

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF WAYNESBORO

**Jennifer Lewis,**  
*a resident of Waynesboro, Virginia,*

**Ann Criser-Shedd,**  
*a resident of Waynesboro, Virginia,*

**Christopher Graham,**  
*a resident of Waynesboro, Virginia,*

**Andrea Jackson,**  
*a resident of Waynesboro, Virginia,*

**Gregory Fife,**  
*a resident of Waynesboro, Virginia,*

**Plaintiff-Petitioners,**

v.

Case No.: \_\_\_\_\_  
**TIME IS OF THE ESSENCE**

**Curtis G. Lilly, II,**  
*in his official capacity as the Chairman of*  
*the Waynesboro Board of Elections,*

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

**Defendant-Respondents.**

**SERVE:**

Curtis G. Lilly, II and Scott Mares  
 Via Office of the Registrar  
 501 West Broad Street  
 Waynesboro, Virginia 22980

Curtis G. Lilly, II and Scott Mares  
 Via Lana Williams in her official capacity as  
 Mayor of Waynesboro  
 Charles T. Yancey Municipal Building  
 503 West Main Street, Suite 208  
 Waynesboro, Virginia 22980

Curtis G. Lilly, II and Scott Mares )  
Via David L. Ledbetter )  
in his official capacity as )  
Commonwealth's Attorney for Waynesboro )  
250 South Wayne Avenue )  
Waynesboro, Virginia 22980 )  
\_\_\_\_\_ )

**COMPLAINT FOR DECLARATORY JUDGMENT AND  
INJUNCTIVE RELIEF AND VERIFIED PETITION FOR WRIT OF MANDAMUS**

**COME NOW** Plaintiff-Petitioners Jennifer Lewis, Ann Criser-Shedd, Gregory Fife, Christopher Graham, and Andrea Jackson (collectively, "Plaintiffs"), by and through the undersigned attorneys, and pursuant to Virginia Supreme Court Rule 3.3 and Virginia Code § 8.01-645, to make this Complaint for Declaratory Judgment and Injunctive Relief and Petition for Writ of Mandamus against the Defendant-Respondents Curtis G. Lilly, II and Scott Mares in their official capacities as, respectively, the Chairman and Vice-Chairman of the Waynesboro Board of Elections (collectively, "Defendants"). In support of this Complaint and Petition, Plaintiffs state as follows.

**I. INTRODUCTION**

1. Plaintiffs are Waynesboro residents and registered voters seeking to vindicate their rights under the Virginia Constitution to have their votes counted and certified as provided by law. The right to vote is a fundamental right secured to Virginia citizens by the Bill of Rights of the Virginia Constitution. Va. Const. art. I, § 6.

2. Defendants are the Chairman and Vice-Chairman of the Waynesboro Board of Elections. They have promised, in both the press and a related lawsuit, that they will shirk their responsibilities by refusing to certify the results of the 2024 election if votes are tabulated by voting machines, such as the ones used in Waynesboro.

3. Plaintiffs bring this lawsuit to prevent the imminent harm that will result from Defendants following through on those threats. This action seeks a declaratory judgment, injunctive relief, and writ of mandamus that would prevent Defendants from following through on their pledge to ignore their oath of office and violate state law by improperly refusing to certify the results of the upcoming elections.

4. In Virginia, the act of certifying election results is a ministerial function over which local election board members have no discretion. As stated by the Supreme Court of Virginia nearly seventy years ago, officials charged with certifying election results may “neither add to nor subtract from the votes as certified to them by the election officials on the poll books. Their duties [are] limited to ascertaining the persons who received the greatest number of votes on the face of the returns after correcting any irregularities or informalities that appeared therein . . . . Their duty is to take the returns as made to them from the different voting precincts, add them up, and declare the result. Questions of illegal voting, and fraudulent practices, are to be passed upon by another tribunal.” *Hall v. Stuart*, 198 Va. 315, 322-23 (1956) (internal quotation and citation omitted).

