

**IN THE SUPREME COURT OF VIRGINIA**

WILLIAM J. HOWELL, *et al.*,

Petitioners,

v.

TERENCE R. MCAULIFFE, *et al.*,

Respondents.

Case No. 160784

**MOTION FOR EXPEDITED CONSIDERATION**

COME NOW Petitioners William J. Howell; Thomas K. Norment, Jr.; William Cleveland; Marianne Gearhart; M. Brett Hall; and William H. Slemp, by counsel, and respectfully move this Court to expedite consideration of Petitioners' Motion For an Order Requiring Respondents To Show Cause Why They Should Not Be Held in Contempt for Violating the Writ of Mandamus. Petitioners request that the Court expedite consideration of that motion so that the Court may complete proceedings and issue appropriate relief before September 24, 2016, when absentee ballots must be mailed for the general election on November 8, 2016. Pursuant to Rule 5.4, Petitioners have informed Respondents of the intended filing of this motion. Counsel for Respondents stated that he cannot take a position until he has received and reviewed a copy of the motion.

In support of this motion, Petitioners state as follows:

1. On April 22, 2016, Governor Terence R. McAuliffe issued an executive order purporting to restore political rights (including the right to vote) *en masse* to approximately 206,000 convicted felons who had completed their terms of imprisonment and supervised release.

2. On May 23, 2016, Petitioners filed an original Petition for Writs of Mandamus and/or Prohibition, asserting that the Executive Order unconstitutionally suspended and nullified the Constitution's general rule prohibiting felons from voting. Petitioners argued that relief should be awarded before August 25, 2016—30 days before absentee ballots must be made available—to ensure that ineligible voters are removed from the rolls prior to the availability of absentee ballots.

3. On May 24, 2016, Petitioners filed a motion for a special session and for expedited consideration. Upon consideration of that motion, this Court set a briefing schedule and heard oral argument during a special session on July 19, 2016.

4. On July 22, 2016, three days after oral argument, this Court granted the petition for a writ of mandamus and held that the Governor's restoration orders of April, May, and June 2016 unconstitutionally suspended and nullified the Constitution's felon-disenfranchisement provision.

Consistent with Petitioners' request for relief, the Court ordered Respondents to comply with the writ by August 25, 2016.

5. Respondents have not complied with this Court's mandamus Order. Although Respondents cancelled the registration of the approximately 13,000 felons who registered to vote pursuant to the Governor's illegal restoration orders, on August 22, 2016, Governor McAuliffe announced that he has issued new individual restoration orders to those felons. The Governor also announced that he will issue new individual restoration orders to the remaining approximately 200,000 felons who meet the same criteria set forth in his invalidated April 22 executive order. Thus, the purpose, scope, and effect of the Governor's new orders are precisely the same as those of the orders this Court ordered Respondents not to implement.

6. Today, Petitioners have filed, concurrent with this Motion for Expedited Consideration, a separate motion requesting that the Court require Respondents to show cause why they should not be held in contempt for violating the writ of mandamus.

7. Time is of the essence to ensure that the upcoming November elections are conducted in accordance with the Constitution of Virginia and this Court's July 22 Order. The Governor waited until August 22—three days before the August 25 deadline for complete relief—to formally announce his

new restoration orders, issued in defiance of this Court's mandamus order. Nevertheless, expedited consideration by this Court can limit the extent to which Respondents' defiance will allow illegal voters to cast ballots in the upcoming election. In particular, absentee ballots must be made available "not later than" September 24, 2016. CODE § 24.2-612. Under one available procedure, absentee ballots cast beginning on September 24 could be counted any time before Election Day, see *id.* § 24.2-709.1, and there does not appear to be any statutorily authorized procedure for cancelling such votes if the voter is later determined to be ineligible. Without expedited proceedings, absentee ballots may be made available to illegal voters by September 24, 2016.

8. To the extent that the Court believes oral argument is necessary to the contempt proceedings, the Court could hold argument during its upcoming September Session, on September 12–16, 2016.

### **CONCLUSION**

For the foregoing reasons, Petitioners respectfully request that the Court expedite consideration of the contempt motion by requiring the Commonwealth to respond on a schedule that would permit the Court to complete contempt proceedings and issue appropriate relief no later than September 24.

Dated: August 31, 2016

Respectfully Submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that on the 31st of August, 2016, I emailed the foregoing to the Clerk of the Court and to the following counsel of record:

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On that same day, I also mailed an original and ten copies of the foregoing via overnight Federal Express delivery to the Clerk of the Court.



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