

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF LYNCHBURG

CITY OF LYNCHBURG, VIRGINIA,

Plaintiff,

v.

STEVEN KOSKI, in his official capacity as
Commissioner of Elections of the
Commonwealth of Virginia, *et al.*,

Defendants.

Civil Action No. CL26000183-00

Hon. F. Patrick Yeatts

**MOTION TO INTERVENE AS A DEFENDANT
BY VIRGINIANS FOR FAIR ELECTIONS**

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Proposed Intervenor Virginians for Fair Elections (“VAFE”), by and through undersigned counsel, respectfully submits this Motion to Intervene (the “Motion”) and hereby moves to intervene as a Defendant in the instant matter under Va. Sup. Ct. R. 3:14.

BACKGROUND

In October 2025, the General Assembly passed a proposed constitutional amendment—House Joint Resolution (“HJR”) 6007—that, if adopted by Virginia voters, would permit it to engage in mid-decade redistricting. *See* H.D.J. Res. 6007, 2024 Spec. Sess. I (Va. 2025). After a general election for the House of Delegates was held on November 4, 2025, a new General Assembly was sworn in on January 14, 2026. Va. Const. art. IV, § 6. The new General Assembly soon approved the proposed amendment for the second time—HJR 4. H.D.J. Res. 4, 2026 Reg. Sess. (Va. 2026). The General Assembly then passed—and the Governor subsequently signed into law—HB 1384 setting a special referendum election for the proposed amendment in April 2026. H.D. Bill 1384, 2026 Reg. Sess. (Va. 2026) (enacted).

As relevant here, H.B. 1384 did three things: (1) it set April 21, 2026, as the date for the special election on the proposed constitutional amendment; *id.* § 14; (2) it provided the ballot language for voters to consider at that election; *id.*; and (3) it required the Virginia Board of Elections to send all materials under Code § 30.19.9 to local electoral boards and registrars by March 2, 2026, *id.*, so that early voting can begin on March 6, 2026. *See* Va. Code § 24.2-701.1.

There has already been a significant amount of litigation involving the ratification process for the proposed amendment. Two different courts have already refused to issue similar injunctive relief that Plaintiff seeks here, holding, at least in part, that interfering in the constitutional amendment process before its consummation by the voters’ adoption at a referendum election would violate the separation of powers. *See, e.g.*, Order at 1, *McDougle v. Nardo*, No. CL25-1852

(Va. Cir. Ct. Oct. 31, 2025) (denying plaintiffs’ request for a TRO); Order at 2, *Jett v. Nardo*, No. CL25-5352 (Va. Cir. Ct. Nov. 5, 2025) (denying plaintiffs’ request for a TRO and preliminary injunction) (citing *Scott v. James*, 114 Va. 297 (1912)); Order at 2, *McDougle v. Nardo*, No. CL25-1852 (Va. Cir. Ct. Jan. 13, 2026) (denying plaintiffs’ second request for a TRO).

Then, in January 2026, the Circuit Court of Tazewell County issued a “TEMPORARY and PERMANENT INJUNCTION” against both H.B. 1384 and the other legislative enactments underlying the proposed amendment. See *McDougle v. Nardo*, No. CL25-1582, 2026 WL 243908, at *2–4 (Va. Cir. Ct. Jan. 27, 2026). There had been no change in law between the Tazewell Court’s denial of the TROs in its initial orders and its grant of the injunction, and the court did not provide any explanation of why it believed the separation-of-powers concerns motivating its TRO denials had dissipated. The case was appealed to the Court of Appeals of Virginia, which moved to certify the case to the Supreme Court of Virginia. Va. App. Ct.’s Mot. for Certification to Va. Sup. Ct., *Scott v. McDougle*, No. 0190-26-3 (Va. Ct. App. Feb. 4, 2026). Finding that the case was of imperative public importance, the Supreme Court accepted jurisdiction of the *McDougle* appeal. Order at 1–2, *Scott v. McDougle*, No. 260127 (Va. Sup.Ct. Feb. 13, 2026) (citing Va. Code § 17.1-409). In doing so, the Supreme Court noted the “limited scope of the [Tazewell Court’s] injunctive relief,” and made clear that the April 21, 2026, referendum election set forth in H.B. 1384 could continue unimpeded while the parties briefed the appeal. *Id.* The *McDougle* appeal remains pending in the Supreme Court.

