

VIRGINIA:

IN THE CIRCUIT COURT OF BEDFORD COUNTY

CAROL MAJOR, MARGE WEISMANTEL,
STEVE WEISMANTEL, DEB SHAW, and
JOSEPH KARDIAN,

Plaintiffs,

v.

TERRY McAULIFFE, Governor of the
Commonwealth of Virginia,
Serve: Governor's Mansion
Capitol Square
Richmond, VA 23219,

KELLY THOMASSON, Secretary of the
Commonwealth of Virginia,
Serve: 1111 East Broad Street
No. 4
Richmond, VA 23219,

JAMES B. ALCORN, Chairman, State Board of
Elections of Virginia,
Serve: Virginia Department of Elections
Washington Building
1100 Bank Street
Richmond, VA 23219,

CLARA BELLE WHEELER, Vice-Chairman,
State Board of Elections of Virginia,
Serve: same address

SINGLETON B. MCALLISTER, Secretary, State
Board of Elections of Virginia,
Serve: same address

JANETA A. DUDLEY, Chairman, Bedford
County Electoral Board,
Serve: same address

CARLEEN H. BOWYER, Vice-Chairman,
Bedford County Electoral Board,

CASE NO. _____

Bedford County Circuit Court Clerk's Office
Filed: 4 51 AM/PM on this the 13 day of
June, 2016
C. Groun ☒ Dep Clerk ☐ Clerk

Serve: same address)
)
CHARLES T. WALKER, Secretary, Bedford)
County Electoral Board,)
Serve: same address)
)
BARBARA GUNTER, General Registrar,)
Bedford County,)
Serve: Office of the Registrar)
122 East Main Street Suite 204)
Bedford, VA 24523,)
)
<i>Defendants.</i>)

COMPLAINT

COME NOW, Plaintiffs, by counsel, and for their complaint against Defendants state as follows:

Introduction

1. Plaintiffs seek declaratory and injunctive relief barring the enforcement of an executive order purporting to restore the voting rights of about 206,000 convicted felons in the Commonwealth of Virginia. By instituting a blanket order restoring the rights of all felons, Defendants violated those provisions of the Virginia Constitution mandating that voting rights may only be restored on an individual basis, following a particular, individualized review and a finding of sufficient grounds for restoring such rights.

2. Plaintiffs are registered voters in the Commonwealth of Virginia. As a result of Defendants' unlawful actions, 206,000 felons who, by law, should be ineligible to vote, are being, and will be, registered and permitted to vote. Unless an injunction is granted, Plaintiffs' lawful votes will be cancelled out, and their voting power will be diluted, by votes cast by individuals who are not eligible to vote under Virginia's laws and Constitution.

3. Plaintiffs ask this Court to issue a declaratory judgment pursuant to the provisions of Va. Code §§ 8.01-184, finding that Defendants' attempt to issue and enforce a blanket restoration of the voting rights of approximately 206,000 felons, without any particularized review of those felons' cases, violated Article II, § 1, and Article V, § 12, of the Virginia Constitution; finding that any further blanket restorations of the voting rights of felons issued in a similar manner by Defendants will violate those same provisions; and finding that these unconstitutional actions dilute Plaintiffs' voting power and infringe their voting rights.

4. Plaintiffs ask this Court to award permanent injunctive relief, pursuant to the provisions of Va. Code §§ 8.01-620, enjoining Defendants' violations of the Virginia Constitution and of Plaintiffs' rights thereunder. Plaintiffs also ask this Court to award preliminary injunctive relief enjoining Defendants' violations of the Virginia Constitution and of Plaintiffs' rights during the pendency of this case.

Parties

5. Plaintiff Carol Major is a citizen, taxpayer and registered voter in the Commonwealth of Virginia, residing in Bedford County at [REDACTED] Bedford, [REDACTED]. Ms. Major has at all times set forth herein been a registered voter and has voted in the Virginia 2008 and 2012 presidential elections.

6. Plaintiff Marge Weismantel is a citizen, taxpayer and registered voter in the Commonwealth of Virginia, residing in Bedford County [REDACTED] [REDACTED]. Ms. Weismantel has at all times set forth herein been a registered voter and has voted in the Virginia 2008 and 2012 presidential elections.

