

VIRGINIA:

IN THE CIRCUIT COURT FOR WAYNESBORO COUNTY

Curtis G. Lilly, II,

*in his official capacity as the
Chairman of the Waynesboro County
Board of Elections,*

and

Scott Mares,

*in his official capacity as the
Vice-Chairman of the Waynesboro County
Board of Elections,*

Plaintiffs,

v.

Susan Beals,

*in her official capacity as the
Commissioner of the Virginia
Department of Elections,*

and

John O'Bannon, M.D.

*in his official capacity as Chairman of
The Board for the State Board of
Elections,*

SERVE:

John O'Bannon, M.D.
Susan Beals
Washington Building
1100 Bank Street, First Floor
Richmond, Virginia 23219

Defendants.

Case No.:

CL24000417-00

TIME IS OF THE ESSENCE

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WAYNESBORO CIRCUIT COURT
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COMPLAINT

COME NOW Plaintiffs Curtis G. Lilly, II and Scott Mares (hereinafter "Plaintiffs"), by and through the undersigned attorney, and pursuant to VA. R. SUP. CT. 3:3, to make this, their Complaint against the Defendants Susan Beals and John O'Bannon, MD in their official capacities as the Commissioner of Elections and Chairman of the State Board of Elections, respectively (hereinafter "Defendants"), and in support of the same, respectfully submit the following:

JURISDICTION AND VENUE

1. This court has personal jurisdiction over the Plaintiffs as they reside in Waynesboro City, and all events relevant to this controversy have occurred or shall occur therein.
2. This court has personal jurisdiction over the Defendants as heads of state agencies whose policies and practices directly impact the rules governing the administration and certification of elections in the City of Waynesboro.

PARTIES

3. Plaintiff Curtis G. Lilly, II, is the Chairman of the Waynesboro County Board of Elections. In that capacity, he is oath-bound to determine whether an election has been conducted properly before certifying that election. He is otherwise a private citizen who resides within the City of Waynesboro.
4. Plaintiff Scott Mares is the Vice-Chairman of the Waynesboro County Board of Elections. In that capacity, he is oath-bound to determine whether an election has been conducted properly before certifying that election. He is otherwise a private citizen who resides within the City of Waynesboro.

5. Defendant Susan Beals is the Commissioner of the Virginia Department of Elections, which administers elections in the Commonwealth.

6. Defendant John O'Bannon is the Chairman of the State Board of Elections, which makes policies and procedures for elections held in the Commonwealth.

7. Lisa P. Jeffers is the Registrar of Waynesboro County, with offices at 501 West Broad Street, Waynesboro, Virginia 22980 (hereinafter "Registrar"). Ms. Jeffers certifies candidates and election winners to the State Board of Elections.

8. The Virginia Department of Elections is the executive agency that administers and enforces elections in the Commonwealth of Virginia.¹

9. Virginia State Board of Elections is "the regulatory board for the Department of Elections. It is authorized to prescribe standard forms for voter registration and elections, and to supervise, coordinate, and adopt regulations governing the work of local electoral boards, registrars, and officers of election."²

10. Waynesboro County Board of Elections (hereinafter "Electoral Board members") "is a three-member board appointed by the Circuit Court Judges. It is responsible for the conduct of all elections. They print ballots, prepare voting machines and polling sites, and recruit and train all election officials. They are guided by the State Board of Elections procedures and the Code of Virginia."³

1. *About Us*, VIRGINIA DEPT. OF ELECTIONS, <https://www.elections.virginia.gov/about.html> (last visited September 27, 2024)

2. *Id.*

3. *Board of Elections*, WAYNESBORO VIRGINIA GOVERNMENT, <https://www.waynesboro.va.us/331/Board-of-Elections> (last accessed September 14, 2024).

DISCUSSION OF AUTHORITIES

11. The United States Constitution grants the people the right to choose representatives to the people of several states, according to the voting eligibility requirements of the state. U.S. Const. Art. 1 § 2.

12. A “citizen” is a person born or naturalized in the United States and subject to the jurisdiction thereof and citizens are protected from the denial or abridgement of their vote. U.S. CONST. amend. XIV

13. The Constitution safeguards the right to vote in a properly administered election. *Reynolds v. Sims*, 377 U.S. 533 (1964).

