



COMMONWEALTH OF VIRGINIA

HOUSE OF DELEGATES
RICHMOND

DAVE LaROCK
POST OFFICE BOX 6
HAMILTON, VIRGINIA 20159

THIRTY-THIRD DISTRICT

COMMITTEE ASSIGNMENTS:
TRANSPORTATION
COUNTIES, CITIES, AND TOWNS
COMMUNICATIONS, TECHNOLOGY
AND INNOVATION

June 3, 2020

Board of Health
c/o Department of Health
109 Governor St.
Richmond, VA 23219

Members of the Board of Health:

We are writing to you specifically to object to the adoption of Public Health Orders 3 (as amended) and 5.

These Orders were issued by the Commissioner of Health under the purported authority of sections 32.1-13 and 32.1-20 of the Virginia Code. We are hereby commenting for the record of the June 4, 2020, meeting. We ask that the Board remain in session and not allow the Commissioner to short-cut the proper processes of the Board with respect to the exercise of any authority under 32.1-13 or other appropriate authority, including outreach to the potentially regulated community and consideration of guidance instead of threats of criminal sanctions. We hope to see this change immediately.

We believe substantial elements of these orders are well outside the authority of the Commissioner and the Board under 32.1-13. These orders were issued without following the Virginia Administrative Process Act. As stated under Section 32.1-24, the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall govern the procedures for rendering all case decisions, as defined in § 2.2-4001, and issuing all orders and regulations under the provisions of this Code administered by the Board, the Commissioner or the Department unless exempt from the Administrative Process Act.

Given the weight of health matters impacting Virginia over the past two months, it is unclear why the Board has not been meeting to provide guidance and fulfill important responsibilities. Instead, it appears that two people in the Executive Branch of Virginia—Governor Northam and Commissioner Oliver—as a response to the novel coronavirus (COVID-19), purport to wield immense power to make law through orders with sweeping restrictions on citizens, businesses, and religious organizations; decisions which carry substantial criminal penalties. This needs to end immediately.

These orders elevate certain vague, inflexible, and unworkable recommendations to purportedly legal orders that threaten sanctions of a Class 1 misdemeanor carrying up to 1 year in jail and a \$2,500 fine for each citation. For example, these Executive Orders make the action of being mask-less in certain public places a Class 1 Misdemeanor with punishment on par with Driving Under the Influence (DUI), Reckless Driving, Petit Larceny, Assault and Battery, and Disorderly Conduct. The mask orders went into effect and the continuation of the broad restrictions on assembly and businesses were renewed 79 days after the Governor's declaration of emergency and 101 days after Commissioner Oliver declared COVID-19 a public health threat. Many of these mandates are not appropriate, impermissibly vague and penalize rational behavior. Elements of these orders infringe on Constitutional rights and are not narrowly tailored or clear.

The General Assembly never contemplated delegating authority for a massive regulatory regime through the emergency authorities. Governor Northam and Commissioner Oliver are using these purported authorities over extended periods of time instead of allowing action by the General Assembly. That failure is inexcusable considering the devastating effect of the Orders which have left close to 700,000 Virginians unemployed, churches and businesses severely restricted, and Virginia's economic outlook, including state revenue, tanking. Section 44-146.16 Definitions provides a definition of "emergency", as follows: "Emergency means any occurrence, or threat thereof, whether natural or man-made, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property or natural resources and may involve governmental action beyond that authorized or contemplated by existing law because governmental inaction for the period required to amend the law to meet the exigency would work immediate and irrevocable harm upon the citizens or the environment of the Commonwealth or some clearly defined portion or portions thereof." (emphasis added). Given the length of the current declared emergency, why has the Board not been called into session? There is a clear responsibility of the Board which the Board must not shirk. Furthermore, why hasn't Governor Northam called the General Assembly into session to address such a pervasively broad regulatory scheme?

As the Board moves forward, we ask it respect, to a large measure, that the control of the transmission of COVID-19 depends on the diligence of citizens in their habits. This is true in all settings whether proscribed or not. Many citizens and businesses properly believe that their flexibility, creativity and reasonable cautions would allow business and activities that are valuable to quality of life to proceed with appropriate modifications. These orders override the efforts of businesses and citizens to move forward in responsible ways.

Government guidance is helpful. Criminal penalties for vague, arbitrary, and inflexible rules are not appropriate. We look forward to the board hearing from and providing relief for businesses and citizens so deeply affected by these orders.

Working with the business community and providing citizen guidance is the appropriate role for the Board at this critical time. Businesses will seek guidance, and many may provide their plans and thoughts; consultation is the proper approach; not impermissibly creating law through action of the Executive Branch.

Sincerely,



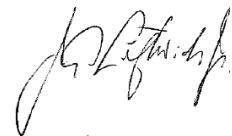
Delegate Dave LaRock, 33rd District



Delegate C. Todd Gilbert
House Republican Leader



Delegate Kathy Byron
House Republican Caucus Chair



Delegate James A. "Jay" Leftwich
House Republican Whip

Additional Signers (Updated 6/26/2020 3:50 PM):



Delegate Michael Weibert
18th District

Delegate Roxann Robinson
27th District

Delegate Ronnie Campbell
24th District



Delegate Buddy Fowler
55th District



Delegate Charles Poindexter
9th District



Delegate Carrie Coyner
62nd District



Delegate Mark Cole
88th District



Delegate Tony Wilt
26th District




Delegate Scott A. Wyatt
97th District



Delegate Chris Runion
25th District

Delegate Joe McNamara
8th District

Delegate Tommy Wright
61st District



Delegate Kirk Cox
66th District

Delegate James Edmunds
60th District



Senator Mark J. Peake
22nd District



Delegate Jason S. Miyares
82nd District



Senator Jen Kiggans
7th District



Delegate Amanda E. Batten
96th District



Delegate Les R. Adams
16th District