

Extending Voter Registration Because of a Website Crash

*New Virginia Majority Education Fund
v. Virginia Department of Elections
(Claude M. Hilton, 1:16-cv-1319) and New Virginia
Majority Education Fund v. Virginia Department of
Elections (John A. Gibney, Jr., 3:20-cv-801) (E.D. Va.)*

On the last day of voter registration in 2016, a commonwealth's online registration website crashed, and commonwealth officials had no authority to extend the registration deadline as a remedy. Two organizations and two prospective voters filed a federal complaint, and the district judge granted a brief extension to voter registration, to which state officials agreed. Again in 2020, a federal district judge granted a registration extension because the website crashed on the last day of registration.

Subject: Registration procedures. *Topics:* Registration procedures; voting technology.

In 2016 and in 2020, Virginia's voter-registration website crashed on the last day of registration, and Virginia's election officials needed a court order to extend the registration deadline.

2016

Heavy use of Virginia's online voter-registration site on Monday, October 17, 2016, the deadline for the November 8 general election, caused the system to crash temporarily.¹ On October 18, two organizations and two prospective voters who were unable to register because of the crash filed a federal complaint in the Eastern District of Virginia's Alexandria courthouse against state election officials asking the court to order reopening of online voter registration in Virginia for three days.² With their complaint, the plaintiffs filed an emergency motion for a preliminary injunction.³

On October 19, Judge Claude M. Hilton set the case for hearing on Thursday morning, October 20.⁴ According to news media, "Gov. Terry McAuliffe said Wednesday he agreed with the lawsuit's request to extend voter registration and had asked Attorney General Mark Herring to reach

1. See Graham Moomaw, *Suit: Extend Va.'s Voter Registration*, Richmond Times-Dispatch, Oct. 19, 2016, at 1A.

2. Complaint, *New Va. Majority Educ. Fund v. Va. Dep't of Elections*, No. 1:16-cv-1319 (E.D. Va. Oct. 18, 2016), D.E. 1; see Moomaw, *supra* note 1; Laura Vozzella, *Lawsuit Filed to Extend Va.'s Voter Registration*, Wash. Post, Oct. 19, 2016, at B1; Patrick Wilson, *Group Files Lawsuit Against Virginia Election Officials Over Voter Registration Crash*, Norfolk Virginian-Pilot, Oct. 20, 2016, at 4.

3. Preliminary-Injunction Motion, *New Va. Majority Educ. Fund*, No. 1:16-cv-1319 (E.D. Va. Oct. 18, 2016), D.E. 3.

4. Docket Sheet, *id.* (Oct. 18, 2016).

out to the federal court to ask for an expedited decision.”⁵ “Election officials and Gov. Terry McAuliffe’s office said Tuesday that they had no authority to extend the deadline, which is set by state law and passed at 11:59 p.m. Monday.”⁶

According to the 11:00 a.m. hearing minutes, “The court grants the motion, but with a reduced extension period than sought.”⁷ Judge Hilton reopened registration from Thursday following the hearing to the end of Friday.⁸

More than 27,000 Virginians registered to vote during the extension.⁹

2020

The website crashed again in 2020, when sewer-installation workers struck a communication cable.¹⁰

An October 13, 2020, federal complaint filed in the Eastern District of Virginia’s Richmond courthouse alleged, “The outage of Virginia’s Citizen Portal online voter registration system on the final day of voter registration on October 13, 2020, necessitates a brief but vitally important extension of the Virginia voter registration deadline.”¹¹

The defendant commonwealth election officials responded that day: “Defendants agree with Plaintiffs that an order from this Court would vindicate the public interests of ensuring access to the voting booth and election integrity.”¹² Also on the day that the complaint was filed, the plaintiffs filed a consent motion for a temporary restraining order and emergency injunction relief extending the registration deadline to 11:59 p.m. on October 15.¹³

5. Wilson, *supra* note 2; *see also* Travis Fain, *McAuliffe Backs Registration Extension*, Newport News Daily Press, Oct. 20, 2016, at A3; Laura Vozzella, *Judge to Consider More Time to Register*, Wash. Post, Oct. 20, 2016, at B5.

6. Moomaw, *supra* note 1; *see also* Vozzella, *supra* note 5.

7. Minutes, *New Va. Majority Educ. Fund*, No. 1:16-cv-1319 (E.D. Va. Oct. 20, 2016), D.E. 9; *see* Rachel Weiner, *Judge Extends Voter Registration Deadline to Midnight Friday*, Wash. Post, Oct. 21, 2016, at B2.

8. Order, *New Va. Majority Educ. Fund*, No. 1:16-cv-1319 (E.D. Va. Oct. 20, 2016), D.E. 10; *see* Patrick Wilson, *Judge Orders Virginia to Immediately Reopen Voter Registration After Website Crash*, Norfolk Virginian-Pilot, Oct. 21, 2016, at 10.

9. *See* Katherine Hafner, *Nearly 28,000 Virginians Registered to Vote After the Deadline Was Extended*, Norfolk Virginian-Pilot, Oct. 23, 2016, at 11; *More Than 27,000 Virginians Register to Vote After Court-Mandated Extension*, Newport News Daily Press, Oct. 23, 2016, at A5.

10. *See* Sabrina Moreno, *Suit Seeks Extension After Voter Registration Site Outage*, Richmond Times-Dispatch, Oct. 14, 2020, at 1A.

11. Complaint at 1, *New Va. Majority Educ. Fund v. Va. Dep’t of Elections*, No. 3:20-cv-801 (E.D. Va. Oct. 13, 2020), D.E. 1; *see* Antonio Olivo, *Website Issues Snag Va. Voters*, Wash. Post, Oct. 14, 2020, at B1.

12. Response Brief at 1, *New Va. Majority Educ. Fund*, No. 3:20-cv-801 (E.D. Va. Oct. 13, 2020), D.E. 2.

13. Consent Motion, *id.* (Oct. 13, 2020), D.E. 3.

At an eighteen-minute hearing on the morning of October 14, Judge John A. Gibney, Jr., granted the requested relief, ordering a press release issued by 11:30 a.m.¹⁴

14. Order, *id.* (Oct. 14, 2020), D.E. 10, 2020 WL 6051855; Minutes, *id.* (Oct. 14, 2020), D.E. 11; see Alexa Corse, *Virginia Extends Deadline for Voter Registration*, Wall St. J., Oct. 15, 2020, at A6; Frank Green, *Judge Orders Extension for Va. Voter Registration*, Richmond Times-Dispatch, Oct. 15, 2020, at 1A.