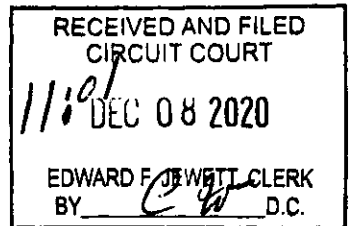


VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

Bill DeSteph

Individually and in Official Capacity as Senator Of 8th Senatorial District

Plaintiff



Case No: CL20-6132-6

v.

Mamie Locke

Senator and Chairperson of Senate Rules

-and-

Eileen Filler-Corn

Delegate and Speaker of the House of Delegates

-and-

Susan Clarke Schaar

Clerk of the Senate

-and-

Suzette Denslow

Clerk of the House of Delegates

-and-

Virginia Division of Capitol Police

Defendants

PETITION

FOR TEMPORARY AND PERMANENT INJUNCTION

"It is time—past time—to make plain that, while the pandemic poses many grave challenges, there is no world in which the Constitution tolerates color-coded executive edicts that reopen liquor stores and bike shops but shutter churches, synagogues and mosques," ... "Who knew public health would so perfectly align with secular convenience?"

**Justice Neil M. Gorsuch – Roman Catholic Diocese of Brooklyn,
New York v. Andrew M. Cuomo, Governor of New York, 592
U.S. _____ (2020)**

Comes now, the Plaintiff Bill DeSteph, in his individual and official capacity as a Virginia State Senator, by counsel and moves this Court for an injunction to be entered against Senator Mamie Locke, Speaker Eileen Filler-Corn, Clerk Schaar, Clerk Denslow and the Virginia Division of Capital Police in their official capacities for the reasons set forth herein:

PARTIES

1. Plaintiff is a resident of the Commonwealth of Virginia residing in Virginia Beach, Virginia and is the duly elected Senator of the 8th Senatorial District in Virginia. The Plaintiff is moving for relief in his individual and official elected capacity.
2. Senator Mamie Locke is a duly elected Virginia State Senator and Chairperson of the Virginia Senate Rules Committee.
3. Eileen Filler-Corn is a duly elected Virginia Delegate and is currently the Speaker of the House of Delegates.
4. Susan Clarke Schaar is the Clerk of the Virginia Senate.
5. Suzette Denslow is the Clerk of the House of Delegates
6. Virginia Division of Capitol Police is a law enforcement agency, with primary responsibilities to enforce laws in and around the State Capitol grounds.

CONTROVERSY / STATEMENT OF FACTS

7. The plaintiff restates all previous paragraphs.
8. On December 2, 2020, the Plaintiff in his official capacity was advised by Defendant Locke and Defendant Filler-Corn that “due to the rise in Covid-19 numbers” the Pocahontas Building—the structure that contains the offices of both House and Senate members—will only be open for credentialed legislative employees and current

legislators during the upcoming Regular Session of the General Assembly. See attached email "Exhibit A"

COUNT 1 – INJUNCTION

9. Plaintiff restates all previous paragraphs.
10. The Pocahontas Building is a traditional forum office building open to members of the public with a primary purpose of providing office appointments for the members of the General Assembly with the general public.
11. Throughout the Commonwealth, every Juvenile & Domestic Relations Court, General District Court and Circuit Court are open and handling business in person pursuant to the Fourteenth Order Extending Declaration of Judicial Emergency of the Virginia Supreme Court.¹
12. City council and board of supervisor meetings are occurring in person throughout the Commonwealth and every government agency is open for in person business and the Governor of Virginia is allowing most businesses to operate in person pursuant to Executive Order 67, Sixth Amended.²
13. While the Governor holds press conferences surrounded by visitors and dignitaries from outside the state, the Courts try cases daily, the DMV processes licenses and City Halls collect taxes throughout the Commonwealth, the Defendant's Filler-Corn and Locke

¹http://www.vacourts.gov/news/items/covid/2020_1203_scv_order_fourteenth_extending_declaration_of_judicial_emergency.pdf