On February 18, five days after the Supreme Court’s Order expressed its expectation that the referendum election would proceed, another case was filed in Tazewell Circuit Court. In that case, *Republican National Committee v. Koski*, the court swiftly granted the plaintiffs’ motion for preliminary injunction in a terse six-page opinion that did not meaningfully address the court’s

subject matter jurisdiction or critically examine the merits of plaintiffs' claims. *See generally* Order, *Koski*, No. CL26-266 (Va. Cir. Ct. Feb. 19, 2026). The court thus preliminarily enjoined the defendants from “administering, preparing for, taking any action to further the procedure of the referendum, or otherwise moving forward with causing an election to be held on the proposed constitutional amendment contained in” HJR 6007. *Id.* at 5–6. The injunction is effective until March 18, 2026—well past March 2, when H.B. 1384 requires the defendants to send the ballot question to electoral boards and registrars for early voting, and far past March 6, when early voting on the proposed constitutional amendment is scheduled to begin. *See* Va. Code § 24.2-701.1; Order at 6, *Koski*, No. CL26-266 (Va. Cir. Ct. Feb. 19, 2026). The next day, the defendants appealed that decision to the Supreme Court of Virginia, sought an immediate stay of the order pending appeal, and asked to consolidate *Koski* with *McDougle* due to the substantial overlap among the cases, parties, and interests at stake.

On February 25, Plaintiff brought this case. Represented *pro bono* by Timothy Anderson, a former member of the Virginia House of Delegates, and recent candidate in the Republican Primary for Virginia's House District 98, the City of Lynchburg purports to seek a declaration to determine whether and to what extent its election officials are bound by the Tazewell Circuit Court's preliminary injunction. However, Plaintiff also asks the Court to impose “limited temporary injunctive relief, if necessary, narrowly tailored to preserve the status quo, and to prevent the City or its officials from taking actions that could violate the Tazewell Temporary Restraining Order” Compl., at 6, ¶ E. In other words, Plaintiff asks for an injunction against itself to prevent its own employees from fulfilling their duties to effectuate the upcoming special election.

ARGUMENT

Proposed Intervenor VAFE is the referendum committee formed to pass the proposed constitutional amendment that H.B. 1384 put on the ballot for the upcoming special election. VAFE was organized for the express purpose of advocating for the proposed amendment to ensure that Virginians will not have their voices diminished in Washington due to unprecedented mid-decade redistricting in other states. Since January 15, 2026, approximately 1,000 Virginians have taken at least one action to support VAFE, such as door knocking, phone banking, crowd canvassing, and/or hosting or participating in community events. These volunteers have contributed approximately 4,000 hours toward assisting VAFE with its mission, and approximately 6,000 Virginia residents have signed VAFE's digital petition for fair elections. VAFE has also raised over \$10 million dollars to further its efforts, as reported on the Virginia Board of Elections website, available at <https://cfreports.elections.virginia.gov/Committee/Index/a5d5d000-0875-419d-b056-4245a6cca40f#LargeContributionReports>.

In carrying out its mission, VAFE has already expended, and will continue to expend, a substantial amount of resources to inform voters about the existence of the proposed amendment, the early voting period during which to vote for that amendment, and the election day on which a referendum on that amendment will occur. To accomplish this purpose, it is mission-critical for VAFE to ensure that both the April 2026 special election and the early voting beginning on March 6 and leading up to that election occur unhindered and on schedule—which requires, among other things, the ongoing, uninterrupted preparatory work by state and municipal election officials, including those employed by the City of Lynchburg.

