

VIRGINIA: IN THE CIRCUIT COURT OF FREDERICK COUNTY

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THOMAS P. REED and  
ROBERT HESS

Plaintiffs

VS.

DOCKET NO. CL20000622-00

VIRGINIA DEPARTMENT OF  
ELECTIONS, and  
JAMILAH D. LECRUISE,  
JOHN O'BANNON, and  
ROBERT H. BRINK, in their  
official capacity as members  
of the Virginia State Board  
of Elections,

Defendants

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FREDERICK COUNTY CIRCUIT COURT  
FREDERICK-WINCHESTER JUDICIAL CTR  
5 NORTH KENT STREET  
WINCHESTER, VIRGINIA 22601  
DATE: OCTOBER 28, 2020

The above-entitled matter came on to be heard for  
the purpose of **Hearing** at 1:00 p.m.

BEFORE:

THE HONORABLE WILLIAM W. ELDRIDGE, IV  
presiding

APPEARANCES:

FOR PLAINTIFF  
THOMAS P. REED:

PHILLIP S. GRIFFIN, II, ESQUIRE  
102 S. KENT STREET  
WINCHESTER, VIRGINIA 22601

J. CHRISTIAN ADAMS, ESQUIRE  
PUBLIC INTEREST LEGAL FOUNDATION  
1555 KING STREET, SUITE 200  
ALEXANDRIA, VIRGINIA 2314

FOR PLAINTIFF  
ROBERT HESS:

CHRISTOPHER M. MARSTON, ESQUIRE  
2652 GROUP, LLC  
P.O. BOX 26141  
ALEXANDRIA, VIRGINIA 22313-6141

FOR DEFENDANTS  
VIRGINIA DEPARTMENT OF  
ELECTIONS, and  
JAMILAH D. LECRUISE,  
JOHN O'BANNON, and  
ROBERT H. BRINK, in their  
official capacity as members  
of the Virginia State Board  
of Elections:

CAROL L. LEWIS, ESQUIRE  
ASSISTANT ATTORNEY GENERAL  
COMMONWEALTH OF VIRGINIA  
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1                                   \* \* \* PROCEEDINGS \* \* \*

2       **(WHEREUPON, the Court Reporter was sworn.)**

3                                   THE COURT: This is *Reed and Hess versus*  
4       *Virginia Department of Elections and the several*  
5       *individuals in their capacity as members of the Virginia*  
6       *State Board of Elections, Docket Number CL20-622.*

7                                   What we are going to do I think is just kind  
8       of give you all heads up of how I would like to proceed.  
9       Obviously I know time is of the essence with this case. I  
10      also know that regardless of whatever my decision may be at  
11      the end of today, I take it one party or the other will  
12      probably be taking this down to Richmond pretty  
13      immediately.

14                                  So my plan is to have you all argue on your  
15      points. I have got questions kind of lined up that I might  
16      have depending on if you all don't address them in your  
17      argument.

18                                  I have thoroughly read the Briefs, done my  
19      own research. I am obviously undecided at this point. You  
20      know, I am interested to hear from all the counsel with  
21      regard to this issue. And what I am going to do, normally  
22      obviously in a case like this I would do a written Opinion.  
23      However, again, because time is of the essence, that is why

1 I am glad the court reporter is here, after we argue and do  
2 questions from me I will go back to chambers and I will  
3 make my...come out and make my decision and state my basis  
4 for my decision on the Record with the court reporter.

5 So I know that might take a few minutes, but  
6 I know that will be more efficient than me writing an  
7 Opinion and you all losing a day or two depending on how  
8 this is procedurally going to go if it goes farther than  
9 this Court.

10 So, does that sound okay with all counsel?

11 MR. MARSTON: Yes, sir.

12 MR. ADAMS: Yes, Your Honor.

13 MS. LEWIS: Thank you.

14 THE COURT: Okay. Now, I take it you are Mr.  
15 Adams; correct?

16 MR. ADAMS: I am, Your Honor. I am Christian  
17 Adams for the Plaintiff, only for the Plaintiff, Mr. Reed.

18 THE COURT: Reed, okay.

19 MR. ADAMS: Correct. And Mr. Griffin is  
20 also for the Plaintiff, Mr. Reed.

21 THE COURT: Right. I know Mr. Griffin is for  
22 the Plaintiff.

23 Sir, you are Mr. Marston?

1 MR. MARSTON: Yes.

2 THE COURT: Okay.

3 MR. MARSTON: For Plaintiff Hess.

4 THE COURT: Okay, great.

5 And, ma'am, are you Ms. Lewis?

6 MS. LEWIS: That is correct, Your Honor. On  
7 behalf of the Commonwealth Defendants.

8 THE COURT: Okay, great.

9 All right. I just wanted to make sure I had  
10 everyone's names.

11 MR. GRIFFIN: And, Judge, we do have Mr. Hess  
12 is here in the courtroom in the front row.

13 THE COURT: I see. Okay, great.

14 MR. GRIFFIN: Thank you.

15 THE COURT: That is Mr. Hess. Okay.

16 Okay. Is everyone prepared to proceed with  
17 argument?

18 (No audible response.)

19 THE COURT: Okay. Go ahead. Plaintiffs,  
20 this was your all's Motion, so.

21 MR. ADAMS: Thank you, Your Honor.

22 Christian Adams for Plaintiff Reed.

23 May it please the Court, I can attest this

1 is the first time in twenty-five years I have argued with a  
2 mask on so...

3 THE COURT: No problem.

4 MR. ADAMS: ...I hope you can hear me  
5 satisfactorily.

6 THE COURT: Yeah, and if you have to take off  
7 to speak I am okay with that too, so.

8 MR. ADAMS: Okay. I may do that if my  
9 glasses continue to fog up.

10 THE COURT: I understand.

11 MR. ADAMS: Your Honor, this case boils down,  
12 I believe, to the question of statutory interpretation as  
13 to what is an official indicia of mailing by the United  
14 States Postal Service. That is the essence of this case is  
15 to what is an official indicia of mailing by the United  
16 States Postal Service or delivery service showing that a  
17 ballot was mailed before or on election day.

18 All of the other reasons proffered by the  
19 Commonwealth in this case have long been rejected in a  
20 larger sense by Virginia's adherence to the Rule of Law.  
21 The Rule of Law and the requirement that the legislature,  
22 the General Assembly is supreme, controls this case.

23 The reasons offered such as fairness,

1 equity, actually cut in favor of the Plaintiff because  
2 fairness requires we follow the Rule of Law. This is a  
3 decision made in this state hundreds of years ago as well  
4 as in March. Both of those decisions, the principle that  
5 the Rule of Law is superior to the wings of bureaucrats as  
6 well as a decision by the General Assembly in March to  
7 enact a statute control this case.

8           And so I think the Commonwealth is at its  
9 best when it is arguing that there is an ambiguity that  
10 fairness has to fill in. That is really their only path to  
11 winning this case is to argue there is an ambiguity.  
12 Otherwise, the plain text governs this case.

13           So let me take up the Defendants' best  
14 argument for a moment because I think that is how this case  
15 can be dispensed fairly quickly. The question is whether  
16 it is ambiguous when a statute says, "Ballots that arrive  
17 after election day are void." That is in 709A. So that is  
18 the presumption of the law.

19           And B sets up an exception and that  
20 exception is that if a ballot arrives after election day,  
21 up until noon Friday I believe, and it has a postmark from  
22 before the election it shall be counted. That is a safety  
23 valve the General Assembly put in this year.

1                   It also says that an official indicia of  
2 mailing by the Post Office or the delivery service will  
3 satisfy 709B.

4                   We have conceded that the intelligent  
5 barcode, for example, would satisfy 709B because that is an  
6 official indicia of the United States Postal Service.

7                   The Defendants, however, have an extreme  
8 position. Their position is this, Your Honor, is the  
9 General Assembly doesn't matter. That 709B can be read to  
10 say if a ballot comes in days after the election and  
11 doesn't have a postmark it should still be accepted.

12                   Now, I would submit, Your Honor, that this  
13 is a relatively elementary case of statutory  
14 interpretation. That there is no plausible reading that is  
15 not absurd that supports their position. You cannot read  
16 the statute to say that a ballot that comes in three days  
17 late that doesn't have a postmark should be counted. It is  
18 just not plausible because the General Assembly could have  
19 done that in January and March when they passed the  
20 statute, but they chose not to. And in Virginia the  
21 General Assembly is supreme to the bureaucracy. The  
22 General Assembly decides what the rules are, not the State  
23 Board of Elections. That is an ancient Virginia principle,



1 possibly more than in other states. Other states don't  
2 have this by suspension clauses in the Constitution the way  
3 that Virginia does.

4                   And so, Your Honor, I would submit that this  
5 case turns on an elementary matter of statutory  
6 interpretation. The only way that the Defendants could  
7 possibly succeed in this case is by establishing that the  
8 voters' own declaration constitutes an official indicia of  
9 mailing by the United States Postal Service. That is the  
10 only way it can win. Otherwise, as a matter of law the  
11 Plaintiff should win.

12                   And because of that, Your Honor, I honestly  
13 think it is rather elementary. I would welcome any  
14 questions you may have.

15                   THE COURT: Okay. Okay. I will do questions  
16 all at the end, so.

17                   MR. ADAMS: Okay.

18                   THE COURT: Yeah.

19                   MR. MARSTON: We join Mr. Adams in argument.  
20 Nothing additional, sir.

21                   THE COURT: Mr. Griffin, anything additional?

22                   MR. GRIFFIN: No, Your Honor, not at this  
23 time.

1 THE COURT: Okay. All right, Ms. Lewis.

2 MS. LEWIS: Thank you, Your Honor, and may it  
3 please the Court.

4 Frankly, Your Honor, this comes down to a  
5 question of whether the Board is authorized to use its  
6 delegated authority that was delegated... Excuse me,  
7 (inaudible) my notes.