² [https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-67-SIXTH-AMENDED-and-Order-of-Public-Health-Emergency-Seven---Phase-Three-Further-Adjusting-of-Certain-Temporary-Restrictions-Due-to-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-67-SIXTH-AMENDED-and-Order-of-Public-Health-Emergency-Seven---Phase-Three-Further-Adjusting-of-Certain-Temporary-Restrictions-Due-to-Novel-Coronavirus-(COVID-19).pdf)

- opine that the only major government building that is too dangerous to be open to the public due to the pandemic, is the general office building of the General Assembly.
14. The closure of the legislative office building to the public is contrary to the explicit historical purpose of the building to allow the public access to its elected legislative members, especially during the General Assembly Session.³
 15. To exclude the public from in-person participation to 2021 General Assembly session is inconsistent with open access to government and is inconsistent with every COVID-19 policy operating in every other branch of government at the state and local level.
 16. The Plaintiff, as a State Senator, will be deprived of his ability to conduct vital constituent service by meeting with members of the public to discuss proposed laws during the 2021 General Assembly Session.
 17. Most importantly, the right to assemble and address lawmakers at the state and federal levels is fundamentally protected by the 1st Amendment of the United States Constitution:
 - a. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."
 18. Further, Article 1 Section 12 further prohibits the General Assembly from abridging the freedom of the people to peaceably assemble.
 - a. "That the freedoms of speech and of the press are among the great bulwarks of liberty, and can never be restrained except by despotic governments; that any citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; that the General Assembly shall not pass any law abridging the freedom of speech or of the press, nor the right of the people peaceably to assemble, and to petition the government for the redress of grievances."

³ *Cornelius v. NAACP*, 473 U.S. 788 (1985), *re'u'g* and remanding *NAACP v. Devine*, 727 F.2d 1247 (1984), *aff'g* 567 F. Supp. 401 (D.D.C. 1983). – Citing "history" and "intent" elements of the *Cornelius* standard for determining a traditional forum.

19. Less restrictive options exist such as requiring appointments and capacity restrictions to the building.
20. Meetings with members of the General Assembly can occur in a manner similar to how any court proceeding is conducted in the Commonwealth during COVID-19 protocols or how a transaction at a grocery store occurs pursuant to the Governors Executive orders. The members of the General Assembly nor the public are no more at risk of becoming infected or transmitting COVID-19 meeting in person at the office building of elected officials then they are in every other public setting occurring every day in the Commonwealth.
21. The Plaintiff acknowledges the COVID-19 pandemic and its implications, however, there is no heightened medical basis to deprive the Plaintiff or his constituents open access to government and the right to peacefully assemble in person, at the public building where the legislative body has official offices and where the legislative body regularly meets the public during the General Assembly session.
22. Allowing public access to the office building during the General Assembly session would be consistent with how the other branches of state and local governments are handling in-person meetings with the public on a daily basis in the normal course of governmental business.
23. If a constituent can contest a speeding ticket in the Commonwealth in person, then that same constituent should be able to exercise their right to freedom of speech protected by the 1st Amendment and Article 1 Section 12 of the Virginia Constitution, and therefore should be allowed to meet with their state representative regarding policy and decision making of the elected body during the General Assembly session.

24. Furthermore the *ex parte* decision to close the public office public to the general public during the 2021 Session by Senator Locke and Speaker Filler-Corn have not been voted on by either chamber.
25. The Virginia Supreme Court issued an unpublished opinion⁴ in *Commonwealth of Virginia ex rel. Bowyer v. Sweet Briar Institute*, Record No. 150619 (June 9, 2015) regarding the issuance of a temporary injunction:
- a. That the primary purpose of a temporary injunction is to preserve the status quo *pendente lite*;
 - b. That “a temporary injunction requires consideration of the requesting party’s allegations and the veracity and magnitude of the asserted harm”; and
 - c. That decisions on requests for temporary injunctions must be based on “the totality of the circumstances”; “no single factor can be considered alone as dispositive.”
26. Plaintiff, as an elected state Senator will suffer irreparable harm if an injunction is not granted, in that he will be denied vital in-person contact with constituents during the 2021 General Assembly Session. Further the constituents of the Plaintiff will suffer irreparable harm in denial of access to their state senator and denial of in-person access to the General Assembly session. The purpose of the injunction is to preserve the status quo, in so much as the office building of the General Assembly members should remain open to the public.
27. The General Assembly session starts in just over 30 days. Denial of the public to in-person access to its members or access to in person floor sessions is a violation of the

⁴ As an unpublished disposition, the Court’s *Bowyer* Order is not a binding precedent. Rule 5:1(f)

freedoms protected under the 1st Amendment and Article 1 Section 12 would cause irreparable as constituents cannot participate as historically allowed with their elected representatives. Further the Plaintiff's same 1st Amendment and Article 1 Section 12 rights are impaired by denying him the ability to meet with constituents and having feedback during the session.

