

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

STEPHEN A. PARSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 3:16CV-13-MHL
	)	
JAMES B. ALCORN, et al.,	)	
	)	
Defendants.	)	
	)	

**RESPONSE TO PLAINTIFFS' MOTION FOR EMERGENCY INJUNCTION  
PENDING APPEAL**

Defendants, James B. Alcorn, Clara Belle Wheeler and Singleton B. McAllister, in their official capacities as Chairman, Vice-Chairman, and Secretary, respectively, of the State Board of Elections, by counsel, for their Response to Plaintiffs' Motion for Emergency Injunction Pending Appeal (Dkt# 28) state as follows:

**ARGUMENT**

The Plaintiffs' offer no new arguments in support of their request for emergency relief. Their brief (Dkt #29) offers nothing more than a restatement of the arguments previously rejected by the Court. As previously pointed out by the Defendants, the public interest weighs strongly against last-minute changes to election procedures, which unquestionably would occur were the Court to grant the current Motion. *See Purcell, et al. v. Gonzalez, et al.*, 549 U.S. 1 (2006), *Frank v. Walker*, 574 U.S. \_\_\_, 135 S.Ct. 7 (2014) (Alito, J., dissenting, joined by Scalia, J. and Thomas, J.), *Veasey, et al. v. Perry, et al.*, 574 U.S. \_\_\_, 135 S.Ct. 9 (2014) (Ginsberg, J., dissenting, joined by Sotomayor, J., and Kagan, J.).

The Fourth Circuit applies a similar standard to a request for stay pending appeal as it does for a request for injunctive relief. *See Long v. Robinson*, 432 F.2d 977, 979 (4th Cir. 1970) (a party seeking a stay “must show (1) that he will likely prevail on the merits of the appeal, (2) that he will suffer irreparable injury if the stay is denied, (3) that other parties will not be substantially harmed by the stay, and (4) that the public interest will be served by granting the stay.”). The Court gave due consideration to the arguments offered by the Plaintiffs in support of their request for injunctive relief, and even afforded them the opportunity for supplemental briefing to demonstrate they would likely succeed on the merits of their Complaint. In its Order (Dkt# 27), the Court rejected the contentions presented in the current Motion. *See January 14, 2016 Order* at 2 (“Plaintiffs did not present evidence sufficient to show a likelihood of success” on the merits of their claims).

Effectively, the Plaintiffs request the Court to reconsider its prior decision and enjoin the action of the Defendants. The present no new evidence, demonstrate no change in the law or any clear error in the previous decision by the Court. *See Mayfield v. Nat'l Ass'n for Stock Car Auto Racing, Inc.*, 674 F.3d 369, 378 (4th Cir. 2012) (reconsideration under Fed. R. Civ. P. 59(e) “may only be granted in three situations: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.”) (quotation and citation omitted). Simply stated, the Plaintiffs merely rehash their previous arguments, which the Court already found insufficient to justify the issuance of injunctive relief. It should similarly deny the current request.

### **CONCLUSION**

WHEREFORE, the Defendants respectfully request the Court deny the Plaintiffs’ motion for emergent relief.



### **CERTIFICATE OF SERVICE**

I hereby certify that on this 13th day of January, 2016, 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 the following:

Chester Smith, Esq.  
Smith Law Group, PLLC  
293 Independence Boulevard, Suite 231  
Virginia Beach, Virginia 23462  
Telephone: (757) 490-3181  
[chucsmit@live.com](mailto:chucsmit@live.com)  
*Counsel for Plaintiffs*

Jack R. Wilson, III, Esq.  
Jack R. Wilson, III PLC  
9401 Courthouse Rd., Suite 204  
Chesterfield, Virginia 23832  
Telephone: (804) 425-9474  
[jack@jackwilsonplc.com](mailto:jack@jackwilsonplc.com)  
*Counsel for Republican Party of Virginia*

/s/

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J. Duncan Pitchford, Asst. Atty. Gen. (VSB No. 87065)  
*Counsel for Defendants*  
Office of the Virginia Attorney General  
900 East Main Street  
Richmond, Virginia 23219  
Telephone: (804) 371-0977  
Facsimile: (804) 786-2650  
[jpitchford@oag.state.va.us](mailto:jpitchford@oag.state.va.us)