5. That certifying election results is a non-discretionary, ministerial act has been recognized for centuries. As stated by one scholarly treatment of the issue:<sup>1</sup> “By 1897, the ministerial, mandatory nature of certifying returns was so well-established that one leading treatise declared ‘[t]he doctrine that canvassing boards and return judges are ministerial officers possessing no discretionary or judicial power, is settled in nearly or quite all the states.’” As recently stated by a Georgia state court judge in confirming that certification is ministerial and

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<sup>1</sup> Lauren Miller & Will Wilder, *Certification and Non-Discretion: A Guide to Protecting the 2024 Election*, 35 Stan. L. & Pol’y Rev. 1, 31 (2024) (quoting George W. McRary, *A Treatise on the American Law of Elections* § 229, at 153 (4th ed. 1897)).

not subject to the discretion of an electoral board: “if election superintendents were . . . free to play investigator, prosecutor, jury, and judge and so—because of a unilateral determination of error or fraud—refuse to certify election results, [] voters would be silenced.” Ex. 1 at 11 (*Adams v. Fulton Cnty. Bd. of Elections & Registration*, No. 24CV011584, Final Order, slip op. (Ga. Super. Ct., Fulton Cnty. Oct. 14, 2024)).

6. In Virginia, voters cast paper ballots, which are then counted by optical scanning machines to expedite the process and avoid human error.

7. The use of these machines is required by state law. *See* Va. Code § 24.2-626 (requiring every city and county to purchase a kind of electronic voting system approved by the State Board of Elections).

8. Ballot scanning machines are certified to meet both state and federal standards and are maintained under a controlled chain of custody.

9. Before every election, ballot scanners are tested using a predetermined sample of votes to ensure they are tallied accurately before any actual votes are cast. It is against the law to connect a ballot scanning machine to the Internet at any point. After the testing of the devices ahead of the election and on Election Day, officials also conduct risk-eliminating audits, which are called the back-end check.

10. All voting machines in Virginia are approved by the Commonwealth of Virginia State Board of Elections.

11. Defendants claim that because “[t]here is no physical way to observe whether [a] machine is counting properly in real time,” vote counting by voting machine is counting votes in “secret,” which is prohibited by the Virginia Constitution. Ex. 2 (Complaint, Dkt. No. 1, Case No. CL24000417-00 (Waynesboro Cir. Ct. Oct. 4, 2024) (the “BOE Chairman’s Complaint”)).



12. But, in fact, the Virginia Constitution proclaims that “voting shall be by ballot or by machines” and expressly authorizes the use of voting machines, referencing “voting machines” several times. The use of voting machines to count votes is literally woven into the fabric of the Virginia Constitution.

13. Moreover, voting machines in Virginia count the votes in public, supervised by election officials.

14. There is nothing secret about the state-approved process and nothing improper about using voting machines to count votes.

15. Because Defendants are legally required to certify the results of the 2024 General Election without precondition, and because Defendants’ refusal to do so will result in a denial of Plaintiffs’ right to vote, Plaintiffs bring this complaint seeking declaratory relief, injunctive relief, and a writ of mandamus to compel Defendants, in their official capacities as members of the Waynesboro Board of Elections, to perform their sworn ministerial duty to certify the 2024 General Election as required by law.

## **II. LEGAL FRAMEWORK**

### **PARTIES**

16. Plaintiff Jennifer Lewis is a resident of Waynesboro and is a voter whose ballot is recorded and counted by the Waynesboro Board of Elections. Her address is 113 Iris Drive, Waynesboro, VA 22980. Ms. Lewis has already cast her ballot in the November 2024 General Election.

17. Plaintiff Ann Criser-Shedd is a resident of Waynesboro and a voter whose ballot is recorded and counted by the Waynesboro Board of Elections. Ms. Criser-Shedd will vote in the November 2024 General Election.

18. Plaintiff Christopher Graham is a resident of Waynesboro and a voter whose ballot is recorded and counted by the Waynesboro Board of Elections. Mr. Graham has already cast his ballot in the November 2024 General Election.

19. Plaintiff Andrea Jackson is a resident of Waynesboro and a voter whose ballot is recorded and counted by the Waynesboro Board of Elections. Ms. Jackson will vote in the November 2024 General Election.

20. Plaintiff Gregory Fife is a resident of Waynesboro and is a voter whose ballot is recorded and counted by the Waynesboro Board of Elections. Mr. Fife has already cast his ballot in the November 2024 General Election.

21. Defendant Curtis G. Lilly, II, is the Chairman of the Waynesboro Board of Elections with offices at 501 West Broad Street, Waynesboro, Virginia 22980. His term expires on December 31, 2026. Members of the Waynesboro Board of Elections are bound by State Board of Elections procedures and the Code of Virginia.<sup>2</sup> Defendant Lilly has publicly stated that he will refuse to certify the results of the November 2024 General Election under the current legal and administrative regime. Ex. 2, ¶ 82.