7. Plaintiff Steve Weismantel is a citizen, taxpayer and registered voter in the Commonwealth of Virginia, residing in Bedford County [REDACTED]

[REDACTED] Mr. Weismantel has at all times set forth herein been a registered voter and has voted in the Virginia 2008 and 2012 presidential elections.

8. Plaintiff Deb Shaw is a citizen, taxpayer and registered voter in the Commonwealth of Virginia, residing in Bedford County [REDACTED]

[REDACTED] Ms. Shaw has at all times set forth herein been a registered voter and voted in the Virginia 2012 presidential election.

9. Plaintiff Joseph Kardian is a citizen, taxpayer and registered voter in the Commonwealth of Virginia, residing in Bedford County [REDACTED]

[REDACTED] Mr. Kardian has at all times set forth herein been a registered voter and voted in the Virginia 2008 and 2012 presidential elections.

10. Defendant Terry McAuliffe is sued in his official capacity as the Governor of the Commonwealth of Virginia. Defendant Governor McAuliffe initiated and signed the executive order at issue restoring the voting rights of all registered felons in Virginia.

11. Defendant Kelly Thomasson is sued in her official capacity as the Secretary of the Commonwealth of Virginia. Defendant Secretary Thomasson is the state official responsible for managing the restoration of voting rights and co-signed the executive order restoring the voting rights of all registered felons in Virginia.

12. Defendant James B. Alcorn is sued in his official capacity as the Chairman of the State Board of Elections of Virginia (the "SBOE"). The SBOE is the state entity responsible for supervising and coordinating the work of county and city electoral boards and registrars regarding Virginia elections.

13. Defendant Clara Belle Wheeler is sued in her official capacity as the Vice-Chairman of the SBOE.

14. Defendant Singleton B. McAllister is sued in her official capacity as the Secretary of the SBOE.

15. Defendant Janeta A. Dudley is sued in her official capacity as Chairman of the Bedford County Electoral Board (the “EB”), which is responsible for the administration of elections in that county.

16. Defendant Carleen H. Bowyer is sued in her official capacity as Vice-Chairman of the EB.

17. Defendant Charles T. Walker is sued in his official capacity as Secretary of the EB.

18. Defendant Barbara Gunter is sued in her official capacity as the General Registrar of Bedford County. She is responsible in that capacity for all services related to voter registration and elections in that county.

Jurisdiction and Venue

19. This Court has subject matter jurisdiction pursuant to Va. Code §§ 8.01-184, 8.01-620 and 17.1-513.

20. Venue is proper in this judicial district pursuant to Va. Code § 8.01-261(2), because this action is against officers of the Commonwealth in their official capacities, and because Defendant Gunter, the General Registrar of Bedford County, has her official office at 122 East Main Street, Suite 204, Bedford, Virginia, 24523.

Facts

21. On April 22, 2016, Virginia Governor Terry McAuliffe signed an executive order, entitled “Order for the Restoration of Rights” (herein, the “Executive Order”). Among other

things, the Executive Order purported to restore the voting rights of about 206,000 Virginia residents who were previously convicted of a felony.

22. The Executive Order purported to restore certain civil rights of all violent and nonviolent felons in Virginia, including those felons who have not individually applied for a restoration of those rights. These civil rights enumerated in the Executive Order included the right to vote, to hold public office, to serve on juries, and to act as a notary public; but excluded the right to own firearms.

23. The Executive Order provided that all felons who have completed their sentences by April 22, 2016 (the date the order was issued) shall have their voting rights immediately restored. As a result, these felons are currently able to register to vote by mail; online; through the Virginia Department of Elections, Virginia Department of Motor Vehicles, Virginia Public Libraries, and state government offices providing government assistance; and in voter registration drives. Felons who register to vote pursuant to the Executive Order will be eligible to vote in the November 8, 2016 general election in Virginia.

24. On information and belief, and according to published reports, Governor McAuliffe intends to issue a new blanket restoration of voting rights similar to the Executive Order every month.

