LEAGUE OF WOMEN VOTERS OF VIRGINIA, et al.,
Plaintiffs,
v.
VIRGINIA STATE BOARD OF ELECTIONS, et al.,
Defendants.

Case No. 6:20-cv-00024

DECLARATION OF M. NORMAN OLIVER, MD, MA,
VIRGINIA HEALTH COMMISSIONER

1. I currently serve as State Health Commissioner for the Commonwealth of Virginia. I have been in that role since April 2018, having served in an acting capacity before being formally appointed to the post in June 2018 by Governor Ralph S. Northam. Before my appointment as State Health Commissioner, I served as Deputy Commissioner for Population Health at the Virginia Department of Health and as a Professor and Chair of the Department of Family Medicine at the University of Virginia School of Medicine.

2. In my capacity as State Health Commissioner, I am leading the Commonwealth’s effort to combat the novel coronavirus known as COVID-19.

3. I became aware of the COVID-19 virus in December 2019 through reports that China was experiencing an outbreak of a new virus causing a pneumonia-like illness. I have since followed medical literature closely as knowledge about the virus evolves.

4. On January 30, 2020, the World Health Organization declared the outbreak a “public health emergency of international concern.” On January 31, United States Health and

5. The virus that causes COVID-19 is both extremely contagious and potentially fatal. It spreads through close person-to-person contact or by contact with the respiratory droplets produced when an infected person coughs, sneezes or talks. There is also evidence that suggests, depending on the circumstances, the virus can survive on certain surfaces for hours if not days. Because asymptomatic patients may spread the virus, and there is a lag of several days between when a person becomes infected and the onset of symptoms, an infected person may spread the virus before becoming aware of the infection. Moreover, anecdotal reports suggest that some people infected with COVID-19 never become symptomatic, increasing the risk that they will unknowingly spread the virus.

6. Although many people with COVID-19 experience mild or moderate symptoms, others, particularly older patients and those with underlying health conditions such as diabetes, heart disease, and chronic lung conditions, experience much more severe outcomes, including death. Such patients often require hospitalization, intensive care, and intrusive ventilation. People who are young and/or physically fit are still susceptible to COVID-19, and even if they may not be as likely to experience symptoms that are severe, negative health outcomes—including death—are still possible. Those who are young and/or physically fit may also spread the virus even if they do not experience symptoms themselves.

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Because of the speed with which COVID-19 spreads in a community, and the significant portion of COVID-19 patients who require hospitalization, intensive care, and intrusive ventilation, outbreaks threaten to overwhelm healthcare systems, as demonstrated by the recent experiences of Italy, Spain, Seattle, Louisiana, and New York, among other places.

As of April 30, 2020, there have been more than 3 million cases of COVID-19 reported worldwide and more than 230,000 deaths. In the United States, there have been more than 1 million reported cases and more than 60,000 deaths.

There is currently no proven treatment or cure for COVID-19.

There is currently no vaccine to address COVID-19.

Over the last several weeks, Virginia has experienced a growing crisis related to the spread of COVID-19.

Virginia recorded its first confirmed case of COVID-19 on March 7, 2020. It took 13 days to reach 100 cases and just ten days for that number to increase ten-fold to 1,000 cases. In the week from April 20, 2020 to April 27, 2020, there were 4,545 new cases in Virginia. As of April 30, 2020, there were 15,846 cases of COVID-19 across the Commonwealth. The number of reported cases likely undercounts the actual number of positive cases because of limitations in testing capacity.

The number of fatalities continues to rise as well. Virginia reported its first death from COVID-19 on March 14, 2020. As of April 30, 2020, there have been 552 deaths in Virginia. Deaths are projected to continue to increase.

Like other places, Virginia faces a significant strain on its healthcare system as a result of the spread of COVID-19. Without increasing hospital capacity, the Commonwealth will

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2 Johns Hopkins University of Medicine, Coronavirus Resource Center (last visited Apr 30, 2020), https://coronavirus.jhu.edu/map.html.
face a shortage of hospital beds, intensive care beds, and ventilators if the number of COVID hospitalizations exceeds 6,000. Such a shortage would mean that the healthcare system would be unable to provide adequate care to COVID-19 patients, as well as those suffering from other illnesses and injuries.

15 Faced with this novel and growing public health crisis, the Commonwealth has taken a number of escalating steps to combat the spread of COVID-19 and prepare its healthcare system for the coming increase of patients. In my capacity as State Health Commissioner, I have advised the Governor on the orders he has issued to protect the public and have also used the authority vested in me by the Code of Virginia to issue orders consistent with the needs of the declared Public Health Emergency.

16. The Governor and I have issued several orders to mitigate the spread of COVID-19 in the Commonwealth.

- On March 13, 2020, the same day he declared a State of Emergency in the Commonwealth, the Governor temporarily closed K-12 schools and limited the number of patrons in restaurants, fitness centers, and theaters to no more than ten per establishment.¹

- On March 24, 2020, the Governor issued Executive Order 53, which extended school closures for the remainder of the school year and temporarily prohibited private and public gatherings of more than ten individuals. Executive Order 53 also directed that certain businesses close their doors to the public. Certain essential businesses (such as grocery stores) were permitted to exceed the ten-person limit, but were required to adhere to social distancing recommendations, enhanced sanitizing practices on

common surfaces, and other appropriate workplace guidance from state and federal authorities while in operation.⁴

- On March 31, 2020, the Governor issued Executive Order 55, which imposed additional restrictions and extended the duration of the temporary gatherings restriction announced in Executive Order 53. Executive Order 55 directed all Virginians to stay at home except as needed to perform essential tasks.⁵

- On April 15, 2020, the Governor amended Executive Order 53 to extend certain measures through May 7, 2020.⁶

17 These restrictions are consistent with guidance from federal officials, who recommend maintaining person-to-person distances of at least six feet, prohibiting gatherings of more than ten people, limiting discretionary travel, and frequently washing hands and cleaning surfaces.⁷ They are also consistent with restrictions put in place in States and localities across the country.