14. “Every voter in a federal . . . election . . . whether he votes for a candidate with little chance of winning or for one with little chance of losing, has a right under the Constitution to have his vote fairly counted, without its being distorted by fraudulently cast votes.” *Anderson v. United States*, 417 U.S. 211, 227 (1974).

VIRGINIA CONSTITUTION

15. “The General Assembly shall establish a uniform system for permanent registration of voters pursuant to this Constitution, including provisions for appeal by any person denied registration, correction of illegal or fraudulent registrations, penalties for illegal, fraudulent, or false registrations, proper transfer of all registered voters, and cancellation of registrations in other jurisdictions of persons who apply to register to vote in the Commonwealth. The General Assembly shall provide for maintenance of accurate and current registration records and may provide for the cancellation of registrations for such purpose.” VA. CONST. art. II, § 4.

16. “The General Assembly shall provide for the nomination of candidates, shall regulate the time, place, manner, conduct, and administration of primary, general, and special

elections, and shall have power to make any other law regulating elections not inconsistent with this Constitution.” VA. CONST. art. II, § 4.

17. “The General Assembly shall provide for the nomination of candidates, shall regulate the time, place, manner, conduct, and administration of primary, general, and special elections, and shall have power to make any other law regulating elections not inconsistent with this Constitution.” VA. CONST. art. II, § 4.

18. “In elections by the people, the following safeguards shall be maintained: Voting shall be by ballot or by machines for receiving, recording, and counting votes cast. No ballot or list of candidates upon any voting machine shall bear any distinguishing mark or symbol, other than words identifying political party affiliation; and their form, including the offices to be filled and the listing of candidates or nominees, shall be as uniform as is practicable throughout the Commonwealth or smaller governmental unit in which the election is held.” VA. CONST. art. II, § 3.

19. “In elections other than primary elections, provision shall be made whereby votes may be cast for persons other than the listed candidates or nominees. Secrecy in casting votes shall be maintained, except as provision may be made for assistance to handicapped voters, **but the ballot box or voting machine shall be kept in public view and shall not be opened, nor the ballots canvassed nor the votes counted, in secret.** Votes may be cast in person or by absentee ballot as provided by law.” VA. CONST. art. II, § 3 [emphasis added].

20. “Voting shall be by ballot or by machines for receiving, recording, and counting votes cast. No ballot or list of candidates upon any voting machine shall bear any distinguishing mark or symbol, other than words identifying political party affiliation; and their form, including the offices to be filled and the listing of candidates or nominees, shall be as uniform as is

practicable throughout the Commonwealth or smaller governmental unit in which the election is held.” VA. CONST. art. II, § 3.

21. “In elections by the people, the following safeguards shall be maintained: Voting shall be by ballot or by machines for receiving, recording, and counting votes cast. No ballot or list of candidates upon any voting machine shall bear any distinguishing mark or symbol, other than words identifying political party affiliation; and their form, including the offices to be filled and the listing of candidates or nominees, shall be as uniform as is practicable throughout the Commonwealth or smaller governmental unit in which the election is held.” VA. CONST. art. II, § 3.

22. “In elections other than primary elections, provision shall be made whereby votes may be cast for persons other than the listed candidates or nominees. Secrecy in casting votes shall be maintained, except as provision may be made for assistance to handicapped voters, but the ballot box or voting machine shall be kept in public view and shall not be opened, nor the ballots canvassed nor the votes counted, in secret. Votes may be cast in person or by absentee ballot as provided by law.” VA. CONST. art. II, § 3.

VIRGINIA CODE OF ELECTIONS

23. “The governing body of each county and city shall provide for the use of electronic voting systems, approved by the State Board, at every precinct and for all elections held in the county, the city, or any part of the county or city.” VA. CODE § 24.2-626(A).

24. “Each county and city governing body shall purchase, lease, lease purchase, or otherwise acquire such systems and may provide for the payment therefor in the manner it deems proper. Systems of different kinds may be adopted for use and be used in different precincts of

the same county or city, or within a precinct or precincts in a county or city, subject to the approval of the State Board.” VA. CODE § 24.2-626(A).

25. The Virginia Code prohibits the use of direct recording electronic machines in elections in the county or city. VA. CODE § 24.2-626(A).