8 THE COURT: That is fine.

9 MS. LEWIS: Thank you. That was delegated by  
10 the General Assembly under 24.2-103 which is a broad grant  
11 of authority to the Department of Elections in order to  
12 provide guidance to general registrars throughout the  
13 Commonwealth and to clarify and ensure uniformity and  
14 integrity or if individual interpretations of statutes that  
15 do have the ambiguity may override in these cases,  
16 especially on eve of an election.

17 In this case we have a regulation  
18 interpreting a statute done by the Board after due  
19 consideration, after public comment, after a public  
20 hearing, that was revised even in light of those public  
21 comments that Plaintiffs are arguing is not in line with  
22 the statute. We would counter that the statute actually  
23 does permit the Board to have offered this interpretation

1 through its regulation.

2                   24.2-709A states that, "If a ballot is  
3 lawfully returned to a general registrar's office that it  
4 shall be counted."

5                   In this situation, especially during this  
6 year when there is a marked influx of absentee ballots and  
7 there have been noted problems with the Postal Service, we  
8 think it important to make sure that the vote of every  
9 Virginian that is lawfully cast is counted. It doesn't  
10 matter party. It doesn't matter where they are coming  
11 from. And in certain situations there may not be a  
12 postmark, there may not be intelligent mark barcode data to  
13 be scanned, and we don't believe that that should be held  
14 against the voter. Their voices should be heard.

15                   We would further just again state while  
16 Plaintiffs have stated that they believe we are  
17 disregarding the will of the General Assembly, we are  
18 actually using the authority that has been granted by the  
19 General Assembly themselves to the Board. This is not the  
20 whim of a bureaucrat as stated by Plaintiff's counsel.  
21 This is the Board carrying out the actual duties that it  
22 has been required to by the General Assembly.

23                   And with that, Your Honor, I will hold for

1 questions.

2 THE COURT: Okay. Any response?

3 MR. ADAMS: Very briefly, Your Honor.

4 First of all, we will concede that there was  
5 a delegation of authority by the statutes to the Board, but  
6 counsel leaves out an important part of Section 103 which  
7 is Section 103, Sub B, which states, "Electoral boards and  
8 registrars shall follow (a) the election laws, and (b) the  
9 rules and regulations of the State Board," and here is the  
10 important language, "insofar as they do not conflict with  
11 Virginia or Federal law." That is 24.2-103.

12 So it is true that there is a delegation of  
13 authority which the Plaintiff concedes, but that delegation  
14 has limits and the limit is simple - don't conflict with  
15 Virginia law which takes us to Section 709A and B and those  
16 two parts have to be read in conjunction.

17 And Section 709A creates a clear presumption  
18 that ballots received late are not to be counted unless  
19 they comply with the terms of B. They are "void" is the  
20 term that the legislature used, "void". It wasn't maybe  
21 void. It wasn't could be void. It is void. That is what  
22 the legislature said.

23 Now, let me address briefly the uniformity

1 issue. There is nothing less uniform than edicts by  
2 agencies that have been changing like Jell-O for the last  
3 three weeks. We have had three separate, three separate  
4 guidance letters from the Defendants changing the rules.  
5 If you want to talk about lack of uniformity that is lack  
6 of uniformity.

7                   It started where...the original guidance,  
8 Your Honor, said, "The absence of a postmark is not a  
9 material omission." And then they retreated to the  
10 position, "Well, you can use the intelligent barcode."

11                   And so there is confusion among the general  
12 registrars as to what the law really is. So if uniformity  
13 is an issue there is a simple solution, Your Honor, follow  
14 the law. Follow the statute. Follow the rules the General  
15 Assembly enacted, not the rules that the State Board did.

16                   So the Plaintiff believes in uniformity and  
17 the way you accomplish that is by uniformly following the  
18 statute and not the guidance.

19                   The public comments. We have heard a lot  
20 about the public comments. First of all it is not relevant  
21 to this case, but I want to point out that the comments are  
22 running about ninety-nine percent in favor of the  
23 Plaintiff's positions. So it is true there was public

1 comment, including by one of the Plaintiffs if not both,  
2 saying it is wrong to change the statute but that public  
3 comment was running overwhelmingly in favor of the  
4 Plaintiffs, to the extent that is even relevant which we  
5 would submit it is not but it is something worth noting.

6 Thank you.

7 THE COURT: All right. Thank you both.

8 Counsel, any other counsel have anything to  
9 add?

10 MR. GRIFFIN: No, Your Honor.

11 MR. MARSTON: No, thank you, Your Honor.

12 THE COURT: Okay. Now for my questions and I  
13 will let you all respond and, you know, and I am going to  
14 probably jump around a little bit.

15 MR. GRIFFIN: Judge, can I interrupt for just  
16 a second?

17 THE COURT: Yes.

18 MR. GRIFFIN: Just as a housekeeping matter,  
19 I want to make sure the Court has signed the Order on the  
20 Amended Motion for Judgment. We have a proposed Order here  
21 accepting that.

22 THE COURT: I signed the...

23 MR. GRIFFIN: I know you signed the Briefing

1 Schedule Order.

2 THE COURT: ...the Briefing Schedule. Which  
3 one was that?

4 MR. GRIFFIN: This is the one that said the  
5 Plaintiffs had an original Complaint that was filed October  
6 the 9<sup>th</sup> and then the State Board met...

7 THE COURT: Oh, the regulation.

8 MR. GRIFFIN: Correct.

9 THE COURT: Any objection from the Attorney  
10 General's Office?

11 MS. LEWIS: No, Your Honor.

12 THE COURT: Okay. I will cross through  
13 "Proposed" and just sign it as of today.

14 MR. GRIFFIN: Okay. Thank you.

15 THE COURT: Okay. All right. I might jump  
16 around a little bit with my questions, you know, but just  
17 some concerns (inaudible) maybe they don't fully fit into,  
18 you know, what we are discussing. I understand both  
19 parties' arguments too but I just want to make sure that I  
20 create a Record also for the two of you.

21 And my first question is going to go to Ms.  
22 Lewis, you know, because I will tell you when I was looking  
23 through the arguments by both parties, in fact before I

1 received the Reply Brief from the Plaintiff, the language  
2 of 24.2-709A really struck me that when you then look at,  
3 you know, like Plaintiff said, "Any ballot returned to the  
4 office of the general registrar in any manner except as  
5 prescribed by law shall be void and it shall be returned to  
6 the general registrar before the closing of the poll."

7           And then B is, "Notwithstanding the  
8 provisions of Subsection A." And before, again, I am  
9 saying this before...I had this in my notes before they  
10 even replied to it because I saw that that creates an  
11 exception to A.

12           So don't I have...what is your rebuttal to  
13 that issue? And don't I have to follow that with regard  
14 to...since it creates an exception to A that I strictly  
15 follow that. That was from the General Assembly. And if  
16 it doesn't meet those conditions then the ballot is not  
17 counted.

18           MS. LEWIS: Your Honor, we would hold that a  
19 ballot could still be lawfully returned under 709A and not  
20 have a postmark and that could be through no fault of the  
21 voter themselves.

22           THE COURT: But 709A the postmark doesn't  
23 matter because they are returned by the election day.



1 MS. LEWIS: Correct.

2 THE COURT: So it is going to get counted  
3 anyway; right?

4 MS. LEWIS: Right.

5 THE COURT: I mean, I am correct with that;  
6 right?

7 MS. LEWIS: Correct.

8 THE COURT: Okay. Where B makes the  
9 exception, okay, we will take your ballots, the absentee  
10 ballots that come in by five o'clock on Friday, three days  
11 after, but, you know, and for it to be counted or shall be  
12 counted if it meets these conditions.

13 MS. LEWIS: Right. And, Your Honor, we would  
14 simply state that 709B is stating...it is providing  
15 direction to the general registrar that these ballots must  
16 be counted but not that they must be invalidated. So we  
17 would interpret that as the General Assembly giving further  
18 direction to general registrars in an attempt to provide  
19 clarity which is again what the Board of Elections is  
20 attempting to do further with its regulation.

21 THE COURT: Okay. Okay. And, Mr. Adams,  
22 would you like to respond to that?

23 MR. ADAMS: Your Honor, I would agree with

1 counsel for the State Board that the law attempts to  
2 provide clarity and, indeed, I would submit that it does.  
3 That 709B provides clarity as to which ballots should and  
4 should not be counted. There is no ambiguity in 709B.

5           As a matter of fact, a canon of statutory  
6 interpretation you noted correctly that 709B is an  
7 exclusion to A. That it provides exception. I am sorry,  
8 exception. And when there is an exception the canon of  
9 statutory interpretation says that the exception to the  
10 general rule is limited and if they don't list something in  
11 the exception you have to interpret that as the list is  
12 (inaudible), but there is nothing else missing or  
13 camouflaged on the list. There is no ghost exception that  
14 the agency could invent and which is exactly what they did  
15 here.

16           And so we are bound by the canon of  
17 statutory interpretation when there is a rule in A that  
18 says "void" and there is notwithstanding in B their  
19 interpretation better show up on that list and it doesn't.

20           THE COURT: Do you want to respond?

21           MS. LEWIS: Your Honor, we would state  
22 obviously in March the General Assembly couldn't have  
23 predicted anything that was going to happen in all

1 situations, definitely in this year which has just been  
2 unprecedented, or all of the issues that might arise with  
3 the just monumental amount of absentee ballots that have  
4 been going out, the changes in the Postal Service. And so  
5 it is somewhat absurd to think that they may have imagined  
6 every circumstance that would arise.

