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JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

VIRGINIA

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

**Virginia Institute for Public Policy, Inc.,**

*Plaintiff,*

v.

**Scott O. Konopasek**, in his capacity as Director of the Office of Elections and General Registrar for Fairfax County, **Stephen M. Hunt**, in his capacity as Chairman of the Fairfax County Electoral Board, **Bettina M. Lawton**, in her capacity as Vice-Chairman of the Fairfax County Electoral Board, **Katherine K. Hanley**, in her capacity as Secretary of the Fairfax County Electoral Board,

Address: 12000 Government Center Parkway, Suite 323  
Fairfax, VA 22035

*Defendants.*

Case No.

2021-  
14420

**VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Comes now the Plaintiff, by Counsel, and moves the Court for a declaratory judgment and preliminary and permanent injunctive relief against Defendants for the following reasons:

1. Defendants are accepting and approving applications for absentee and mail-in ballots that do not include information required by Virginia law, namely, the last four digits of the applicant's Social Security number (the "SSN Requirement"). Va. Code § 24.2-701(C)(1).
2. Defendants' suspension of the SSN Requirement violates the Anti-Suspension Clause of the Constitution of Virginia. Va. Const., Art. I, Sec. 7 ("That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised."), and Virginia statutes, Va.

Code § 24.2-701(C)(1); Va. Code § 24.2-706(C).

### **Jurisdiction and Venue**

3. This Court has jurisdiction to grant the relief sought pursuant to Va. Code § 8.01-184 and § 8.01-620.

4. Venue is proper and preferred in this Court pursuant to Va. Code § 8.01-261(15)(c).

### **Parties**

5. Plaintiff Virginia Institute for Public Policy, Inc. (“VIPP”) is an independent, nonprofit, nonpartisan, 501(c)(3), education and research organization incorporated in Virginia since 1996. VIPP’s mission is dedicated to promoting and fostering individual liberty, dynamic entrepreneurship, economic growth, the rule of law, and adherence to constitutional limits. VIPP opposes the public school bond question that will appear on the ballot in Fairfax County. VIPP pursues its overall mission by performing timely, accurate research on key policy issues and effectively marketing these findings to Virginians, and other supporters, activist, and policy organizations.

VIPP actively monitors the activities of government that pertain to its mission and vision, including ballot questions proposed to the Commonwealth’s voters. Virginia’s November 2, 2021 General Election ballot will include the public school bond question, which asks voters if Fairfax County should borrow up to \$360,000,000 to fund projects of the Fairfax County public school system.<sup>1</sup>

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<sup>1</sup> <https://www.fairfaxcounty.gov/bond/bond-ballot-question> (last accessed Oct. 18, 2021).

VIPP also leads the Virginia Fair Elections Coalition which is dedicated to protecting the integrity of Virginia's elections and upholding and enforcing the Commonwealth's election laws.

VIPP has supporters who are residents of Fairfax County, Virginia. VIPP has hosted, facilitated, and coordinated Election Integrity training workshops in Fairfax County for poll watchers and election officers, and plans to continue this work in the future. VIPP also hosted a statewide election integrity summit in Richmond, VA in August 2021 where participants were trained in how to ensure compliance with Virginia's election laws, including the law which defendants are not following.

6. The Defendants are the Fairfax County General Registrar and the three members of the Fairfax County Electoral Board. The Fairfax County General Registrar is responsible for, *inter alia*, receiving and approving absentee ballot applications and sending absentee ballot materials to each approved applicant. Va. Code § 24.2-706. The Fairfax County Electoral Board is responsible for, *inter alia*, "the preparation of ballots" and "administration of absentee ballot provisions" of the Virginia Code. Va. Code § 24.2-109(B).

7. Pursuant to Va. Code § 24.2-120, each Defendant took the following oath prior to performing the duties of his or her office:

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.

