

VIRGINIA:

IN THE CIRCUIT COURT OF SUFFOLK COUNTY

DEMOCRATIC PARTY OF VIRGINIA,

Plaintiff-Petitioner,

v.

BURDETTE J. LAWRENCE, in her official capacity as Suffolk County General Registrar; and BRENT ROWLANDS, EDWARD ROETTGER, AND ISAAC BAKER, in their official capacities as Suffolk County Electoral Board Members,

Defendants-Respondents.

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRIT OF MANDAMUS

At Law No. _____

Plaintiff-Petitioner the Democratic Party of Virginia (“DPVA” or “Plaintiff”), by and through undersigned counsel, brings this Verified Complaint for Injunctive Relief, including a Temporary Restraining Order, and for Writ of Mandamus against Defendants-Respondents (“Defendants”) to compel their compliance with Va. Code § 24.2-603 and extend voting hours today. Another Virginia court has already ordered this relief elsewhere in Virginia under similar circumstances. Plaintiff alleges as follows:

BACKGROUND

1. On the morning of November 8, 2022, the East Suffolk Recreation Center polling place (the “East Suffolk Precinct”), located in Suffolk County, opened 35 minutes late due to electronic issues with the voting machines. During that time, Virginia voters were unable to vote at the East Suffolk Precinct, and numerous individuals left without voting because they could not wait for the polling place to open. *See* Ex. A (G. Oursler Declaration).

2. Virginia law, however, anticipates that polling places will remain open for 13 hours on election day, pursuant to Va. Code § 24.2-603, which states “the polls shall be open at each

polling place at 6:00 am on the day of the election and closed at 7:00 pm on the same day.”

3. Virginia law also contemplates that polling place hours can be extended by a court order. *See* Va. Code § 24.2-653.2 (“whenever the polling hours are extended by an order of a court of competent jurisdiction” outlining the process for ballots cast after normal polling hours by persons who were not already in line at the time the polls would have closed).

4. This Court has the authority to extend polling hours. A sister circuit in the County of Nottoway issued an order extended polling hours to 8:00pm EST today at Blackstone Primary School following technical difficulties with electronic pollbooks at the precinct between 6:00am and 7:00am. *See* Ex. B (Order).

5. The relief requested by Plaintiff is also consistent with relief granted by state courts across the country under similar circumstances and election code provisions. A Connecticut court ordered two polling places to remain open for an additional 30 minutes after voting officials failed to have voting lists ready at 6am for voters when the precincts opened.¹ A New Hampshire court ordered extension of polling hours in a county for an additional hour after a shooting in the area unexpectedly closed polls for an hour.² A Maryland Court extended hours at Montgomery County polling places for an hour due to a glitch that left computerized machines in the county inoperable in the morning.³ Another Maryland judge extended voting hours by 90 minutes due to an ice

¹ Secretary of State of Connecticut, Press Release: Voting at Two Hartford Polling Precincts Extended Until 8:30 PM (November 4, 2014), <https://portal.ct.gov/-/media/SOTS/RELEASES/2014/11414MerrillVotingExtendedby30MinutesattwoHartfordPrecinctspdf.pdf>.

² Press Release, N.H. Att’y Gen., Town of Pittsburg Polling Places to Stay Open to 8:00 PM (Nov. 4, 2010), <https://web.archive.org/web/20141225072620/http://www.doj.nh.gov/media-center/press-releases/2010/20101102-pittsburg-polling.htm>.

³ Debbi Wilgoren, “Montgomery to Extend Voting Hours After Election Glitches,” *Washington Post* (September 12, 2006), <https://www.washingtonpost.com/archive/business/technology/2006/09/12/montgomery-to-extend-voting-hours-after-election-glitches/5a0a55c0-7a52-4212-a9c3-44610150443b/>.

storm.⁴ And these are just a few examples; extension of polling hours is a common remedy in the context of voting issues on election day.⁵ Such extensions of voting hours to ensure that voters have the full time to vote as allowed by law and thus the constitutional right to vote.

6. In order to ensure that Virginians in Suffolk County have the opportunity to cast their ballot at the East Suffolk Precinct for the full 13 hours guaranteed by law, Plaintiff seeks declaratory and injunctive relief and a writ of mandamus. Specifically, Plaintiff asks the Court to ensure the integrity of the democratic process and prevent serious and irreparable injury to DPVA and the fundamental rights of its membership and voters by declaring that the East Suffolk Precinct polling place must remain open for an additional 35 minutes pursuant to Va. Code § 24.2-603 to make up for the polling place opening 35 minutes late and ordering Defendants to keep the East Suffolk Precinct polling place open until 7:35 pm.

JURISDICTION AND VENUE

7. This Court has jurisdiction to grant declaratory and injunctive relief under the Virginia Declaratory Judgment Act. Va. Code § 8.01-184, which authorizes the Court to declare rights, status, and other legal relations among the parties and to issue injunctive relief as necessary to effectuate judgment. *See also* Va. Code Ann. § 8.01-186 (authorizing further relief based on a declaratory judgment “whenever necessary or proper”). The Court has jurisdiction to hear the Petition for Writ of Mandamus under Va. Code Ann. § 17.1-513.