26. “The governing body of any county or city that adopts for use at elections ballot scanner machines shall provide for each precinct at least one voting booth with a marking device for each 425 registered voters or portion thereof and shall provide for each precinct at least one scanner. However, each precinct having more than 4,000 registered voters shall be provided with not less than two scanners at a presidential election, unless the governing body, in consultation with the general registrar and the electoral board, determines that a second scanner is not necessary at any such precinct on the basis of voter turnout and the average wait time for voters in previous presidential elections.” VA. CODE § 24.2-627.

27. Under to VA. CODE § 24.2-629(B)-(C), the Commonwealth of Virginia may approve any electronic voting system that meets the following requirements:

- a. It shall correctly register or record and accurately count all votes cast for candidates and on questions;
- b. It shall be provided with a "protective counter," whereby any operation of the machine before or after the election will be detected;
- c. It shall be provided with a counter that at all times during an election shall show how many persons have voted;
- d. It shall ensure voting in absolute secrecy. Ballot scanner machines shall provide for the secrecy of the ballot and a method to conceal the voted ballot;
- e. It shall be programmable to allow ballots to be separated when necessary;

- f. It shall retain each printed ballot cast; [and],
- g. Ballot scanner machines shall report, if possible, the number of ballots on which a voter undervoted or overvoted.

VA. CODE § 24.2-629(B)-(C).

28. After examining the equipment, ballots, and other materials submitted by the vendors, the Board shall prepare and file a report in its office detailing its finding regarding:

- a. The apparent capability of such equipment to accurately count, register, and report votes;
- b. whether the system can be conveniently used without undue confusion to the voter;
- c. its accessibility to voters with disabilities;
- d. whether the system can be safely used without undue potential for fraud;
- e. the ease of its operation and transportation by voting equipment custodians and officers of election;
- f. the financial stability of the vendor and manufacturer;
- g. whether the system meets the requirements of this title;
- h. whether the system meets federal requirements;
- i. whether issues of reliability and security identified with the system by other state governments have been adequately addressed by the vendor; and
- j. whether, in the opinion of the Board, the potential for approval of such system is such as to justify further examination and testing.

VA. CODE § 24.2-629(B)-(C).

29. Throughout the election, the exterior of the voting equipment and every part of the polling place shall be in plain view of the officers of election. VA. CODE §24.2-638.

30. “No voting or counting machines shall be removed from the plain view of the officers of election or from the polling place at any time during the election and through the determination of the vote as provided in § 24.2-657, except as provided in subsection D of § 24.2-649.1. In the case of an emergency that makes a polling place unusable or inaccessible, voting or counting machines may be removed to an alternative polling place pursuant to the provisions of subsection D of § 24.2-310.” VA. CODE § 24.2-638.

31. “The equipment shall be placed at least four feet from any table where an officer of election is working or seated. The officers of election shall not themselves be, or permit any other person to be, in any position or near any position that will permit them to observe how a voter votes or has voted.” VA. CODE § 24.2-638.

32. “One of the officers shall inspect the face of the voting machine after each voter has cast his vote and verify that the ballots on the face of the machine are in their proper places and that the machine has not been damaged. During an election, the door or other covering of the counter compartment of the voting or counting machine shall not be unlocked or open or the counters exposed except for good and sufficient reasons, a statement of which shall be made and signed by the officers of election and attached to the statement of results. No person shall be permitted in or about the polling place except the voting equipment custodian, vendor, or contractor technicians and other persons authorized by this title.” VA. CODE §24.2-638.

REQUIREMENTS FOR ELECTION CERTIFICATION

33. “The process of reviewing, confirming, and recording the official local results of each election is called a ‘canvass’. [sic] Local election officials in each locality conduct a

canvass to verify and consolidate election results from the individual precincts. The officers of election, local electoral board, and general registrar are all jointly responsible for conducting an accurate and time canvass, and then transmitting the results of the canvass to the Department of Elections through Enhanced Results.” Ex. A – Virginia Department of Elections General Registrar/Director of Elections Handbook, chap. 14, pg. 3.

34. First, the electoral board must determine the persons who have received the highest number of votes for any office at which point the secretary of the electoral board creates an abstract of the votes for each eligible office. The abstract states the names of all people who received a vote as well as the numbers of votes each candidate received. VA. CODE § 24.2-675.

35. This abstract must be certified, signed by the electoral board, attested by the secretary, and retained as part of the board's records.

