

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

THOMAS CURTIN, et al.,

Plaintiffs,

v.

VIRGINIA STATE BOARD OF ELECTIONS,  
et al.,

Defendants.

Civil Action No.

1:20-cv-00546 (RDA/IDD)

**DECLARATION OF EDGARDO CORTÉS**

1. I am an adult U.S. citizen over eighteen years of age, am otherwise competent to testify, and have personal knowledge of the facts set out in this Declaration.

**My Professional Experience with Elections in Virginia**

2. I was Virginia's first Commissioner of Elections. I was appointed by Governor Terry McAuliffe on July 1, 2014 and I served in that position until 2018. During that time, I also served as the chairman of the Board for the Electronic Registration Information Center (ERIC) and as chairman of the U.S. Election Assistance Commission Standards Board. Additionally, I was a charter member of the Election Infrastructure Government Coordinating Council established by the U.S. Department of Homeland Security.

3. Prior to my role as the Commissioner of Elections, from 2005 to 2009, I served as Deputy Director of Policy and Grants at the U.S. Election Assistance Commission. From 2009 to 2011, I served as General Registrar in Fairfax County. From 2011 to 2014, I was employed at the national office of the Advancement Project, a non-partisan non-profit organization based in Washington, D.C.

4. As Commissioner of Elections, I led the Virginia Department of Elections in working with local election officials to ensure Virginia's election laws and regulations were implemented properly to serve the voters of the Commonwealth of Virginia. As General Registrar of Fairfax County, I was charged with maintaining accurate and current voter registration records as well as conducting fair, transparent, uniform elections in accordance with the Constitutions of the United States and the Commonwealth of Virginia.

5. My professional experience includes first-hand experience dealing with the requesting, approving, and sending of absentee ballots for elections in Virginia. I am familiar with the checks and balances involved in safeguarding the election process, while effectuating Virginia's statutory scheme for election conduct.

6. Given my extensive elections experience, both at the state and local levels, I have extensive personal knowledge regarding the responsibilities and requisite burdens placed on election officials in Virginia, including the requirements for and use of absentee ballots. I also have extensive personal knowledge as to the safeguards that have been put in place in Virginia, and particularly Fairfax County, to ensure that only eligible voters receive an absentee ballot.

#### **Use of Absentee Ballots for COVID-19**

7. I am providing this Declaration in the context of the extraordinary burdens placed on our election system and Virginia voters due to the COVID-19 pandemic. All elections are important and voting is a fundamental right of American citizens, including citizens of the Commonwealth of Virginia. This fundamental voting right requires access to the polls by all eligible voters, including availability to vote by absentee ballot for those suffering from temporary illness or physical disability due to the COVID-19 pandemic.

8. On March 12, 2020, Governor Ralph Northam declared a state of emergency in the Commonwealth due to the COVID-19 pandemic. On March 23, 2020, Governor Northam issued Executive Order 53 (the “Stay-at-Home Order”) which: ordered the closure of non-essential businesses, banned all gatherings of more than 10 people, closed all K-12 schools for the remainder of the academic year and urged residents to avoid non-essential travel outside the home, if and when possible.

9. On April 13, 2020, Governor Northam issued Executive Order 56, directing the Commissioner and the State Board of Elections to promulgate rules that would conform to the Centers for Disease Control and Prevention’s (the “CDC”) guidelines to protect voters and election officials. This executive order was made pursuant to the declared state of emergency in Virginia.

10. Pursuant to Executive Order 56, the State Board of Elections and Department of Elections provided guidance to Virginia voters to minimize the impact of COVID-19 on them during the properly declared and continuing state of emergency. In particular, registered voters were informed that they could elect reason code 2A on the already-prepared absentee ballots as a result of COVID-19.

**Entering an Injunction Concerning Absentee Ballots at this Late Stage Will Disrupt the Election**

11. I have read the Declaration of Christopher Piper<sup>1</sup> and share many of the concerns he expressed that the uniformity of the primary election on June 23, 2020 (the “Primary Election”) may be impaired should the preliminary injunction requested in this proceeding be granted, especially so at this late stage.