**Statutory Requirements for Applications for Absentee Ballots**

8. Applications for absentee ballots may be submitted in person at the office of the general registrar or by mail, electronic means, or facsimile device. Va. Code § 24.2-701(B)(1)-(2).



9. Applications for absentee ballots “shall contain ... [t]he applicant’s printed name and the last four digits of the applicant’s social security number.” Va. Code § 24.2-701(C)(1) (emphasis added).

10. Accordingly, the “Virginia Absentee Ballot Application Form” instructs the applicant that the last four digits of his Social Security number are required three separate times and warns that the application will be rejected if that information is not provided:

- “Social Security # (last 4 digits required):”<sup>2</sup>
- “Your name and the last four digits of your Social Security number are required.”<sup>3</sup>
- “The last four (4) digits of your Social Security Number are required. Your application will be denied if you fail to provide the last four digits of your Social Security Number or if you fail to provide any other information required to determine your qualification to vote by mail.”<sup>4</sup>

11. The “Virginia Vote by Mail Application Form” provides the same instructions and warning.<sup>5</sup>

12. The Handbook prepared and distributed by the Virginia Department of Elections confirms the SSN Requirement:

*7.7.1.3 How to Process the Virginia Vote by Mail Application Form (SBE 701/703.1)*

Check each application for missing information. Each application **must** contain the following:

- The election for which the ballot is being requested, **unless the voter elects to complete the “Permanent Absentee Option” section of the form.**
- The applicant’s printed name, and the **last four digits** of the applicant’s **social security number.**
- The applicant’s residence address in Virginia.

<sup>2</sup> Virginia Absentee Ballot Application Form at 1, *available at* <https://www.elections.virginia.gov/media/formswarehouse/absentee-voting/applications/SBE-701-703-1-rev-7-12-21.pdf> (last accessed Oct. 19, 2021).

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.* at 2 (emphasis added).

<sup>5</sup> Virginia Vote by Mail Application Form, <https://www.elections.virginia.gov/media/castyourballot/SBE-701-703.1.pdf> (last accessed Oct. 19, 2021).

- Unless the applicant is disabled, all applications for absentee ballots must be signed by the applicant.<sup>6</sup>

13. Only an applicant who completes the absentee ballot application “in person” shall not be required to provide the last four digits of his Social Security number. Va. Code § 24.2-701(C)(1).

14. Thus, Virginia code unambiguously requires applicants who submit applications for absentee ballots by mail, electronic means, or facsimile device must provide the last four digits of their Social Security numbers. Va. Code § 24.2-701(C)(1). This requirement is designed to protect the right to vote by ensuring that only the eligible voter may obtain an absentee ballot in his or her name.

#### **General Registrar’s Duties on Receipt of Absentee Ballot Applications**

15. Virginia law provides, “On receipt of an application for an absentee ballot, the general registrar shall enroll the name and address of each registered applicant on an absentee voter applicant list that shall be maintained in the office of the general registrar with a file of the applications received. Va. Code § 24.2-706(A).

16. Virginia law provides further that the “general registrar shall,” at the appropriate time, send absentee ballot materials to the applicant, “[i]f the application has been *properly completed* and signed and the applicant is a registered voter of the precinct in which he offers to vote ....” Va. Code § 24.2-706(C) (emphasis added).

17. An absentee ballot application that omits statutorily required information—including the last four digits of the applicant’s Social Security number—is not properly completed.

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<sup>6</sup> Chapter 7.7.1.3, Virginia Department of Elections Handbook, available at [https://www.elections.virginia.gov/media/grebhandbook/2021-updates/7\\_Absentee\\_Voting\\_\(2020\)revisedcode.pdf](https://www.elections.virginia.gov/media/grebhandbook/2021-updates/7_Absentee_Voting_(2020)revisedcode.pdf) (last accessed Oct. 18, 2021).



18. The general registrar may not send absentee ballot materials to applicants who have not properly completed the absentee ballot application, including those applicants who have not included the last four digits of their Social Security number.