36. The Board then sends a certified copy of the abstract to the State Board of Elections. VA. CODE § 24.2-675.

37. The State Board of Elections then meets to ascertain the election results. They examine the certified abstracts on file and make statements of the total votes given for each candidate and office. The Board members certify these statements, determine the persons who received the greatest number of votes, and endorse and subscribe to a certificate of their determination. VA. CODE § 24.2-679.

38. The electoral board secretary must prepare election certificates for each county, city, town, or district office, except for offices shared by more than one county or city. VA. CODE § 24.2-680.

39. Finally, the State Board must complete and transmit to each elected person a certificate of their election, certified under its seal of office. VA. CODE § 24.2-680.

DEPARTMENT OF ELECTIONS REGULATIONS

40. Machine-counted ballots are assumed to be correct, and there are no regulations requiring election officials to verify that the machine correctly counted the cast ballots.

41. Moreover, in practice, election officials are prevented from comparing the paper ballots to the machine-generated numbers.

42. “All members of the electoral board *should* be present for the canvass; however, it is only mandatory that two members be present. In the event one member is unable to attend, two members of the electoral board constitute a quorum and may proceed with the canvass. The board member that cannot attend should notify [the Department of Elections].” Ex. A, chap. 14, pg. 5.

43. Further, “[w]hen conducting a canvass, only those members of the board present during the entire canvass may legally sign any document concerning it. If you attach a signature of a member that was not present at the canvass or a member that was present does not sign, the electoral board must reconvene.” *Id.* at 5-5.

44. This means that a vote certification requires two Electoral Board members in order to complete a canvass.

45. If two Electoral Board members refuse to certify the election or conclude a canvass, then Waynesboro City will be unable to certify the 2024 election by the deadline set by the Dept. of Elections.

46. The officers responsible for the individual precincts and wards prepare and transmit the Statement of Results (hereinafter “SOR”)⁴ to the Electoral Board and Registrar.

4. The Statement of Results contain the voting machine tape and the signatures of the election officials from the voting location.

47. “The SOR [] is a worksheet officers use to submit the results for each precinct. After polls close, officers of election begin to ascertain the votes by completing the SOR. Officers use materials such as the results tapes to complete the SOR. Officers of election must complete certain fields on the SOR such as: the number of voters checked-in at the pollbook, the number of voters that voted outside the polling place (“curbside”), and the number of ballots cast on the voting machine. The electoral board, then, verifies this information.” Ex. A at 7.

48. “Optical scanning machines produce tapes prior to an election and once the election is completed. The tapes produced prior to the beginning of the election are known as Zero Tapes while the printouts at the end of the election are the results tapes. Your printouts from the end of the night will have a total number of votes and, if applicable, tapes of any write-in names. Zero tapes and results tapes must be certified by the officials on election night; thus, each officer of election must sign these documents and submit an ELECT-658 Printed Return Sheet for all machines within the polling place.” *Id.*

49. “The Enhanced Results “Certification” report ([a.k.a.] Abstract of Votes) is generated after vote totals for each office or issue are submitted into Enhanced Results and confirmed correct. Once all data entered into Enhanced Results is confirmed correct, the local electoral board should have the general registrar or staff retrieve the Abstract of Votes.” *Id.*

50. The clerk of court must receive a copy of the return sheets, a copy of the inspection sheet, and a copy of the SOR to comply with Code of Virginia §24.2-658, which requires the return sheets be made available the day after the election and for 60 days thereafter for public inspection and transcription, regardless of the method of delivery chosen from Code of Virginia §24.2- 668.” *Id.* at 8.

51. The Virginia Department of Elections is required to maintain all ballots, used and unused, counted and uncounted, from both state and federal elections for a minimum of two years after any one particular election. Ex. A, chap. 9, pg. 14.

52. The Waynesboro County Electoral Board follows the Virginia Department of Elections guidelines for conducting an election in Virginia.

STATEMENT OF FACTS

53. All preceding paragraphs are incorporated by reference herein.

54. Prior to election day, the voting machines used by Virginia are programmed at what is called a "Logic and Accuracy Test" meeting between the vendor, Registrar, and one member of each political party. See Ex. B – Lilly Affidavit, Ex. C – Mares Affidavit.