7                   And so in this situation the Board is making  
8 an attempt to cover up those gaps given its discretion to  
9 do so through regulation.

10                   THE COURT: Okay.

11                   MR. ADAMS: Your Honor, if I might briefly  
12 respond.

13                   Indeed this has been an unprecedented year  
14 and the General Assembly took action in that regard.  
15 During the special session that continues the first Bill  
16 they adopted was a Bill that makes substantial changes to  
17 the election law. It provided for an absentee peer  
18 process. It provided for prepaid postage. It provided for  
19 drop-off locations. It made many accommodations for  
20 voters. It did not, however, go back and change this rule.  
21 It is (inaudible).

22                   THE COURT: Well, let me ask you that  
23 question because I have looked at obviously the Virginia

1 Constitution and, you know, what is required if legislation  
2 is passed during a special session when the effective date  
3 becomes. As we all know, generally the effective date is  
4 July 1<sup>st</sup> of legislation. If it is a special session outside  
5 that I believe it is either the third or fourth month after  
6 the enactment, unless it is emergency legislation passed by  
7 four-fifths of the legislature. I think I am correct with  
8 that. I may or may not be but I am pretty sure I am  
9 pulling that from the top of my head.

10 MR. ADAMS: Your Honor, I wouldn't want to  
11 represent myself as giving the legislature's answer to your  
12 question...

13 THE COURT: Right.

14 MR. ADAMS: ...but I believe that the reason  
15 they adopted it as a budget amendment as opposed to doing  
16 it as emergency legislation was so that they could do it by  
17 majority vote.

18 THE COURT: Right.

19 MR. ADAMS: And the argument that they made,  
20 and in fact included in the Bill, was that it would become  
21 effective immediately because it amends the budget...

22 THE COURT: Right.

23 MR. ADAMS: ...as opposed to being free-

1 standing law.

2 THE COURT: Right. And you are saying if  
3 they thought it was going to be an issue they could have  
4 put this in the budget amendment and, you know, the  
5 postmark issue inside the budget amendment and just get the  
6 majority vote instead of the four-fifths or whatever the  
7 Constitution requires.

8 MR. ADAMS: Yes, Your Honor.

9 THE COURT: Okay.

10 MR. ADAMS: Thank you.

11 THE COURT: Ms. Lewis, would you like to  
12 respond to that if necessary?

13 MS. LEWIS: Your Honor, I would just simply  
14 state I know that the General Assembly had just a multitude  
15 of Bills that they considered and amendments and things  
16 that they have had to deal with during this year. And so,  
17 again, the delegation of authority to the Board to fill in  
18 the gaps for situations which they may not have considered  
19 during a busy Assembly Session is the reason why we have  
20 the State Board of Elections in order to carry out these  
21 laws, to make regulations and to provide guidance to the  
22 general registrars.

23 THE COURT: Okay. Now, Mr. Adams, let me

1 pose this question to you. Obviously the last sentence of  
2 24.2-709, "For purposes of this subsection a postmark shall  
3 include any other official indicia of confirmation of  
4 mailing by the United States Postal Service or other postal  
5 or delivery service."

6           Isn't it arguable with that language that  
7 the Board of Elections regulation as to if the postmark was  
8 not legible and but was also signed prior to or on the day  
9 of election, that that could satisfy the indicia  
10 reliability it went through the mail. Now whether or not  
11 again, you know, it was postmarked and you can't read it  
12 clearly the day of election or before, it still  
13 demonstrates that it went through the mail combined with  
14 the signing by the voter at that point. Don't you think  
15 that hypothetically saying that would be still within the  
16 bounds of the Board of Elections rule-making authority in  
17 conjunction with, you know, that last sentence of B?

18           MR. ADAMS: Almost. And, Your Honor, I think  
19 you have reached the most difficult question possible in  
20 this case, but the legislature has an answer for you.

21           THE COURT: Okay.

22           MR. ADAMS: And there is a practical answer  
23 too. Your question is correct insofar as it sets up a very

1 interesting conundrum if there is an illegible postmark on  
2 a ballot that comes in and a statement by the voter that it  
3 was mailed before. But I have an even better solution that  
4 is resolved by the statute and that is that these  
5 postmarks, these envelopes have intelligent mail barcodes  
6 already so you don't need to rely on the extra legislative,  
7 I mean contra-legislative smeared postmark question. You  
8 don't have to reach the hypothetical you posed because it  
9 will never happen.

10           What will happen is a ballot will come in  
11 with a smeared postmark and there will be an intelligent  
12 mail barcode on it. So you never have to go outside the  
13 bounds of the law and start looking at statements by the  
14 voter because those ballots will be mailed with intelligent  
15 mail barcodes. And that is something, by the way, the  
16 Plaintiffs concede in our concessions would satisfy the  
17 statute.

18           So the hypothetical you present I hope I  
19 don't have to answer because it is not going to happen, but  
20 let me try to answer it anyhow.

21           THE COURT: Yeah, if you can because I know  
22 they have done in the regulation kind of a step-by-step  
23 process of how the ballot is going to be analyzed. And

1 intelligent mail obviously if it is postmarked before that  
2 vote counts as long as the voter is otherwise eligible.

3 Then they look at the intelligent mail  
4 barcode that the ballot was mailed after, you know, whether  
5 it was mailed after or before the polls closed, and if that  
6 is good the vote counts.

7 Then that is when you get to the issue of  
8 what do we do now with postmark or not legible postmark and  
9 their argument is it counts, you know. But, you know, I  
10 mean, but you are telling me you are never going to have a  
11 situation where there is no postmark or you can't tell what  
12 it is and there is no intelligent barcode. Because if you  
13 are telling me that that means the no postmark thing, I  
14 mean, those are all moot. I mean, it is never going to  
15 happen if there is not going to be a postmark because there  
16 will always be an intelligent barcode.

17 MR. ADAMS: That is my understanding. But  
18 let me answer your question assuming there is no  
19 intelligent mail barcode.

20 THE COURT: Okay.

21 MR. ADAMS: At that point, at that point, and  
22 let's say you have a smeared postmark, and that is  
23 precisely why we are here because my client has to make



1 these decisions.

2 THE COURT: Right.

3 MR. ADAMS: And I think that the most  
4 reasonable interpretation of the statute would require the  
5 County Board to attempt to discern if that postmark is  
6 legible or not and do their best.

7 Now, that is not always going to be good  
8 enough. I understand. That is when you get into the issue  
9 can the voter substitute for what the legislature has  
10 deemed satisfactory. Can a statement by the voter replace  
11 the terms of the legislature and the statute and we would  
12 submit that it cannot, Your Honor. That the legislature  
13 set up a duality, if you will, where there was not self-  
14 authentication in the statute. Nowhere does self-  
15 authentication show up. It is always, they use the word  
16 "official indicia". It is always someone else, whether it  
17 is the Post Office or a delivery service. It is sort of  
18 like having a notary, if you will. Now, I know it is not  
19 literally a notary. Just having somebody else to stand  
20 there and say, "Yes, I saw them do this."

21 THE COURT: And I get that and, you know, but  
22 wouldn't the fact that it went through the mail...it  
23 appears that it went through the mail because it is...

1 Again, taking the hypothetical that the intelligent barcode  
2 is not there, it wasn't scanned. You know, that it went  
3 through the mail and the postmark was smeared, that, you  
4 know, and I were to find or, you know, that, you know,  
5 under the statute because it went through the Postal  
6 Service that meets the indicia of reliability at that point  
7 that it went through the Postal Service, you know, to make  
8 things uniform under the organic statute given, you know,  
9 passed by the General Assembly to the Board of Elections in  
10 their duties can't they then, I mean, wouldn't it be within  
11 the bounds of their discretion to tell the registrar's  
12 office like, "Look, if you get a smudged postmark then  
13 count it if it was signed before."

14 I mean, we are not going outside the indicia  
15 of reliability because it went through the mail, you know.  
16 And, you know, I mean that is what I am struggling with  
17 right now.

18 MR. ADAMS: Right. And let me offer this  
19 concession that is (inaudible) on the Briefs. I would  
20 submit that if that circumstance arose on Wednesday, there  
21 cannot be a piece of mail delivered, at least in my fifty-  
22 two years of experience, in less than a day; right? So if  
23 the one with the postmark that is smeared shows up

1 Wednesday at noon it is pretty obvious it had to have been  
2 mailed the day before.

3 THE COURT: Right.

4 MR. ADAMS: Because you can't have...they are  
5 not going to have postmarks within the hour; right?

6 THE COURT: Right.

7 MR. ADAMS: This is a pony express system we  
8 still have.

9 THE COURT: Right.

10 MR. ADAMS: So, but that forces you, Your  
11 Honor, to get into the dangerous position of attempting to  
12 impose contra-legislative remedies here that would be,  
13 while fairminded, just as bad as the totally contra-  
14 legislative remedy proposed by the Defendants. So I don't  
15 want to dig in on that issue because I recognize the  
16 practicalities of it. The law is the law.

17 And a postmark, for example, you can  
18 reasonably interpret a piece of mail that comes in on  
19 Wednesday with a smeared postmark is complying with the  
20 law. You don't actually even have to go outside  
21 necessarily the bounds of the law by ruling that that  
22 smeared postmark tells me on the day after the election...  
23 now we can get into the Thursday and Friday, those are

1 different issues...that on Wednesday after the election if  
2 there is a postmark it was mailed before and in time and we  
3 will concede that.

