

**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

**MOTION TO INTERVENE OF THE
REPUBLICAN PARTY OF VIRGINIA,
VICKI BURNS, VINCE FALTER,
MILDRED H. SCOTT, AND THOMAS
TURNER**

NOW COMES the Republican Party of Virginia, Inc. (“**RPV**”), MG Vincent E. Falter, USA (ret), Mildred H. Scott, and Thomas N. Turner, Jr. (collectively, “**Applicants**”), by counsel, and respectfully move this Court to intervene in this case pursuant to Rules 24(a)(2) and 24(b) of the Federal Rules of Civil Procedure. This motion is accompanied by a Memorandum of Points and Authorities that explains why Applicants are entitled to intervene in this case of right and are also entitled to permissive intervention. Applicants respectfully request that the Court grant intervention.

Applicants’ counsel contacted counsel for the parties seeking their consent on this motion. Counsel for Plaintiffs and Defendants both indicated their opposition to Applicants’ intervention.

In conformance with Federal Rule of Civil Procedure 24(c), a proposed Answer is attached as Exhibit A to this motion, and a proposed order is attached as Exhibit B.

Dated: April 24, 2020

Respectfully submitted,

/s/ Christopher M. Marston
Christopher M. Marston (VSB No. 65703)
chris@2562group.com
2652 GROUP LLC
P.O. Box 26141
Alexandria, VA 22313-6141
571.482.6790 / Fax 703.997.2549

Trevor M. Stanley (VSB No. 77351)
E. Mark Braden (pro hac vice pending)
Katherine L. McKnight (adm. pending)
Richard Raile (VSB No. 84340)
BAKER & HOSTETLER LLP
Washington Square, Suite 1100
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5403
202.861.1500 / Fax 202.861.1783
tstanley@bakerlaw.com
mbraden@bakerlaw.com
kmcknight@bakerlaw.com
rraile@bakerlaw.com

Patrick T. Lewis (pro hac vice pending)
BAKER & HOSTETLER LLP
127 Public Square, Suite 2000
Cleveland, OH 44114-1214
216.621.0200 / Fax 216.696.0740
plewis@bakerlaw.com

Counsel for Proposed Intervenors

CERTIFICATE OF SERVICE

I certify that on April 24, 2020, the foregoing was filed on the Court's electronic case filing system. Notice of the filing was generated by the Court's electronic system. Copies of the filing are available on that system.

/s/ Christopher M. Marston
Christopher M. Marston (VSB No. 65703)

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."¹ Intervenors further note that the Richmond Times Dispatch attributed to Governor Northam's spokeswoman Alena Yarmosky

¹ 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.”²

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,³ or require both a copy of the voter’s ID and notary or witness signature on the returned absentee ballot.⁴ Some states require proof of identification at the absentee ballot application phase,⁵ some use signature matching to verify absentee ballot applications and/or returned

² 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.

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

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

⁵ 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,⁶ and some have implemented various other rules designed to ensure electoral integrity in the absentee voting process.⁷

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.

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

⁶ 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).

⁷ 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's lack knowledge or information sufficient to form a basis as to the truth of these allegations.

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

16. Admitted.

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

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

80. Intervenor's 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. Intervenor's 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.⁸

⁸ 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 (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.

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 Intervenor 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

Christopher M. Marston (VSB No. 65703)
chris@2562group.com
2652 GROUP LLC
P.O. Box 26141
Alexandria, VA 22313-6141
571.482.6790 / Fax 703.997.2549

Trevor M. Stanley (VSB No. 77351)
E. Mark Braden (pro hac vice pending)
Katherine L. McKnight (adm. pending)
Richard Raile (VSB No. 84340)
BAKER & HOSTETLER LLP
Washington Square, Suite 1100
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5403
202.861.1500 / Fax 202.861.1783
tstanley@bakerlaw.com
mbraden@bakerlaw.com
kmcknight@bakerlaw.com
rraile@bakerlaw.com

Patrick T. Lewis (pro hac vice pending)
BAKER & HOSTETLER LLP
127 Public Square, Suite 2000
Cleveland, OH 44114-1214
216.621.0200 / Fax 216.696.0740
plewis@bakerlaw.com