22. Defendant Scott Mares is the Vice-Chairman of the Waynesboro Board of Elections with offices at 501 West Broad Street, Waynesboro, Virginia 22980. His term expires on December 21, 2024. Members of the Waynesboro Board of Elections are bound by State Board of Elections procedures and the Code of Virginia. Ex. 3 at 1. Defendant Mares has publicly stated that he will refuse to certify the results of the November 2024 General Election under the current legal and administrative regime. Ex. 2, ¶ 82.

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<sup>2</sup> Ex. 3 at 1 (*Board of Elections*, Waynesboro.va.us, <https://www.waynesboro.va.us/331/21018/Board-of-Elections> (last accessed Oct. 20, 2024)).

### **JURISDICTION AND VENUE**

23. This Court has original jurisdiction to issue a declaratory judgment pursuant to Virginia Code § 8.01-184.

24. This Court has original jurisdiction to issue injunctive relief pursuant to Virginia Code § 8.01-622.

25. This Court has original jurisdiction to issue a writ of mandamus pursuant to Virginia Code § 8.01-645.

26. This Court has jurisdiction to issue writs of mandamus in all matters arising from or pertaining to the actions of governing bodies in the City of Waynesboro, and in all cases in which it may be necessary to prevent the failure of justice and in which mandamus is available under common law principles. Va. Code § 17.1-513.

27. This Court has personal jurisdiction over Plaintiffs, as they reside in the City of Waynesboro and are voters whose ballots are recorded and tabulated by the Waynesboro Board of Elections. Most, if not all, of the events relevant to this controversy have occurred or shall occur in the City of Waynesboro.

28. This Court has personal jurisdiction over Defendants as the Chairman and Vice-Chairman of the Waynesboro Board of Elections, which governs the administration and certification of elections in the City of Waynesboro. Further, both Defendants are residents of the City of Waynesboro.

### **STANDING**

29. Plaintiffs have standing to bring this action as each Plaintiff is a qualified voter who lives and is registered to vote in Waynesboro. Plaintiffs Lewis, Graham, and Fife have already voted in the November 2024 General Election. Plaintiffs Jackson and Criser-Shedd will vote in the November 2024 General Election.

30. Because Plaintiffs Lewis, Graham, and Fife have already voted, Defendants' promised refusal to certify the results of the 2024 General Election will harm Plaintiffs Lewis, Graham, and Fife, even if those Plaintiffs take no further action. Specifically, Defendants' promised action will disenfranchise Plaintiffs Lewis, Graham, and Fife by causing the votes they have already cast to be disregarded entirely.

31. Absent the requested relief, Plaintiffs Jackson and Criser-Shedd will be directly injured by Defendants' stated refusal to certify without precondition the results of the 2024 General Election, which threatens to disenfranchise Plaintiffs.

32. In *Howell v. McAuliffe*, 292 Va. 320 (2016), the Virginia Supreme Court held that Virginia voters who were planning to vote in the upcoming General Election had standing to seek a writ of mandamus based on claims that Virginia officials were violating the Virginia Constitution with regard to determining the eligibility of certain voters. Specifically, the Supreme Court concluded, "each petitioner, as a Virginia registered voter planning to vote in the 2016 General Election, is directly affected by the allegedly unconstitutional expansion of the statewide electorate and has standing to challenge the Executive Order . . . ." *Id.* at 332.

33. Similarly, in *Wilkins v. West*, 264 Va. 447, 460 (2002), the Virginia Supreme Court determined that, for the purposes of standing, a Virginia resident is "directly affected" by a Virginia public official's "failure to comply with the Constitution of Virginia."

34. Plaintiffs have standing to seek the relief requested in this Petition, as they are Waynesboro, Virginia residents and voters who either have already, or plan to, cast their ballots in Waynesboro, Virginia in the 2024 General Election.

#### **ELECTION ADMINISTRATION IN WAYNESBORO**

35. The Waynesboro Board of Elections is a three-member board appointed by the Circuit Court Judges. It is responsible for the conduct of all elections. It prints ballots, prepares

voting machines and polling sites, and recruits and trains all election officials. It is guided by the State Board of Elections procedures and the Code of Virginia. Ex. 3 at 2.

36. The Waynesboro Board of Elections currently consists of the following three individuals: Defendants Lilly and Mares and Ms. Sharon van Name.

37. Defendant Lilly is the Chairman of the Waynesboro Board of Elections. In accordance with the Code of Virginia and the Virginia Constitution, he was required to swear an oath to uphold the Constitutions of the United States and Virginia when he assumed his role as a Member of the Waynesboro Board of Elections.