4 Now, I don't know about Thursday and Friday.  
5 I just don't.

6 THE COURT: Okay. Ms. Lewis.

7 MS. LEWIS: Thank you, Your Honor.

8 So just a few points to touch on. While  
9 Plaintiffs seem to think that the intelligent mail barcode  
10 system will be completely reliable for the data that it  
11 offers and that it is a total backstop, this is a new  
12 system that has been put into place. We haven't really  
13 seen it in effect yet so it is unclear how reliable of an  
14 indicator that will be.

15 Again, as we pointed out earlier, there has  
16 been a marked increase in absentee voting this year which  
17 is very encouraging for us, but I am sure may, just may the  
18 Postal Service somewhat because it has greatly increased  
19 their workload. And we are also working with the Postal  
20 Service to ensure that all employees know how to scan the  
21 barcode and how the data is processed, so there may be some  
22 fault in the system as we work through this. And there are  
23 situations when barcodes perhaps aren't scanned and, again,

1 that fault should not lie on the voter.

2 I would also make clear that under the  
3 proposed regulation if a ballot is received with no  
4 postmark or with an illegible postmark, doesn't have IMB  
5 data, and also does not have the signature that is signed  
6 under penalty of perjury, the oath of the voter, that  
7 ballot will be rendered invalid.

8 Again, we would offer that that signing  
9 under penalty of perjury, it comes with a felony  
10 punishment. It is not nothing. It is a backstop. And  
11 there is a certain amount of trust that is relied upon with  
12 the voters. You are assumed to be a responsible adult and  
13 not make false statements on your ballot. So that is  
14 not...that doesn't go...that isn't nothing. And so we  
15 think that is a reliable source.

16 Also, I would point out while Plaintiffs do  
17 state that no mail is getting to someone the next day, I  
18 struggle to believe that if I sent a postcard to my  
19 neighbor on Tuesday that it would get there by Friday. I  
20 am just not sure, especially with the influx of mail that  
21 the Post Office has seen and different difficulties that  
22 they have had, that it really is reasonable that someone  
23 would mail something on Wednesday and it would get there on

1 Friday. So I really just don't think that is an actual  
2 sort of issue that would arise that someone would be  
3 mailing something on Thursday and it getting there Friday  
4 or even Wednesday and it getting there Friday.

5 THE COURT: Okay. Any response?

6 MR. ADAMS: Your Honor, very briefly. The  
7 only thing I would say, the penalty of perjury provision  
8 has no role in this case. There is plenty of people in  
9 Federal and State prison who have been convicted of signing  
10 something under penalty of perjury that isn't true,  
11 including in election cases that I have been involved in.

12 So that is not something the legislature did  
13 pass, though it could have passed. It could have passed a  
14 voter witness affidavit saying this was cast before  
15 election. It is not in the legislation so it is just not  
16 an issue that has any relevance to the decision here.

17 THE COURT: Well, it is not perjury. I think  
18 it is false statement; right? Don't they have to, I mean,  
19 they sign the...you all correct me if I am wrong... but the  
20 absentee ballot has where you sign, date, you know, and  
21 there is that not oath but kind of an affirmation. I don't  
22 think...is it perjury or false statement?

23 MR. ADAMS: Well, if it is false statement it

1 cuts even more to the Plaintiff because that is even less  
2 of a penalty than the penalty of perjury with its expressed  
3 terms...

4 THE COURT: Right.

5 MR. ADAMS: ...you will be convicted under  
6 penalty of perjury versus a false statement. If it is, in  
7 fact, false statement it even weighs more.

8 THE COURT: Yeah, I agree off the top of my  
9 head. Okay.

10 Okay. Now, Ms. Lewis, let me ask you this  
11 because I know stuff has already been mailed, you know.  
12 And this isn't really an evidentiary hearing but in some  
13 ways it somewhat is. I mean, are there any stats thus far  
14 about what has been coming through without postmarks or  
15 barcodes or anything like that? And if you don't know any  
16 that is fine too. I just was curious.

17 MS. LEWIS: Thank you. Yes, ballots have  
18 already been...they started being mailed on September 18<sup>th</sup>.  
19 I do not have statistics right now for the Court  
20 unfortunately just because all these ballots are going out  
21 to a hundred and thirty-three different localities and they  
22 are going out to overseas in-uniform voters. So just at  
23 this point we won't be able to tell that, but I know that

1 the Board would be more than willing if the Court would  
2 like us to come back and after this election see if we  
3 can't return some of those numbers. We would be happy to  
4 do so.

5 THE COURT: All right. Any response to that  
6 at all? I know that question was more directed to Ms.  
7 Lewis than you all, so.

8 MR. ADAMS: I do not, no.

9 THE COURT: Okay.

10 MR. ADAMS: Well, with one minor exception.  
11 The UOCAVA ballots which counsel mentioned, which are the  
12 uniform overseas military ballots, Virginia has a separate  
13 provision to let those things keep trickling in. That is  
14 not an issue at all here because there is a special  
15 provision as a result of Justice Department settlement from  
16 I think 2008 that Virginia changed its law to allow those  
17 to keep rolling in after the election without regard to  
18 postmarks.

19 THE COURT: Right. All right. A general  
20 question. You know, obviously I am well aware of some of  
21 the other cases that have been going around the country  
22 right now and also the Fourth Circuit case cited by the  
23 Attorney General's Office, you know, too and I am aware of



1 those cases. And, you know, let me ask you all a question  
2 and I know noone really kind of pled this but it was kind  
3 of (inaudible) arguing a little bit in the Attorney  
4 General's Brief with regard to balancing the equities, you  
5 know, which I have got to consider when I am looking at  
6 the...whether or not to grant an injunction.

7                   Yet, I also know our case differs than...  
8 and, I mean, you all can tell me if I am wrong or not about  
9 this...but in my review of like, for instance, the  
10 Pennsylvania case that was recently, you know, Pennsylvania  
11 Supreme Court, *Pennsylvania Democratic Party v. Boockvar*,  
12 that in that case, you know, the Court itself, you know,  
13 basically said, you know, "We are applying the Pennsylvania  
14 Constitution that is going...and, therefore," because in  
15 that case there was no legislative action on increasing the  
16 time limit of the absentee ballots past election day. The,  
17 I guess, Trial Court and then the Supreme Court affirmed,  
18 the Pennsylvania Supreme Court affirmed that if, you know,  
19 basically they looked at Pennsylvania's Constitution and  
20 their Bill of Rights and the Rights of Free Election and  
21 said that trumps due to COVID basically and all the issues  
22 they had in the June 2020 primary and ballots, that trumps  
23 the statute that all...the Pennsylvania statute where all

1 absentee ballots had to be in by election day.

2 Now, we don't have that issue here clearly.  
3 I mean, the legislature took some action, you know, last  
4 year, you know, and now the Board has taken some action  
5 too. So I don't have, you know, an issue of having to just  
6 decide whether or not, you know, the statute doesn't matter  
7 at all as compared to the Constitution.

8 But how does the Virginia Constitution fit  
9 into this because, you know, one thing they have got to  
10 look at is, you know, under Article I, Section 6, you know,  
11 Free Elections, "That all elections ought to be free," and  
12 that I know it says men but obviously all persons "having  
13 sufficient evidence of permanent common interest have the  
14 right of suffrage."

15 And doesn't this in some regards, you know,  
16 if a postmark is not there prevent that from happening  
17 potentially?

18 Mr. Adams.

19 MR. ADAMS: First the Pennsylvania case. The  
20 Pennsylvania Supreme Court had been asked by the parties in  
21 that case to exercise something that does exist in  
22 Virginia. It is called extraordinary jurisdiction.

23 THE COURT: Right.

1 MR. ADAMS: And essentially it turns...

2 THE COURT: Because they don't have an  
3 emergency statute like we have. They don't have provisions  
4 like we have.

5 MR. ADAMS: Right. And there is another  
6 thing that they don't have and that is an anti-suspension  
7 clause in the Constitution.

8 THE COURT: Right.

9 MR. ADAMS: And in that case they were asked  
10 to exercise their extraordinary jurisdiction which almost  
11 turned them into a legislature and it is an extraordinarily  
12 controversial decision.

13 You also cited Defendants' reliance on *Wise*  
14 *vs. Circosta*.

15 THE COURT: Right.

16 MR. ADAMS: And that is the Fourth Circuit  
17 case that, by the way, since the briefing has been done is  
18 now before United States Supreme Court on an effort for an  
19 emergency injunction regarding that case brought by the  
20 Plaintiffs.

21 I prepared something for this question to  
22 hand to the Bench.

23 THE COURT: Okay. Do you have a copy for...

1 MR. ADAMS: I do.

2 Here, if you can pass that to counsel,  
3 please.

4 This is a ruling for the U.S. Supreme Court  
5 yesterday.

6 THE COURT: Yeah, it is the Wisconsin case.

7 MR. ADAMS: Correct.

8 THE COURT: Yeah.

9 MR. ADAMS: And granted...

10 THE COURT: I have done my work.

11 MR. ADAMS: There are limits here. Now, this  
12 is not an Opinion and it is obviously not Virginia...

13 THE COURT: Right.

14 MR. ADAMS: ...and there is a lot of limits  
15 which I know Your Honor knows already, but if I could turn  
16 your attention to the third page. And I marked both  
17 counsel copy and your copy.

18 Justice (inaudible) squarely addresses what  
19 you are asking about and he says that it is legislature.

20 It is not State Court Judges, not state agencies, who bear  
21 responsibility for writing the rules of an election. And  
22 there is some more language in here which I highlighted  
23 that I won't bore you with. But I would submit, Your

1 Honor, that there was a new Court as of this week in the  
2 United States Supreme Court and very shortly in this case  
3 from North Carolina, *Circosta*, we may find something very  
4 different than what happened in Pennsylvania. I can  
5 already count two Justices that are in line with the  
6 Plaintiff's position. Alito and Thomas were silent. They  
7 didn't write any concurrence in this. And I can only guess  
8 what Judge Barrett or Justice Roberts will do.