**Defendants Are Accepting and Approving Absentee and Mail-in Ballot Applications that Do Not Include Statutorily Required Information**

19. Defendants are accepting and approving absentee and mail-in applications that do not include any Social Security numbers.

20. As of October 14, 2021, Defendants have accepted and approved approximately and at least 339 absentee and mail-in ballot applications that do not include the required portion of Social Security numbers. *See* Affidavit of Christine Brim ¶¶ 3-12 (attached).<sup>7</sup>

21. Defendants plan to and will send mail-in and absentee ballots to these applicants for the November 2, 2021 General Election.

22. Defendants continue to accept and approve incomplete applications for mail-in and absentee ballots.

**Defendants' Actions Harm Plaintiff**

23. Defendants' disregard of the SSN Requirement violates the Virginia Constitution and Virginia Statutes.

24. VIPP has devoted substantial time and resources to the promotion of election integrity and compliance with Virginia's election administration laws, in order to ensure that elections are conducted lawfully, and election outcomes are reliable, accurate, and just.

25. Defendants' disregard of the SSN Requirement undermines and frustrates VIPP's election-related efforts and activities.

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<sup>7</sup> "An application for a temporary injunction may be supported or opposed by an affidavit or verified pleading." Va. Code § 8.01-628.

26. VIPP's has a unique interest in the 2021 General Election because it opposes the school bond question that will appear on the ballot. VIPP has a unique interest in preserving the effectiveness of its efforts and activities with respect to administration of the election and voting on the school bond question and in ensuring the 2021 General Election outcome is reliable, accurate, and just.

27. Defendants' disregard of the SSN Requirement undermines and frustrates VIPP's efforts and activities related to the 2021 General Election and the school bond question.

28. Defendants' disregard of the SSN Requirement also jeopardizes the legitimacy of voting on the school bond question because, absent relief, registrants who did not properly complete an absentee or mail-in ballot application as required by Virginia law will be permitted to vote on the school bond question by mail-in ballot illegally.

29. Absent relief, VIPP will be forced to devote additional time and resources after the election to discussion, planning, and cataloging the scope of illegally cast mail-in votes on the school bond question and to counteract the impact of Defendants' unlawful actions.

30. Those resources would otherwise be spent on mission-related programming and education.

#### **Prayer for Relief**

WHEREFORE the Plaintiff moves the Court for an order:

1. Declaring Defendants actions to be in violation of the Article I, Section 7 of the Constitution of Virginia, Virginia's Anti-Suspension Clause.

2. Declaring Defendants' actions to be in violation of Virginia Code Sections 24.2-701(C)(1) and 24.2-706(C).

3. Preliminarily and permanently enjoining the Defendants from continuing to violate the Constitution of Virginia, Virginia Statutes, and any other relevant authorities with respect to absentee and mail-in applicants and ballots.

4. Preliminarily and permanently enjoining the Defendants from sending absentee and mail-in ballots to any applicant who did not follow Virginia law and include the last four digits of his or her Social Security number on the application.

5. Preliminarily and permanently enjoining Defendants from approving additional absentee and mail-in ballot applications that do not comply with Virginia law and include the last four digits of the applicant's Social Security number and from enrolling applicants who submit such applications.

6. Ordering Defendants to collect the last four digits of Social Security numbers from applicants who submitted an application without that information and who have already been issued an absentee or mail-in ballot.

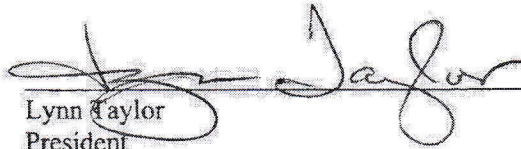
7. Affording any other relief this Court deems just and proper.



**VERIFICATION**

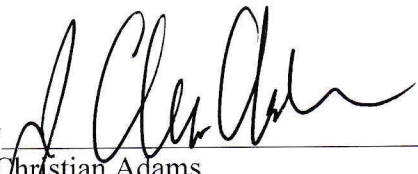
Pursuant to Va. Code § 8.01-4.3, I verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: October 19, 2021.