38. Defendant Mares is the Vice Chairman of the Waynesboro Board of Elections. In accordance with the Code of Virginia and the Virginia Constitution, he was required to swear an oath to uphold the Constitutions of the United States and Virginia when he assumed his role as Vice Chairman of the Waynesboro Board of Elections.

39. Sharon van Name is the Secretary of the Waynesboro Board of Elections with offices at 501 West Broad Street, Waynesboro, Virginia 22980. Her term expires on December 31, 2025. Ms. van Name is not a party in the lawsuit filed by Defendants concerning the 2024 election.

40. Ms. van Name has publicly stated that she believes “that the Virginia election process is extremely secure,” and that “that idea that hand counting would be more accurate than using these counting machines is just completely ridiculous.”<sup>3</sup>

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<sup>3</sup> Ex. 4 at 5 (Lyra Bordelon, *Waynesboro registrar, electoral board members speak out on November election lawsuit*, News Leader (Oct. 16, 2024), <https://www.newsleader.com/story/news/local/2024/10/16/waynesboro-registrar-electoral-board-members-speak-out-on-november-election-lawsuit/75699140007/>).

41. Article II, Section 7 of the Virginia Constitution provides: “All officers elected or appointed under or pursuant to this Constitution shall, before they enter on the performance of their public duties, severally take and subscribe the following oath or affirmation: ‘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).’” Va. Const. art. II, § 7.

42. Each member of a local electoral board “shall take and sign the oath” as “stated in Article II, § 7, of the Constitution . . . before performing the duties of his office.” Va. Code § 24.2-120.

43. Upon information and belief, each of the three members of the Waynesboro Board of Elections swore the Oath as required by the Virginia Constitution upon assuming his or her role as a member of the Waynesboro Board of Election.

44. The Waynesboro Board of Elections appoints a registrar who serves in all elections. Va. Const. art. II, § 8; Va. Code § 24.2-109.

45. Lisa P. Jeffers is the Registrar of Waynesboro. As required by the Code of Virginia, Ms. Jeffers was appointed by the Waynesboro Board of Elections.

46. In accordance with Virginia law, which prohibits wireless communications “between or among voting machines within the polling place or between any voting machine within the polling place and any equipment outside the polling place,” Va. Code § 24.2-625.2, Ms. Jeffers has publicly stated that the voting machines in Waynesboro are “never ever connected to the Internet,” and they “are secure.” Ex. 4 at 2.

47. On election day, precinct-level “officers of election” are responsible for arranging each polling place, including by examining any voting equipment in the presence of authorized representatives of each political party or independent candidate. Va. Code § 24.2-639.

48. After votes are cast, and “[i]n the presence of all persons who may be present lawfully at the time, **giving full view of the voting systems or printed return sheets**, the officers of election shall determine and announce the results as shown by the counters or printed return sheets.” Va. Code § 24.2-657 (emphasis added).

49. The officers of election then must complete a statement of results and affirm that the statement is complete, true and correct. Va. Code § 24.2-667.

50. “If **machines** that print returns are used” in the election, Virginia statute also provides that “the printed inspection sheet and two copies of the printed return sheet containing the results of the election for each machine shall be inserted in the envelope containing the statement of results by the officers of election and sealed and returned” to the clerk of court. Va. Code § 24.2-658 (emphasis added); *see also* Va. Code § 24.2-658 (providing that sealed returns are conveyed to the clerk of court).

51. As a local electoral board, the Waynesboro Board of Elections is statutorily required to meet to ascertain the results of the election at or before 5:00 p.m. on the day after an election. Va. Code § 24.2-671(A). The board may adjourn as needed, not to exceed 10 calendar days from the date of the election unless an extension has been granted to accommodate a risk-limiting audit conducted pursuant to Virginia Code § 24.2-671.2. *Id.* “The board **shall** open the returns delivered by the officers [of election] and **ascertain from the returns** the total votes in the county . . . for each candidate and for and against each question and complete the abstract of

votes case at such election, as provided for in § 24.2-675.” Va. Code § 24.2-671(B) (emphasis added).

52. Under Virginia Code § 24.2-675, “[a]s soon as the [local] electoral board determines the persons who have received the highest number of votes for any office, the secretary shall make out an abstract of the votes for” various offices, including electors for President and Vice President of the United States, United States Senate, United States House of Representatives, Virginia Senate and House of Delegates, and each local office.

53. “The abstracts shall be certified and signed by the electoral board.” Va. Code § 24.2-675.