55. At this meeting, the vendor comes in and installs election information programs into each machine by use of a thumb drive or laptop. *Id.*

56. The board members are prohibited from reviewing the machine's programming or the upload devices. *Id.*

57. The Registrar then generates a short pile of ballots called a "test deck" used to calibrate the voting machines. *Id.*

58. Typically, the test deck includes at least one ballot for each candidate, an undervoted ballot, an overvoted ballot, and other irregular ballot markings to test the logic and accuracy of the newly programmed voting machine. *Id.*

59. The test deck includes only ten to twenty ballots. *Id.*

60. The board members cannot know whether the voting machines are programmed to change how they process ballots. The program can change its protocol after a preset number

of votes are scanned, but the board members cannot know because they cannot audit the programming of the voting machines. *Id.*

61. As board members are prohibited from evaluating the voting machines except as permitted by the vendor, there is also no way to ensure that the machine does not connect to the Internet or present results inconsistent with the content of the ballot box. *Id.*

62. Once each machine has tabulated the test deck, the voting machines produce a tape representing the results. The newly generated voting machine tape must match the results of the Registrar's hand count of the test deck. *Id.*

63. After the polls close, the electoral board members go to the registrar's office and wait for the precinct chiefs to bring in a package from their respective precincts or wards. The chiefs provide the following to the electoral board members:

- a. *Envelope 1A*: Contains provisional ballots with voter registration forms.
- b. *Envelope 1B*: Contains provisional ballots collected during extended hours.
- c. *Envelope 2A*: Contains yellow return form and machine tapes that show the voting machine's count as zero at the beginning of election day, a statement of results from the end machine at the end of election day, and the "write-in" results tape.
- d. *Envelope 2*: Contains oaths of office, incident reports, Statement of Results form, zero machine tape, state of results tape, write-in results tape, morning check-in pollbook report summary, evening check-in summary pollbook report summary, ballot receipt chits (a.k.a. voting ticket), ballot record report, and closed polls checklist.

- e. *Envelope 3A*: Contains machine tape with the totals of the counted ballots.
The actual ballots are not provided to the election officials.
- f. *Envelope 4*: Contains spoiled ballots.
- g. *Envelope 6*: Contains unused ballots.
- h. *Envelope 7*: Contains the voting machine's USB drive, voting machine keys, form for drive, and keys.
- i. *Envelope 8*: Contains voter registration forms, assistance oaths, affirmation of eligibility oaths, and the provisional ballot log.

Id.

64. The first step the Electoral Board must take in certifying an election is ensuring that each precinct and ward has provided the above materials. These must be provided after the polls close on election night. *Id.*

65. The Electoral Board members then compare the results printed by the voting machine to the numbers reported on the attached form detailing the contents. *Id.*

66. Once the numbers have been cross-referenced to ensure their accuracy, the Board then communicates with the registrar to compare the Board numbers with the results the registrar reports to the Department of Election utilizing the computer program "Veris." *Id.*

67. Board members are not permitted to see the Veris reporting screens and cannot verify that the Board numbers are the ones being reported to the Department of Elections. *Id.*

68. Further, the Electoral Board members are prohibited from having any access to Veris whatsoever. *Id.*

69. The Electoral Board members are prohibited from hand counting the ballots before returning them to the registrar. *Id.*

70. If Electoral Board members are not permitted to review the ballots, the only numbers the board can verify are that the number of votes for all candidates matches the number of ballots distributed and the number of voters who checked in at the poll books.

71. The Electoral Board members cannot ensure that the votes recorded by the secret ballots match the number of votes displayed on the voting machine results tape.

72. Consequently, the voting machine may be giving results on the closing tape that agree with the numbers of checked-in voters, ballots cast for all candidates, and ballots distributed but which votes have been incorrectly apportioned.

73. Further, the restriction that prohibits the Electoral Board members from hand counting ballots has no basis in Virginia law and is merely the internal policy of the Virginia Department of Elections. *See* Ex. D - Virginia's Guide to Hand-Counting Ballots.

74. As a result, under the current Virginia Department of Election administrative policy, the electoral board is unable to verify that such a mistake has not occurred. Ex. B, C.