9           But the point is that there is a lot of  
10 thought going into the very question you have asked and it  
11 boils down to this, legislatures are in charge not agencies  
12 in writing election laws because that is what the U.S.  
13 Constitution said.

14           Finally, finally, Virginia has this anti-  
15 suspension clause that makes it different from most other  
16 states, including North Carolina to my knowledge. I have  
17 not looked at that specifically, Your Honor, but certainly  
18 from Pennsylvania. And the Virginia Constitution presumes  
19 that the legislature is supreme. It is true that there is  
20 the right to vote in the Virginia Constitution. That is  
21 true. But it delegates to the legislature the power to  
22 right the rules which takes us right back to the beginning  
23 of this hearing and that is the statute for the

1 interpretation of those rules.

2 MR. GRIFFIN: Judge, if I can just follow up  
3 with what counsel said. And I have also looked at these  
4 cases all over the country and I have studied this for the  
5 last sixteen years all over the country.

6 The case in North Carolina, Judge Osteen,  
7 again he was talking about absentee ballots being received  
8 after election day, which is part of the issue that we are  
9 looking at here, and he said in his Opinion that it is  
10 likely unconstitutional as a Federal Judge in North  
11 Carolina. That is not the exact issue that we have but  
12 that is where we are headed with this particular question.

13 And to follow up with counsel's comments on  
14 the *DNC vs. Wisconsin* case, they actually cited a previous  
15 U.S. Supreme Court case, *Purcell vs. Gonzalez*, that talked  
16 about...and Mr. Adams referenced the fact that General  
17 Assemblies or legislative branches all across the country  
18 have made changes this year whether in regular session or  
19 an emergency session. Virginia has had both.

20 But the Supreme Court also talked about that  
21 legislative bodies should not have their rules changed by  
22 administrative agencies, quote, "Too close to the  
23 election." You cannot change the rules that have been in

1 place.

2                   These rules have been in place since March.  
3 They were changed or attempted to be changed in August by  
4 an administrative agency who attempted again a week ago to  
5 further change those rules.

6                   And so I think the Supreme Court has spoken.

7                   And the last thing that the Supreme Court  
8 case said in that case is there has to be firm deadlines.  
9 You can't have election year. You can't have election  
10 month. There has to be some sort of deadlines. And that  
11 is consistent with what the Carter Baker Commission came up  
12 with back in 2004 and 2005. That is Jimmy Carter and James  
13 Baker when they essentially said that absentee ballots  
14 remain the largest source of voter fraud in the country.

15                   So we are not there. We are talking about  
16 postmarks. But when you don't have postmarks, you don't  
17 have anything from the Post Office it raises the concerns  
18 that these are not legitimately-cast ballots.

19                   We want every legitimately-cast ballot by a  
20 Virginia resident and a Virginia citizen to be counted.  
21 But if they come in late, if they don't follow the rules we  
22 are stuck with the Rule of Law and the Court I think has  
23 pointed out that we have to strictly interpret these two

1 Code Sections in 709A and B.

2 THE COURT: Well, and I think just to make a  
3 note in the *Purcell* decision (inaudible), I mean, it  
4 actually dealt more with Federal Courts intervening, you  
5 know, on the eve of election, you know, twisting around a  
6 different interpretation or throwing out or doing something  
7 different from what was either in the legislation or in a  
8 regulation, you know, at that point.

9 And in this case, you know, I mean, I am the  
10 State Court Judge and in a lot of those Opinions, depending  
11 on how you read it, you know, basically the Federal Court  
12 says, "We are not the ones that should be doing this.  
13 State Court Judges are the people that should be doing this  
14 interpreting their Constitution, their statutes and their  
15 Code in regard to this."

16 So, Ms. Lewis, you can respond.

17 MS. LEWIS: Thank you, Your Honor.

18 So just to clarify a couple points. While  
19 Plaintiff's counsel states that there will likely be a new  
20 configuration of the Supreme Court that could possibly  
21 change some of these election rules, we simply don't have  
22 time to wait for that...

23 THE COURT: Yeah, I am not, you know, that is



1 beyond me. I have got to look at the case today as it is  
2 today, so...

3 MS. LEWIS: Right.

4 THE COURT: ...and not who is on the Supreme  
5 Court.

6 MS. LEWIS: We are merely six days away from  
7 the election now so above all we just need certainty on  
8 this issue.

9 To the point of any sort of allusion that  
10 the State Board waited too long to pass this regulation, it  
11 did not go into effect until July 1<sup>st</sup>, the statute in  
12 question, and then the Board had to meet in order to  
13 discuss it because they couldn't do it without a quorum.  
14 And then they had to take their public comment period which  
15 is required under their own regulations, receive the  
16 comments, read all the comments, have a public hearing on  
17 the comments, and decide on a new regulation that they  
18 thought would better effectuate the statute.

19 And so it is not as if these things can be  
20 done overnight. It is not as if they could have done this  
21 in a more timely fashion. And so we need to provide  
22 clarity to general registrars now and that is what the  
23 Board has attempted to do.

1                   With respect to the anti-suspension clause,  
2 nothing in the statute is being suspended. The Board isn't  
3 taking away any part of the law. They are just attempting  
4 to provide more clarity in this situation.

5                   And with respect to the right to vote, we  
6 would offer that this gives a broader right to vote to  
7 every qualified voter who has cast their ballot by on or  
8 before election day to ensure that there isn't  
9 disenfranchisement of folks throughout the Commonwealth,  
10 especially those who are attempting to vote absentee for  
11 the first time and those who don't want to endanger the  
12 health of themselves and others during a pandemic.

13                   THE COURT: Okay. Ms. Lewis, let me ask you  
14 something, you know, and I apologize if I didn't really let  
15 you respond last time to my question. I know they  
16 responded to it, but the issue with the smudged postmark.  
17 What is the Attorney General's position on that as combined  
18 with if I were to find that, look, I believe that is  
19 indicia of reliability. You know, does it change  
20 (inaudible) compromise with regard to the no postmark  
21 issue?

22                   MS. LEWIS: So...

23                   THE COURT: And it might not be a question

1 you can really answer.

2 MS. LEWIS: Right. Yeah, Your Honor, I would  
3 have to go back to my office and just find that out. But  
4 at least if there is a smudge on the signature of the voter  
5 that would be still evidence that the ballot was mailed on  
6 time, but it is unclear how many ballots are actually  
7 returned with just smudged postmarks and how many are  
8 returned with no postmarks. So we want to make sure that  
9 any voter who is actually returning a ballot that doesn't  
10 have a postmark can still have their vote counted if they  
11 have affirmed that they sent it before...on or before  
12 election day.

13 THE COURT: Do you think the Constitution of  
14 Virginia trumps the General Assembly statute if I were to  
15 find... Let me just pose this hypothetical. If I were to  
16 find that Subsection B is just that, an exception to  
17 Subsection A, and it does not, you know, and it has to meet  
18 those requirements specifically for it to count, do you  
19 think then the regulation, you know, that I should adopt  
20 the regulation holding the Constitution of Virginia higher  
21 than what the General Assembly did at that point?

22 MS. LEWIS: Yes, Your Honor.

23 THE COURT: Okay.

1                   Okay. Mr. Adams, you want to respond back?

2                   MR. ADAMS: Very briefly on that last point,  
3 Your Honor. That puts the Attorney General in the position  
4 of arguing that a statute passed by the General Assembly is  
5 unconstitutional which is a very strange position to be in.

6                   But putting that aside because it is perhaps  
7 not (inaudible) recently, here is the bottom line on the  
8 right to vote. The right to vote has always been assumed  
9 through all the case law...and I could get into cases like  
10 *Reynolds v. Sims* and *Anderson-Burdick* and all of the right  
11 to vote cases...always assume that regulations are equally  
12 applied like 709A and B are. That don't reach questions of  
13 race. That don't reach questions of age or gender and are  
14 minimal burdens under *Anderson-Burdick*. Have always been  
15 held the reasonable regulations do not impair the right to  
16 vote. Otherwise the State Board of Elections can just  
17 dispense with everything that it does. There's reasonable  
18 regulations permitted and we have had how many weeks of  
19 early voting already.

20                   So I don't think there is any Court that  
21 would find that B and A in 709 somehow impair the right to  
22 vote. Considering all of the time we have had to vote in  
23 the Commonwealth up to this point it would be contrary to

1 all of the jurisprudence relating to what is a severe  
2 (inaudible) in voting. It is simply inconsistent and  
3 meritless and not a strong argument to argue that these  
4 provisions impair the State constitutional right to vote  
5 because it is contrary to all the jurisprudence in this  
6 area.

7 THE COURT: Any response, Ms. Lewis, since  
8 you were asked the question first?

9 MS. LEWIS: Your Honor, I would just also  
10 point to the fact that Plaintiffs point out, quote,  
11 unquote, "All of the time that there has been to absentee  
12 vote." However, I think that discounts voters who may have  
13 thought that they would have time to absentee vote and  
14 didn't, voters who may not get...

15 THE COURT: What about the voter who doesn't  
16 make their mind up until the morning of election day?

17 MS. LEWIS: Correct. There are voters who  
18 probably have watched debates recently that may have  
19 changed their minds. There are voters who have to work  
20 long hours, multiple jobs. They may not be able to get in  
21 in time. And so that particularly could disenfranchise,  
22 for example, low income voters. Those voters are  
23 guaranteed the right to all of the information that in-

1 person voters are given who are able to show up until  
2 election day. They shouldn't be disenfranchised for  
3 mailing their ballot validly on election day if, through no  
4 mistake of their own, there is no postmark or there is no  
5 IMB data.