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

Exhibit B

**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] ORDER

Upon consideration of the Motion to Intervene filed by the Republican Party of Virginia (“RPV”), MG Vincent E. Falter, USA (ret), Mildred H. Scott, and Thomas N. Turner, Jr., (the “Motion”) filed herein, the Court having considered the Motion, the Memorandum of Points and Authorities in support thereof, any opposition thereto, and any oral argument thereon, and it appearing to the Court after due deliberation that the relief requested is appropriate and will facilitate efficient resolution of this

case, it is by the Court this ____ day of _____, 2020,

ORDERED, that the Motion be, and it is hereby, granted; and it is further

ORDERED, that the Republican Party of Virginia, MG Vincent E. Falter, USA (ret), Mildred H. Scott, and Thomas N. Turner, Jr., are each permitted to intervene as a defendant in the above-captioned proceeding as a matter of right; and it is further

ORDERED, that the proposed Answer of the Intervenor-Defendants, which is attached as Exhibit A to the Motion, is deemed filed as of the date of this Order.

Honorable United States Judge

**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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO INTERVENE**

I. INTRODUCTION

On April 17, the League of Women Voters of Virginia and four Virginia voters brought this action for declaratory and injunctive relief against Virginia’s election officials in order to enjoin Va. Code. Ann. § 24.2-707(A) for the June 23, 2020, primary election and future elections. That statute requires that absentee ballots be marked in the presence of a witness and that the witness sign the sealed envelope containing the marked ballot. The relief sought by Plaintiffs goes too far, seeking to eliminate absentee voting protections designed to protect the integrity of Virginia elections for all voters.

The Republican Party of Virginia, Inc. (“**RPV**”), MG Vincent E. Falter, USA (ret), Mildred H. Scott, and Thomas N. Turner, Jr. (collectively, “**Applicants**”), respectfully move this Court to intervene in this case to vindicate their unique interest in the integrity of the Republican Primary Election initiated by RPV to nominate candidates, and in the integrity of the General Election in which those

Republican candidates will compete. These interests are not adequately represented by existing parties to this case, and the relief Plaintiffs seek would materially impair that interest.

Finally, Applicants' intervention will not disrupt these proceedings. Applicants are prepared to comply with the Court's deadlines related to Plaintiffs' pending Motion for Preliminary Injunction (Dkt. 16) and all future deadlines set by the Court.

II. BACKGROUND OF APPLICANTS

Applicants each have strong and unique interests in this matter. The RPV is a major political party in Virginia and seeks to intervene on its own behalf, as well as on behalf of its candidates and party members. The power of a political party, such as RPV, to "provide for the nomination of its candidates..." and "perform all other functions inherent in political party organizations" is recognized in statute. Va. Code Ann. § 24.2-508 (2019). In exercising those powers, RPV adopted a direct primary and timely notified the Virginia State Board of Elections ("**Board**") of its choice pursuant to Va. Code § 24.2-516. The Board then ordered the holding of a Republican Primary for U.S. Senate and U.S. House of Representatives in the second and third congressional districts, now scheduled for June 23, 2020. The conduct of that Primary Election is a subject of this lawsuit.

Applicants Gen. Falter, Ms. Scott, and Mr. Turner are registered Virginia voters, members of the RPV, and intend to vote in the June 23, 2020 Republican Primary Election and in the 2020 General Election. Many have been voters for quite

some time in the Commonwealth, and Ms. Scott served as an officer of election in Roanoke County for years.

Finally, Applicant Mr. Turner is also the chairman of the Young Republican Federation of Virginia and, in such capacity, spends considerable time organizing get-out-the-vote and other efforts to encourage young voters to vote and to support Republican candidates throughout the Commonwealth.

III. LAW AND ARGUMENT

A. Applicants Are Entitled To Intervene As A Matter Of Right

Under Rule 24(a)(2) of the Federal Rules of Civil Procedure, intervention as a matter of right is appropriate when, upon a “timely motion,” a party:

claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.

Fed. R. Civ. P. 24(a)(2). The Fourth Circuit has interpreted the rule to require that an applicant timely “demonstrate: (1) that they have an interest in the subject matter of the action; (2) that the protection of this interest would be impaired because of the action; and (3) that the applicant’s interest is not adequately represented by existing parties to the litigation.” *Teague v. Bakker*, 931 F.2d 259, 260-61 (4th Cir. 1991). As outlined below, Applicants meet these requirements.