75. After polls close, the ballots are removed from the machines, put in a box, and sealed along with the officers' of election signatures. *Id.*

76. The ballots are sent to the registrar's office and then to the Clerk of Court and the ballot boxes may not be opened without a court order. *Id.*

77. As the ballots themselves contain no identifying information that needs to be kept private, there is no basis in the Virginia Code upon which to refuse the board members' requests to review the ballots. *Id.*, *see* VA. CONST., art. II.

78. Under the current legal regime, board members are unable to personally review and verify that:

- a. the voting machine program being used to count the ballots is keeping a true and accurate count;
- b. the voting machine program being used to count the ballots is recording the true and accurate count; and/or,
- c. that the voting machine record tape accurately represents the ballots cast.

79. Consequently, the Plaintiffs believe that the voting machine is counting the votes in secret because neither the program counting the votes recorded on the ballots nor the ballots themselves can be examined.

80. The Virginia Constitution explicitly states that the ballot count cannot be conducted in secret.

81. The board members have taken an oath to uphold the Virginia Constitution, and the Virginia Constitution prohibits the counting of ballots in secret, so the board members do not believe that any election decided by voting machine total in the City of Waynesboro can be certified as accurate.

82. The Plaintiffs believe that to certify the election under the current legal and administrative regime, therefore, would be a violation of their oaths of office, and, absent Court intervention, shall refuse to certify the 2024 election.

COUNT 1: DECLARATORY JUDGMENT

83. All preceding paragraphs are incorporated by reference herein.

84. "In cases of actual controversy, circuit courts within the scope of their respective jurisdictions shall have power to make binding adjudications of right, whether or not consequential relief is, or at the time could be, claimed and no action or proceeding shall be open to objection on the ground that a judgment order or decree merely declaratory of right is prayed

Exhibit B

RETRIEVED FROM DEMOCRACYDOCKET.COM

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF WAYNESBORO

Curtis G. Lilly, II et al.,

Plaintiffs,

v.

Susan Beals et al.,

Defendants.

Case No.: _____

TIME IS OF THE ESSENCE

LILLY AFFIDAVIT

1. My name is Curtis G. Lilly, II (hereinafter "I" or "me").
2. I am the Chairman of the Waynesboro City Board of Elections.
3. In my role as Chairman, I am responsible for the oversight of all elections in my jurisdiction.
4. When I accepted my position on the Board, I swore the following oath: "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the Commonwealth of Virginia and that I will faithfully and impartially discharge all the duties incumbent upon me as _____, according to the best of my ability (so help me God)."
5. Further, I must abide by the laws of the Commonwealth of Virginia, which includes the Constitution of the Commonwealth of Virginia.
6. I have personal knowledge and experience of the statutes, rules, regulations, administration, and general practices employed by Virginia and the Department of Elections to run an election.

7. Prior to election day, the Virginia voting machines are programmed at a "Logic and Accuracy Test" meeting between the vendor, the Registrar, and at least one member of each political party. At this meeting, the vendor comes in and installs election information software programs into each machine by use of a thumb drive or laptop.

8. I am prohibited from reviewing the machine's programming software, or the upload devices.

9. The Registrar then generates a short pile of ballots called a "test deck" used to check if the voting machines will count the sample ballots that we cast accurately

10. Typically, the test deck includes randomly selected items of choice which we can select, such as favorite vacation spots, favorite colors, or favorite foods as well as an undervoted ballot, an overvoted ballot, and other irregular ballot markings to test the logic and accuracy of the newly programmed voting machine.

11. The test deck is generally limited to fewer than twenty ballots.

12. I cannot know whether the voting machines are programmed to change how they process ballots on the day of testing compared to how they operate on election day since I have no way of having an independent and unbiased review of the software and its operational subroutines done.

13. The Virginia Information Technology Agency is the state agency that conducts a secretive review of this software. Then, they deem it acceptable without any public or other third party reviews.

14. I know that any software program can change the way it functions after a preset number of votes are scanned or after any selected date, but I have no way of verifying that the

ballot scanning machines are not doing that because I cannot independently audit the voting machines' programmed software.

15. As electoral board members are prohibited from evaluating the voting machines software, except to observe them and how they appear to operate during Logic and Accuracy testing, as permitted by the vendor, then I cannot ensure that the machines do not connect to the Internet, allowing for vote counting algorithm manipulation, nor can I ensure with any certainty that the electronic ballot scanners are presenting results which are consistent with the contents of the ballot box.

