

**United States District Court  
for the Eastern District of Virginia  
Alexandria Division**

**Thomas Curtin, Donna Curtin, Suzanne A. Spikes, Kelley Pinzon, Tom Cranmer, and Carol D. Fox,**

*Plaintiffs,*

v.

**Virginia State Board of Elections; Robert H. Brink**, in his official capacity as Chairman of the Board, **John O'Bannon**, in his official capacity as Vice Chair of the Board, and **Jamilah D. Lecruise**, in her official capacity as Secretary of the Board; and **Christopher E. Piper**, in his official capacity as Commissioner of the Virginia Department Of Elections,

*Defendants.*

**Civ. No.** \_\_\_\_\_

**Declaration of Judy Flaig**

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I, Judy Flaig, declare as follows:

**1.** I was the Fairfax County Election Manager from July 1999 through my retirement in January 2018.

**2.** As the Election Manager, I was responsible for planning and implementing all phases of election administration. This included, *inter alia*, establishing timelines, ensuring compliance with statutory deadlines, security arrangements, contingency planning, securing polling places, determining the number of ballots to be printed and supplies to be ordered, producing training materials, recruiting and training election officers, supervising office staff, and submitting budgets.

3. Prior to being the Election Manager, I was on the staff at the Fairfax County Election Office from September 1987 through March 1996 and served as an Election Officer from 1976 through 1986.

4. I am a Certified Elections/Registration Administrator, and have been since August 2004.

5. I have direct knowledge of the Fairfax County Election Office and Virginia elections.

6. I am familiar with both in-person and absentee voting processes in Virginia, and have personal experience with both.

7. I have personally participated in the absentee voting process in Fairfax County.

8. While the number of absentee ballots have increased in recent years, the number of voters voting by mail is roughly 5-10% for normal elections.

9. A sudden dramatic increase in absentee ballots, would be a logistical nightmare and increases the risk of disenfranchisement. Some examples of most detrimental issues are detailed below.

10. First, Virginia does not have the necessary equipment, infrastructure, or processes to deal with a dramatic increase in absentee ballots. While some states have transitioned to all-mail voting, these states have automated systems, barcodes, methods of tracking boxes, etc. and had several years to plan and implement their new system. Virginia has never had a large percentage of ballots submitted by mail.

11. Moreover, Virginia does not have a reliable way to track ballots, so there would be no way of knowing whether ballots were properly delivered or properly received.

12. Second, election offices are staffed to deal with the standard number of absentee ballots. If there were to be a large influx of absentee ballots, it is likely that many jurisdictions will not

have enough staff to process them. Moreover, with existing social distancing guidelines, many locations will not have space available to adequately staff election offices to deal with the large influx of absentee ballots.

**13.** The lack of space and social distancing requirements may also prevent political party observers from observing the vote count, which increases the chances of mistakes going undetected.

**14.** Third, the process of sending, receiving, and counting ballots is a tedious process. For example, almost all of the process is still done manually. While voter information is entered into the computer system, all mailings are assembled by hand and labels manually attached.

**15.** Despite all of the established processes and precautions to avoid errors, there is normal human error in every election. This would be sure to increase if an elections office is overwhelmed with applications and ballots.

**16.** My experience with election workers is that they are hardworking, dedicated individuals who will work around the clock, if necessary. But if workers are overworked and tired, mistakes are certain to increase.

**17.** Fourth, many jurisdictions will not have adequate space for counting absentee ballots, especially under social distancing guidelines. In normal years, the Fairfax County Elections Office pre-processes a large number of absentee ballots in a small conference room and on Election Night takes over and secures the entire conference center (3 large capacity rooms and 3 small capacity rooms) to process and count absentee ballots. To handle a large influx of ballots, pre-processing would have to increase dramatically in Fairfax County which requires more space, and pre-processing would need to be implemented in many other jurisdictions which adds

to the complexity of the process with respect to space, security, tracking, and storage of ballots.

Any increase in complexity, especially without adequate time to prepare, will certainly lead to an increased number of errors.

**18.** Fifth, the existing secure storage options are not equipped to handle a massive influx of absentee ballots. Before an election, secure storage is needed to ensure that all ballots get counted. After an election, secure storage of the absentee ballots is necessary for recount situations.

**19.** While some larger jurisdictions may be able to comply with the secure storage needs, smaller jurisdictions will likely run out of secure storage options. This will result in either boxes being moved or boxes being stored in a variety of locations—both of which risk loss of boxes. There is also an increased risk of boxes being tampered with, as Virginia does not require tamper evident security measures.

**20.** In years with a normal amount of absentee ballots, Fairfax County has dealt with space issues—a problem that is sure to be exasperated with an influx of absentee ballots. It is almost certain that Fairfax County would have to obtain additional secure storage to store ballots.

**21.** In a prior election recount, the Clerk of Court refused to allow the boxes to be transferred offsite to avoid misplacing boxes. Transport of boxes greatly increases the risk of loss or misplacement.

**22.** Sixth, election offices may not be able to afford to administer additional absentee ballots. Absentee balloting is much more expensive than in-person voting. For example, it costs two to three cents per ballot just to have the absentee ballots folded for mailing (in-person voting ballots are not folded). There are also additional costs for postage, envelopes, labels, boxes, etc,

which would not be required for in-person voting.

23. Seventh, the United States Postal Service (USPS) presents another significant concern. USPS does not have the necessary infrastructure to deal with a sudden influx of absentee ballots in Virginia.


24. In the past, there have been issues with USPS and ballots showing up after the election or being lost. These issues would certainly increase if there were a sudden increase of absentee ballots.

25. Given my concerns with USPS, if I were to vote absentee by mail I would personally deliver my ballot to the Elections Office to ensure that it gets there on time. I would not risk my ballot getting lost or delayed in the postal system.

26. Virginia election offices are not prepared for a significant increase in absentee ballots. The processes, procedures, equipment, and staff are not equipped to deal with this dramatic shift. It would be a severe burden for election officials and greatly increases the potential of disenfranchisement for voters.

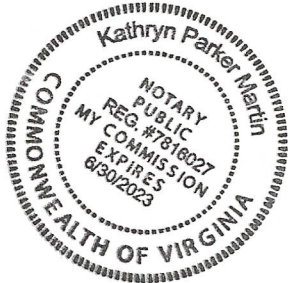
27. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and understanding. 28 U.S.C. § 1746.

Executed on MAY 12, 2020.

  
\_\_\_\_\_  
Judy Flaig

COMMONWEALTH OF VIRGINIA )  
 ) SS:  
COUNTY OF Fairfax )

Before me, a Notary Public, personally appeared Judy Flaig, who acknowledged the free and voluntary execution of the above and foregoing Declaration on the 12<sup>th</sup> day of May, 2020.



Signed: Kathryn Parker Martin  
Printed: Kathryn Parker Martin  
Resident of Fairfax County, Virginia  
My Commission Expires: 6/30/2023

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each social security number in this document unless required by law.

Courtney Turner Milbank

Instrument prepared by Courtney Turner Milbank, #32178-29, THE BOPP LAW FIRM, PC, The National Building, 1 South Sixth Street, Terre Haute, Indiana 47807, (812) 232-2434; FAX (812) 235-3685; cmilbank@bopplaw.com.