54. “A copy of each [abstract], certified under the official seal of the electoral board, shall **immediately** be mailed or delivered by hand to the State Board.” *Id.* (emphasis added).

55. “For offices for which the electoral board issues the certificate of election, the result so ascertained, signed and attested, shall be conclusive.” Va. Code § 24.2-671(B).

56. Counted and uncounted ballots in a federal election are maintained by the clerk of court for two years.

57. The Code of Virginia states that the clerk “shall not allow the ballots to be inspected except (i) by an authorized representative of the State Board or by the electoral board at the direction of the State Board to ensure the accuracy of the returns or the purity of the election, (ii) by the officers of election, and then only at the direction of the electoral board in accordance with § 24.2-672 when the provisions of § 24.2-662 have not been followed, (iii) on the order of a court before which there is pending a proceeding for a contest or recount under Chapter 8 (§§ 24.2-800 *et seq.*) of this title or before whom there is then pending a proceeding in



which the ballots are necessary for use in evidence, or (iv) for the purpose of conducting a risk-limiting audit pursuant to § 24.2-671.2.” Va. Code § 24.2-669.

58. If ballots are inspected pursuant to Virginia Code § 24.2-669(i), (ii), or (iv), each political party and independent candidate is entitled to have a representative present during the inspection. Va. Code § 24.2-669.

59. Pursuant to Virginia Code § 24.2-671.2, a risk-limiting audit is conducted each election cycle.

60. In addition to the state-wide risk-limiting audit, local election boards “may request that the State Board approve the conduct of a risk-limiting audit for a contested race within the local electoral board’s jurisdiction.” Va. Code § 24.2-671.2(D).

61. The Code of Virginia provides processes for recounts, Va. Code §§ 24.2-800 *et seq.*, and election contests, Va. Code §§ 24.2-803 *et seq.*

62. Contests of presidential elections are to be filed in circuit court and after the State Board certifies the results of the election. Va. Code § 24.2-805.

63. In a contested election, the Code of Virginia provides no ability for an electoral board to wait to certify an abstract of votes pursuant to its duty under Virginia Code § 24.2-675 until after the contest is completed.

### **THE VOTING MACHINES USED IN VIRGINIA**

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

65. The Board of the Department of Elections is known as the State Board of Elections. The State Board of Elections is the sole entity authorized to approve, test, or investigate electronic voting systems for use in Virginia elections.

66. Virginia law is clear that “[a]ny voting system and ballots approved for use by the Board shall be deemed to meet the requirements of this title and any applicable federal laws, and their use in any election shall be valid.” Va. Code § 24.2-629(G).

67. The Virginia Constitution expressly provides for the use of voting machines. Article II, Section 3 of the Virginia Constitution, entitled “Method of voting,” refers to “voting machines” three times:

Article II. Franchise and Officers

Section 3. Method of voting

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.

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 (emphases added).

68. The use of voting machines is not only authorized by the Virginia Constitution but also mandated by the Code of Virginia. *See* Va. Code § 24.2-626(A) (“The governing body of each county and city shall provide for the use of electronic voting systems, of a kind 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.”).

**III. ABSENT DECLARATORY, INJUNCTIVE, AND MANDAMUS RELIEF, DEFENDANTS WILL REFUSE TO CERTIFY LEGITIMATE ELECTION RESULTS**

69. Defendants have publicly stated in multiple fora that they will refuse to certify the results of the 2024 General Election if voting machines are used in Waynesboro and there is no process for hand counting votes.

70. Defendants filed Case No. CL24000417-00 in this Court on October 4, 2024. The complaint initiating that lawsuit, attached to this Complaint as Exhibit 2, is referred to herein as the BOE Chairman's Complaint.

71. Paragraph 79 of the BOE Chairman's Complaint alleges that "the Plaintiffs [Lilly and Mares] 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."

72. In Paragraph 81, Defendants assert that they "do not believe that any election decided by voting machine total in the City of Waynesboro can be certified as accurate."

73. What Defendants "believe" about the legality or accuracy of voting machines is irrelevant to their obligation to certify election results consistent with the Virginia Constitution, which expressly provides for the use of voting machines.

74. Paragraph 82 of the BOE Chairman's Complaint states, in no uncertain terms, that Defendants will refuse to certify the results of the 2024 General Election in direct contravention of their sworn duties and obligations as the Chairman and Vice-Chairman of the Waynesboro Board of Elections. Paragraph 82 states, in full (emphasis added):

The Plaintiffs [Lilly and Mares] 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.**

75. Defendants have no basis to refuse to certify votes cast in the 2024 General Election. As stated above, Defendants’ certification duties are ministerial, and they have no discretion over the certification process.