16. Once each machine has tabulated the test deck, the voting machines produce a tape representing the results. The newly generated voting machine tape must match the results of the Registrar's hand count on the test deck for the machines' testing to be considered complete and accurate.

17. On election day, after the polls close, the other electoral board members and I go to the registrar's office and wait for the precinct chiefs to bring in a package from their respective precincts or wards. The chiefs provide the following to the electoral board members:

- a. *Envelope 1A*: Contains provisional ballots with voter registration forms.
- b. *Envelope 1B*: Contains provisional ballots collected during extended hours.
- c. *Envelope 2A*: Contains yellow return form and machine tapes that show the voting machine's count as zero at the beginning of election day, a statement of results from the end machine at the end of election day, and the "write-in" results tape.

- d. *Envelope 2:* Contains oaths of office, incident reports, Statement of Results form, zero machine tape, state of results tape, write-in results tape, morning check-in pollbook report summary, evening check-in summary pollbook report summary, ballot receipt chits (a.k.a. voting ticket), ballot record report, and closed polls checklist.
- e. *Envelope 3A:* Contains machine tape with the totals of the counted ballots. The actual ballots are not provided to the election officials.
- f. *Envelope 4:* Contains spoiled ballots.
- g. *Envelope 6:* Contains unused ballots.
- h. *Envelope 7:* Contains the voting machine's USB drive, voting machine keys, form for drive, and keys.
- i. *Envelope 8:* Contains voter registration forms, assistance oaths, affirmation of eligibility oaths, and the provisional ballot log.

18. The first step I, as a member of the Electoral Board, must take in certifying an election is ensuring that each precinct and ward has provided the above materials. These must be provided after the polls close on election night.

19. My fellow board members and I then compare the results printed by the voting machine to the numbers reported on the attached form detailing the contents.

20. Once the numbers have been cross-referenced to ensure their accuracy, my fellow board members and I communicate with the registrar to let her know the totals to report to the Department of Election utilizing the computer program "Veris."

21. My fellow board members and I are not permitted to see the Veris reporting screens and cannot verify that what is reported to the Department of Elections is an accurate

representation of the vote totals contained on the cast ballots. In fact, we are prohibited from accessing Veris at all.

22. Based on current Virginia election regulations, I am prohibited from hand-counting the cast ballots before returning them to the registrar.

23. If I cannot review the ballots, the only numbers that I can verify are that the total number of votes for all candidates matches the number of ballots distributed and the number of voters who checked in at the poll books.

24. As Electoral Board members are prohibited from hand-counting ballots, we cannot ensure that the vote tally produced by the voting machines matches the votes memorialized on the case paper ballots.

25. Consequently, the voting machine may be giving results on the closing tape that agree with the numbers of checked-in voters, ballots cast for all candidates, and ballots distributed but which votes have been incorrectly apportioned.

26. Further, I am prohibited from hand counting all paper ballots for all races and all precincts, and I cannot access the ballots without a court order.

27. As a result, I cannot certify that votes have been counted and apportioned correctly by the voting machines.

28. After polls close, the ballots are removed from the machines, put in a box/envelope, and sealed along with the officers' of election signatures.

29. The ballots are sent to the registrar's office and then to the Clerk of Court, and the ballot boxes may not be opened without a court order.

30. The ballots themselves contain no identifying information that needs to be kept private, so there is no reason why the paper ballots and the votes cast thereon should be filed

away in secret without being able to view them to ascertain voter intent prior to certifying the vote totals.

31. Under the current legal regime, I am unable to personally review and verify that:
- a. the voting machine program being used to count the ballots is keeping a true and accurate count;
 - b. the voting machine program being used to count the ballots is recording the true and accurate count; and or,
 - c. that the voting machine record tape accurately represents the ballots cast.

32. Consequently, I believe that the voting machines are conducting a secret canvass as prohibited by the Virginia Constitution.

33. The Virginia Constitution explicitly states that the ballot count cannot be conducted secretly.

34. I have taken an oath to uphold the Virginia Constitution, which prohibits the secret canvassing of ballots. As such, I believe that certifying the 2024 election would be a violation of the Virginia Constitution.

35. As such, I shall refuse to certify the 2024 election until such time as the legal regime permits for hand-counting ballots, and certification would not result in a violation of the Virginia Constitution.

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