8. Venue is proper in this court because the Defendants in this case are the Suffolk

⁴ Eric M. Weiss & Joshua Zumbrun, Icy Rain Ties Up Traffic, Causes Dangerous Ride to the Polls, Wash. Post (Feb. 12, 2008), <http://www.washingtonpost.com/wp-dyn/content/story/2008/02/12/ST2008021202302.html>.

⁵ *See, e.g.*, Christine Hauser & John Holusha, Problems Lead 8 States to Extend Some Voting Hours, N.Y. Times (Nov. 7, 2006), <http://www.nytimes.com/2006/11/08/world/americas/08iht-web.1108day.3441243.html?pagewanted=all>; Amended Order, *Obama for Am. v. Cuyahoga Cty. Bd. of Elections*, No. 1:08-CV-00562 (N.D. Ohio Mar. 4, 2008) (extending polling hours in certain precincts in Ohio in 2008 based upon ballot shortages and weather).

County General Registrar and the Suffolk County Electoral Board Members, in their official capacities and with their official offices in Suffolk County, Va. Code § 8.01-261(2), and because the proceeding to which the writ of mandamus relates is Suffolk County, *id.* § 8.01-261(5).

PARTIES

9. Plaintiff Democratic Party of Virginia (“DPVA”) is a political party as defined by Va. Code § 24.2-101 and is the officially recognized state party committee for the Democratic Party in the Commonwealth of Virginia. DPVA’s mission is to elect Democratic candidates in local, county, state, and federal elections in the Commonwealth and to help its members and constituents successfully vote. Those efforts are hindered by the delayed opening of the East Suffolk Precinct polling place, which is located in a city that leans Democratic. Further, DPVA has members who will be disenfranchised absent relief.

10. Defendant Burdette J. Lawrence, sued in her official capacity only, is the Suffolk County General Registrar. General Registrar Lawrence, along with the county electoral board members, is responsible for controlling the election process and polling place hours. Va. Code § 24.2-601; *id.* § 24.2-603.

11. Defendants Brent Rowlands, Edward Roettger, and Isaac Baker, in their official capacities as Suffolk County Electoral Board Members (the “Board”). The Board, along with the county general registrar, is responsible for controlling the election process and polling place hours. Va. Code § 24.2-601; *id.* § 24.2-603.

CAUSE OF ACTION

COUNT I

(Violation of VA Const. Art. 1, § 6)

12. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Verified Complaint as though set forth fully herein.

13. VA Const. Art. 1, § 6 ensures that Virginians “have the right of suffrage.”

14. Voting is a fundamental right, as recognized by this state’s courts. *See, e.g., Etheridge v. Med. Ctr. Hosps.*, 237 Va. 87, 98, 376 S.E.2d 525, 530 (1989).

15. Absent an order from this Court ordering polls stay open, DPVA will suffer irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court issue the following relief: that Defendants to, in compliance with Va. Code § 24.2-603, keep polling places open for an additional 35 minutes; and that votes of all voters who are in line by 7:35 PM be permitted to vote provisionally and have their votes counted pursuant to § 24.2-653.2.

PETITION FOR WRIT OF MANDAMUS

In addition, Plaintiff, by and through the undersigned counsel, and pursuant to Va. Code § 17.1-513, hereby petitions this Court for the issuance of a writ of mandamus directed to the Defendants, and in support thereof states:

16. DPVA incorporates by reference each of the allegations contained in the foregoing paragraphs of this Verified Complaint as though set forth fully herein.

17. DPVA has a clear right to the relief it seeks.

18. Virginia law mandates: “At all elections, the polls shall be open at each polling place at 6:00 a.m. on the day of the election and closed at 7:00 p.m. on the same day.” Va. Code § 24.2-603.

19. Defendants have a clear legal duty pursuant to Va. Code § 24.2-601 to “control the election process and carry out the applicable provisions of this title,” which includes Va. Code § 24.2-603.

20. As detailed above, Defendants failed to open the polls at the East Suffolk

Recreational Center precinct at 6:00 a.m. on the day of the election, today.

21. Defendants' failures are in direct conflict with their duty under Va. Code § 24.2-601.

22. Plaintiff has no other adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court hear this action pursuant to Va. Code § 17.1-513 and grant a writ of mandamus ordering: (1) Defendants to, in compliance with Va. Code § 24.2-603, keep polling places open for an additional 35 minutes; and (2) that votes of all voters who are in line by 7:35 PM be permitted to vote provisionally and have their votes counted pursuant to § 24.2-653.2.

Respectfully submitted, this 8th day of November, 2022

/s/ Joel Nied
Joel Nied, VA Bar No. 48031
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Counsel for Plaintiff

VERIFICATION

Pursuant to Va. Code. § 8.01-4.3, I verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: November 8, 2022

Shyam Raman

Shyam Raman,
Executive Director,
Democratic Party of Virginia
11/8/2022