25. On January 15, 2010, Mark E. Rubin, Counsel to then Virginia Governor Tim Kaine, wrote to the American Civil Liberties Union of Virginia addressing the executive's "power to grant a blanket restoration of voting rights to Virginians who have lost voting rights due to a felony conviction." In the letter, Mr. Rubin "conclude[s] that a blanket restoration of voting rights within the context of current Virginia law would not be proper." Mr. Rubin pointed out that, because the executive powers under the clemency clause of Article V, § 12 of the

Virginia Constitution “are meant to apply in particular cases to named individuals for whom a specific grant of executive clemency is sought,” a “blanket order” to restore voting rights “would be a rewrite of the law rather than a contemplated use of the executive clemency powers.”

26. On May 10, 2013, then Virginia Attorney General Ken Cuccinelli issued a memorandum entitled “Report of the Attorney General’s Rights Restoration Advisory Committee.” The report concluded “[t]he Governor cannot institute by executive order an automatic, self-executing restoration of rights for all convicted felons in the Commonwealth of Virginia.” It also noted “[t]he Governor may exercise his discretionary clemency power . . . to restore civil rights on an individual basis.” Interpreting Article II, § 1 in conjunction with Article V, § 12, “the Governor’s power to remove political disabilities more properly is read to be exercisable on an individual basis.”

27. On information and belief, and according to published reports, thousands of felons who, prior to the issuance of the Executive Order on April 22, 2016, could not lawfully register to vote, have now registered to vote in Virginia.

COUNT I

Dilution of Plaintiffs’ Right to Vote on Account of Defendants’ Violation of Article II, § 1 and Article V, § 12 of the Virginia Constitution

28. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

29. The Executive Order was issued without the Virginia General Assembly’s legislative authorization.

30. Article II, § 1 of the Virginia Constitution is self-executing.

31. Article V, § 12 of the Virginia Constitution makes clear that any removal of political disabilities or remission of penalties by the Governor of Virginia must be made on a case-by-case basis.

32. The blanket restoration of rights attempted by Governor McAuliffe by means of the Executive Order violated Article II, § 1, and Article V, § 12, of the Virginia Constitution.

33. The implementation and enforcement of the Executive Order by each of the Defendants violates the Virginia Constitution.

34. The Executive Order does not constitute a lawful restoration of voting rights under Virginia's laws and Constitution.

35. Felons who register to vote pursuant to the blanket restoration of rights contained in the Executive Order have registered unlawfully. These felons are, in fact, ineligible, as a matter of Virginia law, to register and vote in Virginia.

36. The thousands of felons who have registered to vote pursuant to the blanket restoration of rights contained in the Executive Order will cancel and diminish the votes, and thereby dilute the voting power, of all eligible Virginia voters, including Plaintiffs.

37. The hundreds of thousands of felons who may choose to register to vote pursuant to the blanket restoration of rights contained in the Executive Order, or contained in any similar orders issued in the future, will cancel and diminish the votes, and thereby dilute the voting power, of all eligible Virginia voters, including Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Issue a declaratory judgment finding that Defendants' attempt to issue, implement, and enforce a blanket restoration of the voting rights of felons by means of the

Executive Order violated the Virginia Constitution; finding that any further blanket restorations of the voting rights of felons issued in a similar manner by Defendants will violate the Virginia Constitution; and finding that these unconstitutional actions have diluted and will dilute Plaintiffs' voting power, and have infringed and will infringe Plaintiffs' voting rights;

2. Issue preliminary and permanent relief enjoining Defendants from issuing, implementing, and enforcing the Executive Order and any other blanket restoration of the voting rights of felons;

3. Issue preliminary and permanent relief removing from Virginia's registration lists, voter rolls, and lists of eligible voters those felons identified by the Executive Order or by any similar, future orders;

4. Order Defendants to pay reasonable attorneys' fees incurred by Plaintiffs, including litigation expenses and costs;

5. Retain jurisdiction to issue any and all further orders that are necessary to satisfy the ends of justice; and

6. Award Plaintiffs any and all further relief that this Court deems just and proper.

DATED this 13th day of June, 2016.

Respectfully Submitted,

CAROL MAJOR
MARGE WEISMANTEL
STEVE WEISMANTEL
DEB SHAW
JOSEPH KARDIAN

By Counsel

/s/


Rick Boyer (VSB #80154)

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