1. Applicants’ Request To Intervene Is Timely

Applicants motion is certainly timely. “Where a case has not progressed beyond the initial pleading stage, a motion to intervene is timely.” *United States v. Commonwealth of Virginia*, 282 F.R.D. 403, 405 (E.D. Va. 2012) (citing *Scardelletti*

v. Debarr, 265 F.3d 195, 203 (4th Cir.2001)). The Complaint was filed on April 17, 2020, and Applicants filed this motion a mere 7 days later, and prior to April 28, the date on which the Plaintiffs have requested the Defendants' response to their motion for a preliminary injunction. (Pls.' Mot. for Expedited Briefing at 1). Defendants have not yet responded to the complaint on file, a hearing is not yet scheduled, and no adjudication on the merits has taken place.

The passage of time is only one element of the timeliness inquiry. "The most important consideration is whether the delay has prejudiced the other parties." *Spring Constr. Co, Inc. v. Harris*, 614 F.2d 374 (4th Cir. 1980). Applicants' intervention is made without any delay and causes no prejudice to the existing parties. Should this court allow Applicants to intervene at this early stage, they will have an opportunity to assert their defenses and protect their interests without disrupting, delaying, or protracting the litigation. Applicants are prepared to meet the expedited briefing schedule requested by Plaintiffs. Therefore, this Motion is timely and will not cause delay or prejudice any of the existing parties.

2. Applicants Have An Interest In This Litigation That Is Not Adequately Represented By Existing Parties

Applicants each have vital interests in the subject matter of this litigation. Because those interests are not adequately represented by existing parties, they must be permitted to intervene to vindicate those interests.

First consider the RPV, which seeks to intervene both on its own behalf and in a representative capacity on behalf of its nominees, candidates, and members. As set forth above, the RPV elected to have a Primary Election to nominate candidates

for the U.S. House of Representatives (CD-2 and CD-3) and the U.S. Senate. That a political party has an interest in its own primary election is axiomatic. *Clingman v. Beaver*, 544 U.S. 581 (2005); *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 (1986); *see also Democratic Party of the United States v. Wisconsin*, 450 U.S. 107 (1981). And just as surely, RPV has a vital interest in the conduct of the 2020 General Election at which its nominated candidates will compete for office.

Additionally, RPV, particularly on behalf of its candidates, has a substantial interest in any change, such as one to absentee voting rules, to the “structure[e] of th[e] competitive environment” of an election. *Shays v. F.E.C.*, 414 F.3d 76, 85 (D.C. Cir. 2005). If Plaintiffs’ relief is granted, RPV and its candidates will face “a broader range of competitive tactics than [state] law would otherwise allow.” *Id.* at 86. Eliminating the witness signature requirement would “fundamentally alter the environment in which [they] defend their concrete interests (e.g., [...] winning reelection).” *Id.*; *see also id.* at 87 (holding that political candidates have a legally cognizable interest in preventing electoral “competition [becoming] intensified by [statutorily]-banned practices”). Because RPV’s candidates “actively seek [election or] reelection in contests governed by challenged rules,” they have an interest in “demand[ing] adherence” to those requirements. *Id.* at 88; *see also Nader v. F.E.C.*, 725 F.3d 226, 228-9 (D.C. Cir. 2013).

Each of the Applicants also has a compelling interest in ensuring the integrity of the election(s) at issue in this litigation. Plaintiffs seek to enjoin a statute that serves to mitigate the risk of absentee ballot fraud. If unauthorized

ballots are cast due to fraud, they dilute the votes of legal voters, like the individual Applicants and other Republican voters the RPV represents here. Vote dilution is a violation of the fundamental right to vote. *See Reynolds v. Sims*, 377 U.S. 533, 554 (1964); *Howell v. McAuliffe*, 292 Va. 320, 335, 788 S.E.2d 706 (2016). RPV also seeks to vindicate this interest on behalf of its candidate and members.

These vital interests are not adequately represented by the existing parties to this action. Certainly they are not represented by Plaintiffs, who seek relief that Applicants oppose.