18 In addition to these orders, the Governor and I have taken steps to prepare the healthcare system to care for COVID-19 patients

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• On March 20, 2020, the Governor issued Executive Order 52, which allowed hospitals to add bed space without having to comply with certificate-of-public-need and licensing requirements that would otherwise apply to such expansions.8

• On March 25, 2020, the Governor and I issued Order of Public Health Emergency Two, which temporarily banned elective surgery in the Commonwealth (subject to certain exceptions) to save personal protective equipment and hospital bed space in preparation for the uptick in resource use necessitated by the COVID019 pandemic.9

• We also have begun preparations to build temporary hospitals that can absorb overflow should the number of COVID-19 patients exceed existing hospital capacity.

19. These actions are essential to mitigating the spread of COVID-19 and easing the strain on our healthcare system. Because COVID-19 spreads from person to person through close contact, maintaining distance between people and avoiding large crowds is critical. If people retain a distance of at least six feet, the virus is unable to spread from an infected person to an uninfected person. That reduces the overall number of positive cases within a geographic area, which in turn reduces the number of hospitalizations that become necessary and the number of intensive-care beds and ventilators required to treat patients.

20. In the absence of a vaccine, cure, or treatment for COVID-19, reducing person-to-person transmission is the most effective way of mitigating the outbreak and ensuring that the healthcare system is not overwhelmed. This is particularly important in rural areas of the Commonwealth, many of which do not have as many healthcare resources as areas that are more heavily populated.

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21. Predicting the spread and mortality rate of a novel virus like COVID-19 is extremely difficult. The accuracy of any prediction model depends on the assumptions on which it relies—for example, the percentage of people who adhere to unprecedented social distancing guidelines and restrictions on gatherings and unnecessary travel. If a model assumes lower compliance with such restrictions than actually occurs, its predicted mortality rate may exceed the actual mortality rate. By contrast, if a model assumes greater compliance, it may underestimate mortality rates and likewise underestimate the extent to which an outbreak will tax the capacity of a healthcare system. In addition, because it was impossible to know how many people would be infected but asymptomatic in the absence of widespread testing, some models may have underestimated the number of infections, thereby overestimating the mortality rate.\(^{10}\) As the pandemic evolves and more information is learned, each model’s estimates adjust.

22. The Commonwealth does not rely on a single model to set policy. Accordingly, the fact that one model may have adjusted its mortality predictions downward does not mean that public health officials have overestimated the dangers of COVID-19. While some models have revised their mortality estimates downward, others continue to predict new COVID-19 cases increasing over the next several weeks or months, resulting in a significant strain on the Commonwealth’s healthcare system. For example, a model created by researchers at the University of Virginia that focuses on data specific to the Commonwealth suggests that even if social-distancing efforts continue through June 10, 2020, when Executive Order 55 is set to expire, all regions in Virginia would still reach a point at which the number of cases would

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\(^{10}\) See Fareed Zakaria, *Why the Coronavirus Models Aren’t Totally Accurate*, Wash Post (Apr 9, 2020) (describing how the same number of deaths among a larger number of infections results in a lower mortality rate)
exceed hospital surge capacity.\textsuperscript{11} Even models that have been revised downward recognize the possibility that over 1,000 Virginians could die by August 2020.\textsuperscript{12} Moreover, the same models that have recently revised their mortality estimates downward previously revised their estimates upwards, demonstrating that adjustments made over time have not uniformly suggested that initial predictions were too high.\textsuperscript{13} 

23. Regardless of adjustments, all models agree that the institution of social distancing measures greatly decreases the incidence and mortality of COVID-19. In fact, the University of Virginia model estimates that the reduction in activity since the Governor declared a State of Emergency has reduced transmission rates by roughly 50\%—from 2.2 transmissions per infection before March 15, 2020, to 1.1 after March 15, 2020.\textsuperscript{14} 

24. To prepare for all possible scenarios, including the worst-case scenario, it is critical that officials consider a variety of models estimating the spread and mortality rate of COVID-19. This information has guided the Commonwealth’s response to the COVID-19 pandemic, including the critical steps the Governor and I have taken to slow person-to-person transmission. Without such efforts, the uncontrolled spread of COVID-19 would lead to an explosion of cases, many more severe outcomes and fatalities, and an untenable burden on our healthcare system. For that reason, consistent and widespread adherence to the restrictions imposed by the Governor and myself is critical to protecting the public, especially vulnerable populations with weakened immune systems or underlying health conditions, from the novel and profound threat posed by COVID-19.

\textsuperscript{14} Supra note 10
In accordance with 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 5/1/20

[Signature]

Dr. M. Norman Oliver,
Virginia Health Commissioner