6 THE COURT: Now, I will say this and I think  
7 (inaudible) the Plaintiff's argument that they just stated  
8 and I think if I am remembering correctly from the  
9 *Wisconsin* Opinion yesterday, Justice Kavanaugh made a point  
10 to say that, you know, like I said it is not a severe  
11 burden because, you know, and kind of alluded, you know, to  
12 the fact that if people haven't voted and they were  
13 concerned that their ballot will not get there on time or  
14 not properly get through the mail at that time that there  
15 is still the option of voting on election day, you know.

16 And that, you know, and I understand, you  
17 know, and I understand the COVID issue. Trust me, up here  
18 with a mask on and we have no jury trials right now with  
19 tolling of speedy trial, statutory speedy trial, you know.  
20 So, but I just, you know, I mean, isn't there still an  
21 option. I mean, because I agree with you. I mean, I hope,  
22 you know, that there are Americans that are...that, you  
23 know, they are listening to the debates or listening to

1 people and they might not...then make a decision on who  
2 they are going to vote for, you know, last minute. You  
3 know, they might be waiting until the day of election to  
4 make a vote.

5 But don't they still have the option to go  
6 vote at the polls and if they are really concerned about  
7 their mail not getting there by Friday with a postmark?

8 MS. LEWIS: Your Honor, you are correct.  
9 There is still the option of voting in person.

10 I would also point out though that there are  
11 elderly voters or voters who might not have transportation  
12 who aren't able to get themselves to the polls.

13 I would also just state that I know many  
14 voters have been deterred by news stories that we have seen  
15 throughout the country about extremely long lines at the  
16 polls. And things...situations may arise in which they  
17 aren't able to get to the polls. So we just want to make  
18 sure that every Virginian has an equal opportunity to cast  
19 their ballot.

20 MR. REED: Your Honor?

21 THE COURT: Yes.

22 MR. REED: If I may briefly respond.

23 THE COURT: Yes.

1                   MR. REED: The General Assembly has already  
2 has already made a decision with regards to whether there  
3 is a right to absentee mail on election day. They said  
4 that it has to be received by Friday at noon. It is quite  
5 possible that someone could mail their ballot on Tuesday,  
6 election day, and it would not arrive by Friday at noon.  
7 The General Assembly didn't say go and get every ballot  
8 that was ever postmarked possibly that could have been cast  
9 on election day and count it no matter how late it comes in  
10 as some other states have. Some states set that deadline  
11 to fifteen days. The General Assembly made a choice and  
12 they set it to three.

13                   Additionally, I would note that there are  
14 more options than simply voting in person on election day.  
15 In its special session legislation the General Assembly  
16 provided for drop-off locations at every precinct and at  
17 every registrar's office where a voter can return their  
18 absentee ballot without using the mail system. They still  
19 have that option.

20                   And it is certainly the case that any of us  
21 could come up with hypotheticals about a particular voter  
22 who might be inconvenienced, but there have to be rules  
23 about an election. It has to end by a certain time and



1 voters have to comply with those rules.

2 I applaud the many organizations that have  
3 done public service announcements encouraging people to  
4 plan how they are going to cast their vote, to do that  
5 early and it would be wonderful if everyone had perfect  
6 information before casting a ballot, but that is simply not  
7 what the right to vote entails. There have to be  
8 parameters around it. I suppose we could eliminate terms  
9 and have people decide each day whether they wanted someone  
10 to continue, but that is not our system.

11 We have to have an election and it has to  
12 have an end date and the General Assembly has made a choice  
13 about what ballots are going to be counted and what ballots  
14 are not. So I don't think that suggesting that there is a  
15 violation of the constitutional free election clause in  
16 Virginia is a way to resolve this case.

17 I think simply the question is what the  
18 General Assembly has set as the rules and whether they  
19 should be strictly interpreted or whether the State Board  
20 has the authority to expand them to include additional  
21 exceptions to the rule that are not included in the  
22 statute.

23 Thank you, Your Honor.

1 THE COURT: Do you by chance have, and I know  
2 you said it was passed in the Budget Appropriation Bill, do  
3 you have the actual Bill number with all the amendments  
4 with regard to specifically the COVID specific stuff?

5 MR. REED: Yes, Your Honor. It is Senate  
6 Bill 5120. It is Chapter 1 of the (inaudible) Assembly  
7 passed during the special session. I believe that it was  
8 attached as an exhibit to our Amended Complaint.

9 THE COURT: Oh, okay. It may have been. It  
10 may have been. Sorry about that.

11 MR. REED: I might be mixing it up with a  
12 different (inaudible).

13 THE COURT: Because I saw you guys filed the  
14 Amended Complaint. I knew it was because of the regulation  
15 actually becoming finalized. I may have not looked at the  
16 actual attachments on the second one, so. But Senate Bill  
17 5120?

18 MR. REED: Yes.

19 THE COURT: Okay. Okay. Thank you.

20 MR. REED: Thank you, Your Honor.

21 THE COURT: All right. Just give me...  
22 normally I would say Court's indulgence but since I am just  
23 looking at my questions to make sure I don't have anymore.

1                   Let me ask this of the Plaintiffs. Besides  
2 what you have, you know, stated in your Complaint, you  
3 know, with regard to, you know, the harm being, you know,  
4 that there wouldn't maybe be...that the registrar's offices  
5 are having to change guidance and stuff like that, I mean,  
6 what other harm is there by not accepting a ballot that  
7 wasn't postmarked or not legible postmarked that was  
8 signed, you know, prior to the thing. I mean, are we  
9 talking voter fraud? I mean, what other harm is there to  
10 the system at that point?

11                   MR. ADAMS: Yes, Your Honor. First of all,  
12 we are not making any allegations about voter fraud.

13                   THE COURT: Yeah, I realize that in the  
14 Complaint.

15                   MR. ADAMS: Okay. You asked the question  
16 what other harm other than those we articulated. I just  
17 thought of one as you were saying that. My client will  
18 have to violate his oath of office which is to uphold the  
19 laws of Virginia. And that is one we didn't put in the  
20 Complaint but it is also one that is totally true. Oaths  
21 still matter. And he took an oath to uphold the law and if  
22 he has to follow things that are not in the law and  
23 inconsistent with the law then he has to break his oath and

1 I would submit that that still matters at this point.

2 THE COURT: But if I rule today...let me just  
3 say I rule but then the Virginia Supreme Court rules after  
4 me that the regulation was appropriate, I mean, he is not  
5 violating the law at that point. He has got to follow it;  
6 correct?

7 MR. ADAMS: Well, that is correct of course.  
8 But the other harm is that we don't have certainty about  
9 this election. We have three sets of regulations in the  
10 last two months. A sliding scale of different regulations  
11 from, "Don't worry at all about the postmark," to "Okay,  
12 well if they sign something." So there is this incredible  
13 uncertainty.

14 They may issue a new regulation later this  
15 week. Nothing is stopping them from coming up with new and  
16 inventive ways to interpret the statute. So certainty is  
17 another harm. There is a lack of certainty in the  
18 election.

19 THE COURT: Ms. Lewis.

20 MS. LEWIS: Your Honor, again I would state  
21 the Commonwealth state election officials don't believe  
22 that this regulation is in contravention of the law and so  
23 we would state that there is no violation of the oath of

1 office of local election officials if they are following  
2 the law as directed by the State Board of Elections.

3 I would also point out, so there has been  
4 some allegations that there have been three sets of  
5 regulations on this. There was a proposed regulation that  
6 was then...there was a public hearing on it and only then  
7 was the regulation actually amended.

8 And also to assert that the State Board of  
9 Elections is somehow going to hold an emergency meeting and  
10 update the regulation within the next week just before the  
11 eve of an election is somewhat silly to say the least.  
12 They are not going to change it. What we are attempting to  
13 do is just get clarity and provide a system for registrars  
14 throughout the Commonwealth to be consistently checking the  
15 postmark or the IMB data or the oath that has been signed  
16 by a voter.

17 THE COURT: Thank you.

18 MR. GRIFFIN: Judge, if I can just comment  
19 briefly. Exhibit D which the Court has talks about what  
20 the registrars can do as opposed to what they shall do or  
21 have to do. And we did...counsel advised the Court there  
22 are what, a hundred and twenty-three different  
23 jurisdictions in Virginia. So you could have a situation

1 where the registrar in Winchester and Frederick County are  
2 doing one thing and a separate registrar following the  
3 exact same guidance from the State Board of Elections in  
4 Loudoun County or Fairfax County could do it differently.  
5 So you could have sixty jurisdictions doing it one way,  
6 fifty of them doing it the other way because of the  
7 regulation that says you can do it this way if you want to  
8 which is completely different from what the Code says. And  
9 that is in Section A, "Shall be void," and then Subsection  
10 B is, "Unless you meet the following specific terms and  
11 conditions."

12 So we are trying to avoid having a hundred  
13 and twenty-three different local registrars making these  
14 decisions.

15 THE COURT: Anything to add, Ms. Lewis? You  
16 don't have to if you don't want to.

17 MS. LEWIS: No, it is okay. So just to be  
18 clear, under the regulation that would be supervised by the  
19 State Board of Elections and all one hundred and thirty-  
20 three localities would be required to follow that stair-  
21 step system of checking on ballots. So there wouldn't be  
22 Winchester doing something different than York County. It  
23 would be the registrars being required to follow that exact

1 regulation and have certainty from the State Board of  
2 Election that that is how ballots should be counted as  
3 valid.