28. The likelihood the Plaintiff will prevail is high as the *ex parte* unilateral actions taken by Defendant's Locke and Filler-Corn are in plain violation of the United States Constitution and the Virginia Constitution and lack any consistency to how other state government agencies are running during the pandemic.

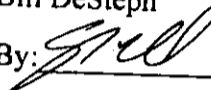
29. The public interest weighs in favor of the General Assembly office building being fully open during session as historically has occurred in every session in the history of the Commonwealth and is as mandated by law. The balancing approach test of *Blackwelder Furniture Co. v. Seilig Manufacturing Co., Inc.*, 550 F.2d 189 (4th Cir. 1977) overwhelming favor the Plaintiff and his requests to treat the General Assembly office building and the members identical to any other governmental building or any employee in the public or private sector who is safely operating during the COVID-19 pandemic.

30. The Defendant's Scharr, Denslow and Division of Capitol Police are named solely as additional parties that are lawfully required in carrying out any order of Speaker Filler-Corn or Senator Locke to restrict access to the public as indicated in the attached email and injunction against them is requested for that purpose only.

Wherefore, the Plaintiff moves for an injunction against all Defendant's listed herein and moves for any further relief as may be appropriate.

Respectfully Submitted,

Bill DeSteph

By:  VSB #90917 for:
Counsel

Timothy Anderson
Anderson & Associates
2492 N. Landing Rd 104
Virginia Beach VA 23456
757-301-3636 Tel
757-301-3640 Fax
VSB 43803
Counsel for Plaintiff

CERIFICATE OF SERVICE

I HEREBY CERTIFY, that a copy of this complaint was served via email to the Virginia Attorney General at service@oag.state.va.us pursuant to the COVID-19 protocols of service. Each Defendant is a state agency or employee, and the single email to the Attorney General should be accepted as service on each named Defendant this 8th day of December 2020.

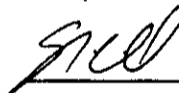
 VSB #90917 for:
Timothy Anderson

EXHIBIT A
**THE BELOW EMAIL IS AN EXACT REPLICA OF THE EMAIL OMITTING ONLY THE
EMAIL ADDRESSES.**

From: Susan Schaar
Date: Wed, Dec 2, 2020 at 3:58 PM
Subject: 2021 Session
**To: Senator Private Legislative Assistants Pri Senate Benefited Staff Senate Finance Staff Amigo Wade
David W. Burhop Amy Atkinson Hal Greer Kristen Howard**

Senator Locke, Chair of Senate Rules, and Speaker Filler-Corn have determined that due to the rise in Covid numbers the Pocahontas Building will ONLY be open for credentialed legislative employees and current legislators.

The Main Street entrance will not be available for access. Bank Street will be the only entrance. IDs must be visible as you enter the building. An additional screening station has been installed to help expedite the process.

The Virginia Department of Health has advised that Legislative Assistant offices should only be used by ONE staff member. This is due to social distancing. Therefore only one LA to an office will be permitted.

We are setting up a constituent hotline number to take and transmit messages. We will NOT have all the administrative assistants working.. A limited number will be working the hotline service.

Due to the limited number of people we can have on the mini buses with social distancing, and the cleaning required between runs, we will not be providing transportation from Lot 22.

We are still working on many challenging details. We will keep everyone apprised of any changes and additions as we move forward. Please know that we are doing everything possible to keep everyone safe and are working with the House Clerk's Office on procedures for the building.

If you have any questions please call me.

Susan

--

Susan Clarke Schaar

Clerk of the Senate

P. O. Box 396

Richmond, VA 23218

sschaar@senate.virginia.gov