76. Additionally, Defendants’ statements that they will refuse to certify the results of the 2024 General Election if they are not permitted to conduct a hand count directly contravenes the text of the Virginia Constitution, which provides that “Voting shall be by ballot **or by machines for receiving, recording, and counting votes cast.**” Va. Const. art. II, § 3 (emphasis added).

77. That Defendants “do not believe that any election decided by voting machine total in the City of Waynesboro can be certified as accurate,” Ex. 2, ¶ 81, does not trump the requirements of the Virginia Constitution.

78. Defendant Lilly has acknowledged that the idea for filing the BOE Chairman’s Complaint was advanced by his attorney, Thomas Ranieri of Ranieri and Associates in Staunton, Virginia. When describing the genesis of the BOE Chairman’s Complaint to a journalist and describing Mr. Ranieri, Defendant Lilly stated:

He and somebody else met at some political event and started talking about the machines and the concern that they are . . . I guess, somehow [they] came up with this logic that there’s a contradiction. Then they just needed an electoral board that would support bringing this forward to the judge to say, ‘hey, there’s a contradiction in the law. What can we do?’ And luckily, I guess, I’m one of them.

Ex. 4 at 4 (brackets and marks in original).

79. The BOE Chairman’s Complaint is an effort to spread distrust of voting machines—the use of which is expressly permitted by the Virginia Constitution.

80. Defendants are legally required to certify the results of the 2024 General Election without precondition, and to refuse to do so is a violation of their statutory duties.

#### **IV. COUNTS OF PETITION AND COMPLAINT**

##### **COUNT I** **DECLARATORY JUDGMENT FOR VIOLATION OF THE VIRGINIA** **CONSTITUTION**

81. The allegations in Paragraphs 1-80 are incorporated by reference.

82. The Court may “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 for. Controversies involving the interpretation of . . . statutes, municipal ordinances and other governmental regulations, may be so determined . . .” Va. Code § 8.01-184.

83. Article I, Section 6 of the Virginia Constitution provides in part: “That all elections ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage . . . .”

84. Here, Plaintiffs ask the Court to enter an order declaring that Defendants’ refusal to certify and sign the abstracts of votes as completed based on the returns would violate Plaintiffs’ right to vote under the Virginia Constitution.

85. Plaintiffs here satisfy all constitutional requirements to qualify to vote in the forthcoming presidential election: they are United States citizens, are more than 18 years old, live in Waynesboro, and are registered to vote. Va. Const. art. II, § 1. None of the exclusions or disqualifications of the Virginia Constitution apply to them.

86. Defendants, however, have stated they will refuse to certify the election results unless certain preconditions not authorized under Virginia law, and as set forth in the BOE Chairman’s Complaint, are met.

87. Virginia law does not permit Defendants to refuse to certify validly cast votes. Any such refusal would violate the Virginia Constitution and void the votes of those who cast them, including Plaintiffs, thereby infringing upon their constitutionally-protected right to vote.

**COUNT II**  
**TEMPORARY INJUNCTION PROHIBITING**  
**VIOLATION OF THE VIRGINIA CONSTITUTION**

88. The allegations in Paragraphs 1-80 are incorporated by reference.

89. This Court has the discretion to grant injunctive relief based on violations of the Virginia Constitution.

90. Virginia Code § 8.01-628 states that no temporary injunction shall be awarded unless the court is satisfied with the plaintiff's or petitioner's equity.

91. Under Virginia and United States Supreme Court precedent, a plaintiff seeking a [temporary] injunction must establish that (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest. *See, e.g., Loudoun County Sch. Bd. v. Cross*, No. 210584, 2021 WL 9276274, at \*4 (Va. Aug. 30, 2021); *Dillon v. Northam*, 105 Va. Cir. 402 (Va. Beach Cir. Ct. 2020); *Winter v. Nat. Res. Def Council, Inc.*, 555 U.S. 7, 20 (2008).

92. All four elements must be met for the court to issue a temporary injunction. Here, all four elements are met.

93. *First*, Plaintiffs are likely to succeed on the merits of this complaint and petition. Defendants have stated unequivocally that they plan to violate Plaintiffs' right to vote under the Virginia Constitution.