4 THE COURT: Hold on a second.

5 Okay. Any closing remarks from counsel  
6 before I go to chambers and...

7 MR. ADAMS: Very briefly, Your Honor.

8 THE COURT: Okay. There were two things that  
9 the Plaintiffs asked about in briefing that we never heard  
10 an answer to today from the Defendants.

11 The first one is they still have not  
12 articulated any limiting principle for their position. It  
13 seems to be that their position is whatever the State Board  
14 of Election comes up with is the new law. They could, for  
15 example, pass a regulation that says affidavits work,  
16 photographs work. If you take a selfie passing the ballot  
17 next to a T.V. screen with the date and time as a time  
18 stamp that will work. I am not suggesting that would work.  
19 What I am suggesting is they haven't articulated a limiting  
20 principle whatsoever and that flies directly in the face of  
21 Virginia's entire system of government where limiting  
22 principles are at the core of our structure of government.

23 The second thing that the Defendants have

1 not addressed whatsoever is the case that we believe  
2 controls this case and that is *Howell vs. McAuliffe*. It  
3 was the governor intended to suspend the law there and  
4 grant the right to vote to every single felon who has ever  
5 been convicted without an individualized determination.  
6 Defendants have yet to address this case once. Not on  
7 briefs, not in arguments today. We contend that it is  
8 control.

9                   So, Your Honor, there is plenty of policy  
10 reasons why the right to vote might be handled differently.  
11 Why people ought to be able to cast a ballot after...that  
12 is going to come in late. There is plenty of those policy  
13 reasons. But in this Commonwealth the General Assembly  
14 decides those issues not the State Board of Elections.

15                   Thank you.

16                   THE COURT: Okay. Counsel for Plaintiffs,  
17 any other...

18                   MR. MARSTON: Thank you, Your Honor.

19                   MR. GRIFFIN: No, Your Honor.

20                   THE COURT: Okay. Ms. Lewis.

21                   MS. LEWIS: Thank you, Your Honor.

22                   Just to go to Plaintiffs' arguments  
23 regarding the limiting principle, the State Board of



1 Elections has been delegated authority to interpret the  
2 statutes passed by the General Assembly. They have to do  
3 that without being arbitrary, without making completely  
4 ridiculous rules, and we believe that in this situation the  
5 regulation is fully reasonable in that the official indicia  
6 can include the signed statement of a voter that they can  
7 be held under penalty if they falsify. That is a  
8 reasonable effort. It is not a selfie. We are not making  
9 any sort of assertions that that would be something that  
10 would be acceptable. We are just asking for something  
11 reasonable that will allow all Virginians to vote.

12 We would also say to Plaintiffs' point  
13 regarding *Howell* that there has been no suspension of the  
14 law in this case so we do not think that *Howell* is  
15 applicable in this situation.

16 Again, Your Honor, we would just highlight  
17 again that we are attempting to encourage enfranchisement  
18 of voters who are voting absentee, especially during a  
19 period when there has been a large number of absentee votes  
20 cast due to the fact that no excuse absentee voting is now  
21 the law of the Commonwealth and during a pandemic. And so  
22 the State Board has acted under its delegated authority to  
23 do so.

1 Thank you.

2 THE COURT: Okay. Mr. Adams, you get last  
3 response.

4 MR. ADAMS: Nothing further, Your Honor.

5 THE COURT: Okay. Counsel?

6 MR. MARSTON: Thank you, Your Honor.

7 MR. GRIFFIN: No, thanks.

8 THE COURT: Okay. Okay. Thank you all. I  
9 am going to go back and retire to chambers for a little  
10 bit. I am not sure how long. I am only working on this  
11 case. I want to look through a few things, review your  
12 all's arguments and then formulate my oral Opinion for the  
13 Record. That way you guys have a clear Record of  
14 everything too. Okay?

15 So give me a few minutes on that and I will  
16 be back hopefully shortly but it may be a little bit so I  
17 apologize about that but I know time is of the essence and  
18 I don't want you guys to wait until tomorrow or Friday for  
19 a written Opinion. Okay?

20 So just give me a few minutes. Okay?

21 MR. ADAMS: Thank you, Your Honor.

22 MS. LEWIS: Thank you, Your Honor.

23 **(RECESS AT 2:04:25 P.M.)**

1       **(COURT RECONVENES AT 3:04:26 P.M.)**

2                   THE COURT: Okay. Thank you all again for  
3 your patience. Like I said, I know time is of the essence  
4 and I wanted to get this out as quickly as possible. I am  
5 going to issue my oral Opinion from the Bench. Obviously  
6 it can be...the transcript can...it is Valley Reporting so  
7 you all can get the transcript from the court reporter with  
8 regard to the proceedings. And I will after I am done  
9 giving my Opinion I will just do a one page quick Order. I  
10 will have that signed and downstairs within the next twenty  
11 minutes or so. Okay?

12                   Okay. So with regard to my Opinion, first  
13 of all I want to thank counsel for a well argued position  
14 on all sides. You know, this is a very interesting issue.  
15 You know, it was interesting to research and work on the  
16 last week when I knew I was going to have this case and saw  
17 both of your all's Briefs and you all did an excellent job  
18 arguing your positions both in your Briefs and also today  
19 in Court.

20                   Now, as you all know voting is one of the  
21 most fundamental rights and a right that has to be  
22 protected. And people, you know, starting with our  
23 Constitution in Virginia, our Virginia Constitution,

1 Section 6...or Article I, sorry, Section 6, you know,  
2 basically talks about all elections have to be free...  
3 ought to be free and that each man and woman and every  
4 individual should have a right to suffrage. And that is a  
5 very, you know, that is the foundation of our democracy and  
6 a foundation of our, you know, of our being and our being  
7 as an American citizen and also as a citizen of this great  
8 Commonwealth.

9                   However, there are also still rules that  
10 must be followed in elections, you know, and Article II,  
11 Section 4, of the Constitution of Virginia in the last  
12 paragraph states that, "The General Assembly shall provide  
13 for the nomination of candidates, shall regulate the time,  
14 place, manner, conduct and administration of primary,  
15 general and special elections and shall have the power to  
16 make any other law regulating elections not inconsistent  
17 with this Constitution."

18                   So, our Founding Fathers, you know, have  
19 basically endowed the Virginia General Assembly and our  
20 legislature to make the rules with regard to elections that  
21 are not inconsistent with the Constitution. The General  
22 Assembly is the one that gets to regulate the time, place  
23 and manner and how elections are done.

1                   Now, you know, turning now down to our  
2 election Code in 24.2-103 the State Board, you know,  
3 through the Department of Elections, is granted powers.  
4 Our General Assembly has granted them powers to make  
5 rules...as the statute states, "To make rules and  
6 regulations and issue instructions and provide information  
7 consistent with election laws, to the electoral boards and  
8 registrars to promote the proper administration of election  
9 laws."

10                   That is a significant, you know, power given  
11 to the Department of Elections and it is to ensure the  
12 General Assembly, you know, clearly it is the intent of the  
13 General Assembly that they want to make sure there are  
14 uniform elections and fair elections in the Commonwealth of  
15 Virginia. And the General Assembly granted the State Board  
16 the power; however, the power is still limited in the  
17 context of any rule or regulation by the Department of  
18 Elections has to be to promote the proper administration of  
19 elections and that is kind of where we are at today. Not  
20 kind of, that is where we are at today.

21                   And that brings us to the statute at issue  
22 which is obviously Virginia Code 24.2-709. As was argued  
23 in Court today, you know, Subsection A says, "Any ballot

1 returned to the office of the general registrar in any  
2 manner except as prescribed by law shall be void." Very  
3 clear, unambiguous. "Shall be void."

4 "Absentee ballots shall be returned to the  
5 general registrar before the closing of the polls." Again,  
6 unambiguous. That is in Subsection A of 24.2-709.

7 Now, in this past General Assembly session,  
8 back starting actually with the prefilings by both the  
9 Senate and the House, I believe the House prefiled back in  
10 December and the Senate in January filed amendments.  
11 Ultimately they went with the House version of them which  
12 created basically Subsection B which starts off,  
13 "Notwithstanding the provisions of Subsection A any  
14 absentee ballot (i) returned to the general registrar after  
15 the closing of the polls on election day but before noon on  
16 the third day after the election and (ii) postmarked on or  
17 before the date of election shall be counted pursuant to  
18 the procedure set forth in this chapter if the voter is  
19 found entitled to vote."

20 That first part of that first sentence,  
21 "Notwithstanding the provisions of Subsection A," makes  
22 Subsection B a clear exception to a ballot being void under  
23 Subsection A if it does not meet the conditions of

1 Subsection B. If the ballot does not meet the conditions  
2 of Subsection B then it is void under A and it is a clear  
3 exception.

4 Now the last sentence of Subsection B states  
5 that, "For the purpose of this subsection a postmark shall  
6 include any other official indicia of confirmation of  
7 mailing by the United States Postal Service or other postal  
8 or delivery service."

9 Now taking that all into consideration the  
10 issue in this case since the Plaintiffs did concede that  
11 the intelligent mail barcode provision of the regulation  
12 that was proposed or that was finalized by the Department  
13 Board of Elections is appropriate. So that section of the  
14 regulation is appropriate and that was conceded by the  
15 Plaintiffs in this case.