Nor are Applicants' interests adequately represented by the Defendants. Ordinarily, "the burden on the applicant of demonstrating a lack of adequate representation 'should be treated as minimal.'" *Teague*, 931 F.2d at 262 (citing *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)). Applicants recognize that in the Fourth Circuit, intervenors must make a "strong showing" that government agency defendants will inadequately represent their interests. *Stuart v. Huff*, 706 F.3d 345, 352 (4th Cir. 2013). But central to *Stuart's* holding was the proposed-intervenors' concession that the government defendants in that case shared "the same ultimate objective as the existing defendants" and that they merely disagreed with "the Attorney General's reasonable litigation tactics." *Id.*

Applicants have a strong basis to believe their interests are not adequately represented. To begin, at this juncture it is not clear whether the Defendants will even defend the statute or will do so aggressively. And, if they chose not to, there would be no litigant before this Court to defend it.

Further, Applicants and Defendants do not share the same ultimate objectives, and it is unreasonable to believe they would. The Defendants are obligated to serve “two distinct interests,” which the Fourth Circuit has recognized are grounds to permit intervention to a party who is only obligated to serve one such interest. *United Guaranty Residential Ins. Co. v. Philadelphia Sav. Fund Soc’y*, 819 F.2d 473, 475 (4th Cir. 1987). Specifically, the Defendants have a generalized interest in election-administration that may come into tension with a defense of the statute in question. Further, the Defendants also have an interest in advancing the Governor’s public health goals. It is exactly the conflict between these two goals that underly the Plaintiffs’ claim. While Applicants share great concern for the public health, meeting the Governor’s goals is not their ultimate objective. This conflict makes this case much more like *Trbovich*, in which the Secretary of Labor had to “serve two distinct interests,” and intervenor only served one. 404 U.S. at 538. In *Stuart*, the intervenors “concede[d] that they share[d] the same ultimate objective as the existing defendants and where those defendants are represented by a government agency.” 706 F.3d at 352. Because of the differing interests of Applicants and Defendants, the rule in *Teague* should be decisive in this case.

B. In The Alternative, Applicants Should Be Granted Permissive Intervention

Alternatively, this Court should permit Applicants to intervene pursuant to Rule 24(b) of the Federal Rules of Civil Procedure. Rule 24(b) provides for permissive intervention where a party timely files a motion and “has a claim or

defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). “In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3).

The arguments set forth in Part I, *infra*, establish that Applicants meet the criteria for permissive intervention, which should be liberally granted. “[T]he Fourth Circuit generally recognizes that liberal intervention is desirable to dispose of as much of a controversy involving as many apparently concerned persons as is compatible with efficiency and due process.” *Pinnacle Bank v. Bluestone Energy Sales Corp.*, Civil Action No. 7:15CV00149, 2017 WL 6915289 (W.D. Va. Nov. 24, 2017) (internal quotation marks omitted), citing *Feller v. Brock*, 802 F.2d 722, 729 (4th Cir. 1986); *see also Baker Packing Co. v Andrews Farming, Inc.*, Civil Action No. 7:17CV00395, 2016 WL 8777364 (W.D. Va. Nov. 23, 2016).

IV. CONCLUSION

For the reasons set forth above, Applicants respectfully request that their Motion be granted, and that this honorable Court allow Applicants to intervene as defendants in order to protect their interest in the subject matter of this litigation.

Dated: April 24, 2020

Respectfully submitted,

/s/ Christopher M. Marston

Christopher M. Marston (VSB No. 65703)

chris@2562group.com

2652 GROUP LLC

P.O. Box 26141

Alexandria, VA 22313-6141

571.482.6790 / Fax 703.997.2549

Trevor M. Stanley (VSB No. 77351)

E. Mark Braden (pro hac vice pending)

Katherine L. McKnight (adm. pending)

Richard Raile (VSB No. 84340)

BAKER & HOSTETLER LLP

Washington Square, Suite 1100

1050 Connecticut Avenue, N.W.

Washington, DC 20036-5403

202.861.1500 / Fax 202.861.1783

tstanley@bakerlaw.com

mbraden@bakerlaw.com

kmcknight@bakerlaw.com

rraile@bakerlaw.com

Patrick T. Lewis (pro hac vice pending)

BAKER & HOSTETLER LLP

127 Public Square, Suite 2000

Cleveland, OH 44114-1214

216.621.0200 / Fax 216.696.0740

plewis@bakerlaw.com

Counsel for Proposed Intervenors

CERTIFICATE OF SERVICE

I certify that on April 24, 2020, the foregoing was filed on the Court's electronic case filing system. Notice of the filing was generated by the Court's electronic system. Copies of the filing are available on that system.

/s/ Christopher M. Marston
Christopher M. Marston (VSB No. 65703)