

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

STEVEN KOSKI, in his official capacity as
Commissioner of the Virginia Department of
Elections,

Defendant.

No. 3:26-cv-42

DEFENDANT’S MOTION TO DISMISS

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant Steven Koski, in his official capacity as Commissioner of the Virginia Department of Elections, moves to dismiss the United States’ amended complaint for failure to state a claim. Consistent with the briefing of undersigned counsel in support of this motion to dismiss, the United States’ amended complaint fails to state a claim for at least three reasons: (1) Virginia’s statewide voter registration list is not the type of “record” relating to a federal election that state elections officials must preserve, retain, and make available for inspection under Title III; (2) the U.S. Attorney General’s written demand failed to state the factual basis for demanding Virginia’s statewide voter registration list; and (3) the purpose contained in the U.S. Attorney General’s written demand was both contrived and insufficient to require Virginia to make records available under Title III. The United States’ claim also independently fails because the U.S. Attorney General’s demand for Virginia voters’ sensitive, non-public data violates both state and federal law.

For the reasons set forth in the accompanying brief in support, Defendant respectfully requests that the Court grant this motion to dismiss the United States’ amended complaint.

Date: May 19, 2026

Respectfully submitted,

STEVEN KOSKI, IN HIS OFFICIAL CAPACITY
AS COMMISSIONER OF THE VIRGINIA
DEPARTMENT OF ELECTIONS

Jay Jones
Attorney General

By: /s/ Tillman J. Breckenridge
Tillman J. Breckenridge (#85647)*
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**Counsel of Record for Defendant*

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of May, 2026, I filed the foregoing using the Court's CM/ECF filing system, which sends an electronic notification of the same to counsel of record.

By: /s/ Tillman J. Breckenridge
Tillman J. Breckenridge (#85647)*
Solicitor General

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