16 So it comes down to the other portions of  
17 the regulation addressing illegible or not legible  
18 postmarks, *i.e.*, they are smudged, you can't read the date  
19 on them, or ballots without postmarks. Understand that due  
20 to the unique...I do understand that due to the unique  
21 situation the country and the Commonwealth is in with COVID  
22 there will be more mail-in ballots this year and clearly  
23 that has been the trend in all the news cycles, you know,

1 throughout the last several weeks. I don't think anyone  
2 sitting in this courtroom can deny that. You know, but,  
3 however, you know, and I did ask this question, at least at  
4 this point at the date of this proceeding there was no  
5 evidence before this Court about how many of these absentee  
6 ballots in the Commonwealth, in our Commonwealth, have come  
7 in with smudge or no postmarks.

8                   The Court does understand clearly that  
9 ballots that have come in at this point will fit Subsection  
10 A, don't need a postmark, and they are counted because they  
11 are received before next Tuesday.

12                   However, the Court does not know at this  
13 point how many of even these are...even though they will be  
14 counted, you know, what trend there has been with the  
15 mailings of whether or not there has been a lot of smudged  
16 postmarks or whether or not there has been no postmarks on  
17 these ballots. It would be completely speculative for this  
18 Court to try to assume how many ballots will or will not be  
19 affected by this.

20                   Virginia Statute 24.2-709 is unambiguous  
21 including Subsection B. It sets the requirements for the  
22 absentee ballots to be counted. It establishes an  
23 exception to Subsection A, thus stating that if Subsection



1 B is met then the ballot meets the exception to potentially  
2 be voided under Subsection A.

3           However, the last sentence of B must be  
4 examined. "Any other official..." And again I have  
5 already stated it but, you know, it bears stating again.  
6 "Any other official indicia of a postmark," sorry, "for the  
7 purposes of this subsection the postmark shall include any  
8 other indicia of confirmation of mailing by the United  
9 States Postal Service or other postal delivery service."

10           It does not say indicia of confirmation of  
11 mailing by the date of the election. It just says,  
12 "Indicia of confirmation of mailing by the United States  
13 Postal Service."

14           Therefore, my ruling is as follows. As to  
15 the portions of the regulation dealing with illegible or  
16 non-legible postmarks, that Injunction by the Plaintiffs is  
17 denied. An illegible or not eligible postmark is an  
18 indicia of confirmation of mailing by the United States  
19 Postal Service. The Virginia Department of Elections was  
20 well within their authority under 24.2-103 to promulgate a  
21 rule saying that if a postmark is illegible then the vote  
22 counts if signed and dated by the voter the day of or  
23 before the election. This fulfills the Department's

1 mandate to ensure uniformity and fairness with the  
2 election. It does not leave...and thus, it does not leave  
3 each registrar's office setting there to determine whether  
4 or how bad a postmark is smudged and whether it counts or  
5 not. It does not leave that determination there. It  
6 clearly gives guidance to effectuate the last sentence  
7 passed by the General Assembly and the intent of the  
8 General Assembly by the unambiguous language of  
9 confirmation of mailing.

10           However, the Injunction will be granted as  
11 to the counting of ballots received after election day  
12 without a postmark and that cannot be confirmed with  
13 intelligent mail barcode system.

14           Clearly it was the General Assembly's intent  
15 to add the postmark or some indicia of confirmation as a  
16 requirement to the void provisions of 24.2-709A. To decide  
17 otherwise would contradict clear legislative intent  
18 demonstrated by an unambiguous statute. Additionally, it  
19 would be contrary to statutory construction.

20           This is further bolstered by the budget  
21 amendment passed by Senate Bill S5120 passed by the General  
22 Assembly during the special session just recently. In that  
23 Bill as noted it sets up, you know, the ability to have

1 voter drop-off locations. Also it goes through, I believe  
2 it is in Subsection A2 the general registrar if they are  
3 finding and they examine a returned absentee ballot and  
4 there is errors in that returned absentee ballot there is a  
5 procedure about going back through, trying to get a hold of  
6 the voter and try to get the necessary corrections before  
7 that cut off on the Friday at noon.

8           Clearly the General Assembly has recently in  
9 their special session the last couple months has gone back  
10 and adjusted for COVID and the issues and fears by the  
11 population with regard to voting. But, the thing that they  
12 did not do in that was address the postmark issue or the  
13 not having a postmark issue while it actually was still  
14 pending as a proposed rule in front of the Board of  
15 Elections. They had the opportunity to and they did not  
16 and I think I have to consider that in determining whether  
17 or not, you know, the intent of the legislature with regard  
18 to how to interpret 709.

19           So, with regard to granting the Injunction  
20 as to the non-postmark ballots that also cannot be verified  
21 with intelligent barcode, you know, obviously the standard  
22 with regard to Injunction is likely to succeed, you know,  
23 there is basically four elements likely to succeed on the

1 merits, likely to suffer irreparable harm in the absence of  
2 preliminary relief, the balance of equities tips in their  
3 favor and the Injunction is in the public interest.

4 I do believe based on my recitation and my  
5 opinion as to the issue with regard to ballots not  
6 postmarked that it is likely to succeed because it is the  
7 regulation and as to that issue and that issue only is in  
8 conflict with the intent of the General Assembly and the  
9 unambiguous statute that was passed by the General Assembly  
10 last year.

11 I do also feel that the element of likely to  
12 suffer reparable harm in the absence of preliminary relief  
13 is also established in the general context of the fact that  
14 an election is next week. Once an election occurs things  
15 cannot really be changed. You know, votes have to be  
16 counted, votes have to be orderly counted, and individuals  
17 will be elected and if we are litigating this and there  
18 will irreparable harm if we don't have an election where  
19 the votes come in and are counted promptly at that time.  
20 You can't go back and change an election so that element is  
21 met.

22 The balance of the equities tip in their  
23 favor. I considered that with four with regard to the

1 Injunction as in the public interest. And with regard to  
2 that, you know, I looked at it and I brought up, you know,  
3 the Virginia Constitution and how with regard our Bill of  
4 Rights and the Virginia Constitution, the right to suffrage  
5 and right to vote and whether or not that gets encroached  
6 upon in balancing that issue with the issues of the  
7 regulation and the statute and the Injunction and I do find  
8 that the equities tip in the favor of granting the  
9 Injunction as to the balance and that is in the public  
10 interest.

11           There does need to be rules and rules have  
12 to be followed. The rules of the legislature have to be  
13 followed in the context of our Constitution also granting  
14 the legislature with the power to make the alleged rules  
15 for elections. They did not grant the Commissioner of  
16 Elections or Board of Elections to do that. They granted  
17 the General Assembly and the General Assembly has just done  
18 that. And if we were not to abide by the mandates of that  
19 it would not be in the public interests.

20           Furthermore, based on the steps taken by the  
21 General Assembly with regard...in the special session and  
22 the fact that no evidence was put on today about people not  
23 having the ability to vote, like in the Pennsylvania case

1 in the primary, in their June primary because of the mail  
2 issues they were having there, in those cases, you know, I  
3 do feel that they are, at least at this point, it would be  
4 speculative to say constitutional rights would be infringed  
5 upon at this point. I feel that this is the balance.

6 The legislature has spoken and I will grant  
7 the Injunction as to ballots without any postmarks.  
8 However, I deny the Injunction as to the postmarks that are  
9 not legible or illegible. I do find that the rule is  
10 appropriate in that case and the proper interpretation.

11 Okay. Any questions?

12 MS. LEWIS: Your Honor, if I might.

13 THE COURT: And I will note your both  
14 exceptions to my ruling.

15 MS. LEWIS: The Commonwealth Defendants for  
16 the reasons more fully stated in our Brief would like to  
17 note our objection to the grant of the preliminary  
18 Injunction with respect the ballots that are received that  
19 do not have a postmark. And for the reasons that we do not  
20 believe the regulation contravenes or supersedes any part  
21 of Title 24.2 and for the reasons that we do not believe  
22 that there is a likelihood of success on the merits, that  
23 there will not be irreparable harm to the Plaintiffs and

1 because the balance of the equities tips in favor of the  
2 Commonwealth's Defendants' regulation being upheld.

3 Thank you.

4 THE COURT: Okay. Thank you.

5 Mr. Adams, do you want to put on the Record  
6 your disagreement as to the one issue?

7 MR. ADAMS: Not at this time, Your Honor.

8 THE COURT: Okay.

9 Okay. Thank you all. Again, well argued on  
10 both sides.

11 I will prepare the Order like I said. The  
12 Order is just going to reflect my Opinion on the transcript  
13 and I will note that in the Order and it will just be a  
14 one-page Order. I will get that done in the next twenty  
15 minutes and it will be downstairs in the Clerk's Office.  
16 Okay?

17 MR. GRIFFIN: Is the Court going to issue any  
18 ruling with regard to the return of the court costs to the  
19 Plaintiffs?

20 THE COURT: No.

21 MR. GRIFFIN: Okay.

22 THE COURT: So, yeah, no.

23 All right. Thank you all again and I will

1 get that down in the next twenty minutes. Okay?

2 MR. GRIFFIN: All right. Thank you.

3 MR. ADAMS: Thank you, Your Honor.

4 MS. LEWIS: Thank you, Your Honor.

5 **END OF PROCEEDINGS**

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\* \* \* CERTIFICATE \* \* \*

I, KATRINA HUKKALA, solemnly swear that I have truly taken down the evidence and incidents of trial in the aforementioned hearing to the best of my knowledge and ability.

Given under my hand, this the 29<sup>th</sup> day of October, 2020.

---

KATRINA HUKKALA, COURT REPORTER

\* \* \* CERTIFICATE \* \* \*

I, LINDA GRIMSLEY-LOGAN, solemnly swear that I have truly transcribed, under my direction, the evidence and incidents of trial in the aforementioned hearing to the best of my knowledge and ability.

Given under my hand, this the 29<sup>th</sup> day of October, 2020.

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LINDA GRIMSLEY-LOGAN, COURT REPORTER

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