94. Pursuant to Virginia Supreme Court precedent, the Virginia Bill of Rights (*i.e.*, Article I of the Virginia Constitution) is self-executing. *Ibanez v. Albemarle County Sch. Bd.*,

897 S.E.2d 300, 311 (Va. Ct. App. 2024) (citing *Robb v. Shockoe Slip Found.*, 228 Va. 678, 681-82 (1985)).

95. A Virginia resident's right to vote and have their vote counted is a fundamental right under the Bill of Rights of the Virginia Constitution.

96. Defendants have stated that they will violate Plaintiffs' fundamental right to suffrage guaranteed by the Virginia Bill of Rights by refusing to certify the results of the 2024 General Election if voting machines are used.

97. Defendants' stated refusal to certify is a violation of the Virginia Constitution, as it strips Plaintiffs of their right to suffrage guaranteed by the Virginia Bill of Rights.

98. *Second*, Defendants' stated refusal to certify the results of the 2024 General Election and effectively strip Plaintiffs of their guaranteed right to suffrage under the Virginia Constitution, constitutes irreparable harm.

99. An injunction is necessary to prevent the irreparable harm that Defendants' stated refusal will cause. There is no less drastic remedy available to Plaintiffs.

100. *Third*, the balance of equities favors Plaintiffs. If this Court does not provide injunctive relief to Plaintiffs, Defendants will violate Plaintiffs' right to vote under the Virginia Constitution.

101. In contrast, Defendants will not be harmed whatsoever if the Court grants injunctive relief. Indeed, granting the requested injunctive relief would only require Defendants to fulfill their sworn duties and responsibilities as the Chairman and Vice-Chairman of the Waynesboro Board of Elections. There is no harm to Defendants in requiring them to perform their sworn duties.

102. *Fourth*, and finally, a grant of injunctive relief here is in the public interest. Plaintiffs are residents and voters in Waynesboro. Their request for injunctive relief would not only protect their own rights under the Virginia Bill of Rights, but also those of every voter in Waynesboro. Injunctive relief here prohibits Defendants from disenfranchising any voter in Waynesboro. Thus, a grant of injunctive relief inures to the benefit of the public and is in the public interest.

103. Equity is the appropriate remedy here. Plaintiffs do not have another adequate remedy at law to prohibit Defendants from violating the Virginia Constitution, and specifically, their right to suffrage under Article 1, Section 6.

104. Plaintiffs request that the Court waive the injunction bond required by Virginia Code § 8.01-631. Whether to require an injunction bond is within the discretion of the court when, “in the opinion of the court awarding an injunction it may be improper or unnecessary to require bond . . . .” This is such an action. Plaintiffs are seeking a temporary injunction to protect their fundamental rights under the Virginia Constitution. There should be no injunction bond required.

**COUNT III**  
**WRIT OF MANDAMUS**

105. The allegations in Paragraphs 1-80 are incorporated by reference.

106. As described above, Defendants have an unequivocal legal duty to: (1) ascertain the results of the 2024 election in Waynesboro “from the returns” delivered by precinct-level officers of election, rather than through any hand-counting or other procedure; (2) complete the abstracts of votes cast in the 2024 election based on the returns delivered by officers of election; (3) certify and sign the abstracts of votes as completed based on the returns; and (4) immediately mail or deliver by hand the abstracts to the State Board. Va. Code §§ 24.2-671, 24.2-675.



107. This duty is mandatory, not discretionary. Virginia law provides no methodology other than “from the returns” for Defendants to ascertain and certify the results of the election.

108. The Virginia Constitution and Virginia statutes explicitly and repeatedly authorize the use of machines to vote and tabulate results.

109. Defendants have no discretion to refuse to certify the results of the 2024 General Election on any basis, least of all that the use of voting machines violates the Virginia Constitution.

110. Virginia law expressly provides that ballots should be sealed after tabulation *by precinct-level officers of election*—not local election board officials—and that counted ballots may only be re-accessed under strictly controlled circumstances as directed by the State Board of Elections. Va. Code § 24.2-669. In other words, Defendants are prohibited from opening and directing a manual recount of these sealed ballots—the very relief they seek in the BOE Chairman’s Complaint.

111. Defendants may not utilize a new method of canvassing votes and ascertaining election results not provided for under Virginia law.

112. Defendants’ stated refusal to certify the election results will deprive thousands of Waynesboro voters of their right to vote in the 2024 General Election.

113. Urgent mandamus intervention is needed to protect the fundamental right to vote not only of Plaintiffs, but also of all of their Waynesboro neighbors who vote in Waynesboro.