A handwritten signature in cursive script, appearing to read "Lynn Taylor", written over a horizontal line.

Lynn Taylor  
President  
Virginia Institute for Public Policy

Dated: October 20, 2021.

By   
\_\_\_\_\_  
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COUNSEL FOR PLAINTIFF VIPP

VIRGINIA

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**Scott O. Konopasek**, in his capacity as Director of the Office of Elections and General Registrar for Fairfax County, **Stephen M. Hunt**, in his capacity as Chairman of the Fairfax County Electoral Board, **Bettina M. Lawton**, in her capacity as Vice-Chairman of the Fairfax County Electoral Board, **Katherine K. Hanley**, in her capacity as Secretary of the Fairfax County Electoral Board,

*Defendants.*

Case No. \_\_\_\_\_

2021-14420

**AFFIDAVIT OF CHRISTINE BRIM**

Commonwealth of Virginia §  
  §  
County of Fairfax §

BEFORE ME, the undersigned personally appeared Christine Brim who, swore the following:

1. My name is Christine Brim. I am over 18 years of age, of sound mind, and competent to make this affidavit. I have personal knowledge of the facts stated herein, and they are true and correct to the best of my knowledge.
2. I am resident and registered voter of Fairfax County, Virginia.
3. On October 10, 2021, Fairfax County Electoral Board Chairman Stephen M. Hunt confirmed to me by email that the Fairfax County General Registrar had instituted a procedure to approve absentee ballot applications on which the applicant has not provided the last four digits of his or her Social Security number.



4. Between October 11 and 14, 2021, I inspected approximately 339 approved absentee and mail-in ballot applications submitted to that the Fairfax County General Registrar that do not include the required last four digits of the applicant's Social Security number.

5. Prior to the inspection, on October 8, 2021, I wrote to Fairfax County General Registrar Scott Konopasek ("Registrar Konopasek") by email to request the opportunity to inspect all absentee ballot applications that do not include full or partial Social Security numbers, and which were received on or after September 29, 2021.

6. On October 8, 2021, I again wrote to Registrar Konopasek to clarify that I wished to inspect only absentee ballot applications that were submitted by mail.

7. On October 8, 2021, Registrar Konopasek wrote me an email in which he indicated he would facilitate my request to inspect absentee ballot applications the following week.

8. On October 9, 2021, I wrote to Fairfax County Electoral Board Chairman Stephen M. Hunt by email to ask whether Fairfax County was approving absentee ballot applications on which the applicant has not provided the last four digits of his or her Social Security number.

9. On October 10, 2021, Chairman Hunt wrote me an email in which he confirmed that the Fairfax County General Registrar's office was approving absentee ballot applications on which the applicant has not provided the last four digits of his or her Social Security number.

10. On October 11, 2021, I visited the Fairfax County General Registrar's office to inspect absentee ballot applications that were submitted by mail on or after September 29, 2021. The General Registrar's office presented me with, and I inspected, approximately 265 applications that did not include the required portion of the applicant's Social Security number.

11. On October 14, 2021, I again visited the Fairfax County General Registrar's office to inspect absentee ballot applications that were submitted by mail on or after September 29, 2021. The General Registrar's office presented me with, and I inspected, an additional 74

applications that did not include the required portion of the applicant's Social Security number, bringing the total number of inspected applications to 339.

12. All 339 inspected applications without the required portion of the Social Security numbers inspected are marked as "accepted" and are thus approved.

13. During my October 14, 2021 visit, I was presented with approximately 50 additional approved applications without the required portion of the applicant's Social Security number, but did not have time to individually inspect each of those applications.

SIGNED this 19 day of October 2021.



Christine Brim

SUBSCRIBED and SWORN TO before me, the undersigned authority, on the 19th day of October 2021.



Notary in and for the Commonwealth of Virginia