As such, VAFE has important and weighty interests in this matter that warrant intervention. A proposed intervenor may move to intervene to “assert any claim or defense germane to the

subject matter of the proceeding,” Va. Sup. Ct. R. 3:14, so long as he or she is also “asserting an interest that is part of the subject matter of the litigation,” *Hudson v. Jarrett*, 269 Va. 24, 32 (2005); *see also Eads v. Clark*, 272 Va. 192, 196 (2006) (“[T]o become a party by intervention [a proposed intervenor] must assert some right involved in the suit.”).

VAFE plainly satisfies that requirement. The relief Plaintiff seeks would—if granted—halt the actions Defendants and local Lynchburg election administrators must take to ensure that early voting for the April 2026 election occurs on March 6 as required by statute and, consequently, threaten to delay and disrupt the election itself by extending the Tazewell Circuit Court’s unconstitutional preliminary injunction to the City’s local election administrators. Not only would this jeopardize the election, but it would plainly contradict the Supreme Court of Virginia’s clear expectation that the special election should move forward while the various constitutional challenges are resolved on appeal. Order at 1–2, *McDougle*, No. 260127 (Va. Sup. Ct. Feb. 13, 2026). This would undermine VAFE’s ability to carry out its basic function—advocating for, and thus persuading Virginians to vote for, the proposed amendment—and would also thwart VAFE’s ability to accomplish its ultimate mission of helping to secure the amendment’s passage. It would mean that all the resources that VAFE has thus far allocated or expended to advocate for the proposed amendment and ensure voters can exercise their fundamental right to vote on it would have been wasted.

In view of these important interests, numerous courts throughout the country have permitted similarly situated referendum committees to intervene in cases challenging the ballot questions they were formed to defend. *See, e.g., Perry v. Schwarzenegger*, 628 F.3d 1191, 1194 & n.1 (9th Cir. 2011) (noting that the referendum committee for a referendum was permitted to intervene as a defendant in a challenge to that referendum); *Taxpayers United for Assessment Cuts*

v. Austin, 994 F.2d 291, 293 (6th Cir. 1993) (similar); *Diaz v. Bd. of Cnty. Comm'rs of Dade Cnty.*, 502 F. Supp. 190, 192 (S.D. Fla. 1980) (similar); *Daunt v. Benson*, 956 F.3d 396, 405 (6th Cir. 2020) (similar); *Nw. Sch. of Safety v. Ferguson*, No. C14-6026 BHS, 2015 WL 1311522, at *1 (W.D. Wash. Mar. 23, 2015) (granting motion to intervene by referendum committee).

Although Virginia law does not require a proposed intervenor to demonstrate that its interests lack adequate representation, in this case, VAFE's interests are significantly distinct from those of the existing Defendants, who are election administrators sued in their official capacities. *Cf.* Fed. R. Civ. P. 24(a)(2) (requiring a proposed intervenor to show that existing parties do not adequately represent its interests). VAFE's mission to advocate for the proposed amendment, and for fair elections for Virginians in general, differs sharply from Defendants' administrative duties as election officials. *Cf. Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003) (noting that courts routinely hold that "governmental entities do not adequately represent the interests of aspiring intervenors").

Finally, practical considerations also weigh heavily in favor of intervention. VAFE's entry into this case would not delay these proceedings; if anything, its participation will accelerate ventilation of the relevant issues. After all, VAFE moves to intervene at the same time as Defendants notice their appearances, on a highly accelerated schedule. VAFE will also comply with any and all deadlines set by this Court.

CONCLUSION

For the reasons set forth herein, Proposed Intervenor VAFE respectfully requests that the Court permit it to intervene as a Defendant in this action.

DATED: February 26, 2026

Respectfully submitted,



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** Pro Hac Vice applications forthcoming*

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of February 2026, a true and exact copy of the foregoing was filed with the Office of the Clerk of the Circuit Court of the City of Richmond and, on the same date, sent by email to:

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DATED: February 26, 2026

Respectfully submitted,



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** Pro Hac Vice applications forthcoming*

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