114. There is no other remedy at law available that would allow Plaintiffs’ votes to be counted, tabulated, and certified in the normal course of the 2024 General Election, and in accordance with Virginia law.

115. Deciding this urgent writ of mandamus in advance of the 2024 General Election will provide substantial clarity for Defendants, allowing them to perform their ministerial duties in tabulating and certifying election results without substantial delay and as required by the Virginia Constitution and Code of Virginia.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully request this Court:

- A. Issue a declaratory judgment providing that:
  - i. Refusing to certify the results of the 2024 General Election would infringe Plaintiffs' constitutional rights; and
  - ii. Refusing to certify the results of the 2024 General Election would be an unconstitutional act which Defendants lack authority to take;
- B. Issue a temporary injunction prohibiting Defendants from violating Plaintiffs' rights under the Virginia Constitution, including their right to suffrage guaranteed by Article I, Section 6;
- C. Issue a writ of mandamus ordering Defendants to:
  - i. Ascertain the results of the 2024 General Election in Waynesboro "from the returns" delivered by officers of election;
  - ii. Complete the abstracts of votes cast in the 2024 General Election based on the returns delivered by officers of election; and
  - iii. Certify and sign the abstracts of votes as completed based on the returns and immediately and by the required deadline provide the abstracts of votes to the Virginia State Board of Elections;

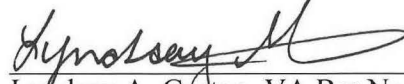
D. Award Plaintiffs their costs in bringing this action as permitted by Virginia Code § 8.01-648; and

E. Award any such additional relief as this Court deems just, necessary, and appropriate.

Dated: October 21, 2024

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Respectfully Submitted,



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*Counsel for Plaintiffs Jennifer Lewis, Ann  
Criser-Shedd, Gregory Fife, Christopher  
Graham, and Andrea Jackson*

*\*Application for Pro Hac Vice Forthcoming*

### CERTIFICATE OF SERVICE

I certify that true and correct courtesy copies of the foregoing Complaint and Petition and corresponding Exhibits were served on the Defendants in the above-captioned case by delivering a copy of the documents to the individuals and addresses below on October 21, 2024. Service of process will be perfected and completed forthwith.

Curtis G. Lilly, II, Chairman of the Board of Elections  
Scott Mares, Vice-Chairman of the Board of Elections  
Via Office of the Registrar as Head of Board of Elections  
501 West Broad Street  
Waynesboro, Virginia 22980

Curtis G. Lilly, II, Chairman of the Board of Elections  
Scott Mares, Vice-Chairman of the Board of Elections  
Via Lana Williams in her official capacity as Mayor of Waynesboro  
Charles T. Yancey Municipal Building  
503 West Main Street  
Suite 208  
Waynesboro, Virginia 22980

Curtis G. Lilly, II, Chairman of the Board of Elections  
Scott Mares, Vice-Chairman of the Board of Elections  
Via David L. Ledbetter in his official capacity as  
Commonwealth's Attorney for Waynesboro  
250 South Wayne Avenue  
Waynesboro, Virginia 22980

Dated: October 21, 2024

  
Lyndsay A. Gorton

**VERIFICATION**

Pursuant to Virginia Code § 8.01-4.3, I verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: October <sup>18.00</sup>\_\_\_\_, 2024

  
\_\_\_\_\_  
Jennifer Lewis

RETRIEVED FROM DEMOCRACYDOCKET.COM

**VERIFICATION**

Pursuant to Virginia Code § 8.01-4.3, I verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: October 19, 2024

*Ann M. Criser-Shedd*  
\_\_\_\_\_  
Ann M. Criser-Shedd

RETRIEVED FROM DEMOCRACYDOCKET.COM

**VERIFICATION**

Pursuant to Virginia Code § 8.01-4.3, I verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: October <sup>19</sup>\_\_\_\_, 2024

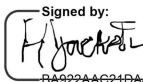
Chris Graham  
Christopher Graham

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**VERIFICATION**

Pursuant to Virginia Code § 8.01-4.3, I verify under penalty of perjury that the foregoing  
is true and correct to the best of my knowledge.

Dated: 10/19/2024

Signed by:  


BA922AAG21DA495...  
Andrea Jackson

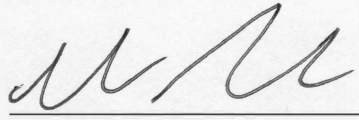
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## VERIFICATION

Pursuant to Virginia Code § 8.01-4.3, I verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: October 19, 2024

  
\_\_\_\_\_  
Gregory Fife

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