw back of any inadvertent disclosures of privileged information. The parties agree to promptly notify the others upon realizing that there has been an inadvertent disclosure, and the recipients of the inadvertently disclosed information agree to return and/or destroy all copies in its possession.

Discovery should be completed as follows:

Pursuant to the Court's March 3, 2022, Scheduling Order, all discovery will be completed no later than 80 days before trial.

Plaintiffs shall disclose any experts whose testimony bears on such issue no later than sixty (60) days before the date set for completion of discovery. Within fifteen (15) days thereafter, the opposing party shall disclose any opposing experts. The party with the burden of proof shall disclose any rebuttal experts within fifteen (15) days thereafter. As used in this paragraph, disclose means to provide the identity of the expert and any information and documents required by Federal Rule of Civil Procedure 26.

Supplementations under Rule 26(e) may be due from time to time as new evidence is discovered, but at least 15 days before the discovery deadline.

No party shall be required to produce or reflect on a privilege log any documents or communications with a creation date of December 7, 2021, or later.

The parties agree to electronic service.

Finally, the parties agree to the limitations on discovery as set by the Federal Rules of Civil Procedure and the Local Rules for the U.S. District Court for the Eastern District of Virginia, and

to abide by all dates set out in the Court's March 3, 2022, Scheduling Order. *See* ECF Nos. 53, 53-1.

Dated: March 22, 2022

Respectfully Submitted:

/s/ Haley K. Costello Essig

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**Agreed:**

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 22, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing to all parties.

/s/ Haley K. Costello Essig

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