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<sup>1</sup> The Declaration of Christopher Piper (the “Piper Declaration”) is filed as Exhibit 3 to ECF Document No. 26.

12. Additionally, I have reviewed the specific relief Plaintiffs seek in their motion and believe that if the preliminary injunction is granted it would, in fact, have severe detrimental effects on the Primary Election for reasons I explain below.

13. First, Plaintiffs ignore that on March 20, 2013, the Virginia Legislature specifically eliminated the requirement that a person applying for an absentee ballot with reason code 2A, disability or illness, disclose personal information regarding the nature of their disability or illness. Should the court grant Plaintiffs' preliminary injunction as requested, the court would require applicants to disclose the reasoning behind their choice and/or personal information, undermining the legislature's intent of providing privacy to these voters when making this election.

14. Further, the Plaintiffs do not take into account that the absentee voting process began more than three weeks ago, with absentee ballots being issued as of May 8, 2020. I echo Christopher Piper's fears that a change in the election process now would cause severe disruption, create great uncertainty and confusion and further tax the elections administration system. Plaintiffs do not discuss the effect of their proposed injunction on the thousands of votes that were already cast by absentee ballot – or the literally thousands of absentee ballots in voters' possession for completion and submission.

15. Finally, it should be noted that Plaintiffs appear to misapprehend the argument concerning voter dilution. Here, those voters who have requested to vote absentee are eligible voters and seek only to change the mechanism by which they vote, which is reasonable under the circumstances given the unknowns associated with the transmission and spread of COVID-19. The guidance does not in any way change any eligibility requirements for voters in Virginia. In my experience, the safeguards for absentee ballots already in place are sufficient to prevent any

voter fraud from occurring in connection with increased utilization of absentee ballots as a result of the COVID-19 state of emergency.

**How My Voting Rights Would Be Impacted by this Injunction**

16. I am married and live with my wife and two young children in Fairfax County, Virginia where I have been registered to vote since at least 2005.

17. I am a regular voter and have routinely voted in primary, general, and special elections since at least 2005.

18. My family and I have been rigorously complying with the Governor’s Stay-at-Home Order. As a result, my wife and I have ceased all work-related travel and have been teleworking from home. Our children have been home from school and day care. We have avoided non-essential travel and almost never go shopping in person—instead, we have been ordering grocery delivery or arranging for curbside pickup. My family and I have avoided contact with others in public venues for the past three months, to safeguard our health and avoid potential exposure to COVID-19.

19. To protect my family’s health as well as my own health, and to avoid exposing others to the risk of COVID-19, I do not believe that I should vote in person in the Primary Election, rather, I should vote by absentee ballot instead. In accordance with the guidance issued by Commissioner of Elections, due to the COVID-19 pandemic, I requested an absentee ballot via the Department of Elections Online Portal on May 24, 2020, choosing reason code “2A, My disability or illness.” I would not go to a polling place to vote in the Primary Election in person in the event I experience any COVID-19 symptoms.

20. I am an asthmatic, and thus am at higher risk for pneumonia or acute respiratory disease as a result of COVID-19. This has led my family and me to have followed the

prevention guidance issued by both the Virginia Department of Health and the CDC since the state of emergency was declared. Although currently the Stay-at-Home Order is scheduled to be lifted as of June 10, 2020, I intend to continue to follow the prevention guidance for the near future, including teleworking, social distancing, wearing a facemask and avoiding non-essential travel to minimize the risk of infection for myself and my family, and to minimize the potential for transmitting the disease to others should I become contagious, despite the safety measures I am implementing.

21. I am also concerned for my local community in Fairfax County if this absentee voting option is made unavailable or curtailed for the Primary Election. If my neighbors and fellow citizens are not able to vote absentee, I am concerned that there will be large crowds of voters who are unable to properly socially distance at polling sites, increasing the potential for further spread of COVID-19, particularly among poll workers and elections officials.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 25, 2020.

  
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Edgardo Cortés