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October 11, 2023

BY EMAIL

Travis S. Andrews
Assistant Attorney General
Office of the Attorney General, Commonwealth of Virginia
202 North Ninth Street
Richmond, Virginia 23219
TAndrews@oag.state.va.us

Re: October 10, 2023 Letter - Cease and Desist Distribution of Misinformation to
Voters in Virginia

Mr. Andrews,

I write on behalf of my client, Look Ahead America, in response to your letter dated October 10, 2023. We appreciate your concern for the integrity of the upcoming elections in Virginia, and all the hard work that your office does in this regard. We must, however, express our respectful disagreement with your assertion that criminal penalties may be applicable to materials that you allege are from our client. Your letter alleges that criminal penalties under Va. Code §§ 24.2-1005 and 24.2-1005.1 may apply to these materials.

First, Va. Code § 24.2-1005.1 states:

It shall be unlawful for any person to communicate to a registered voter, by any means, false information, knowing the same to be false, intended to impede the voter in the exercise of his right to vote. The provisions of this section shall apply to information only about the date, time, and place of the election, or the voter's precinct, polling place, or voter registration status, or the location of a voter satellite office or the office of the general registrar.

This statute is plainly inapplicable here where my client is most clearly not intending to impede any voter in the exercise of his or her right to vote. Rather, my client is seeking to ensure that as many people vote in the upcoming election as possible.

Second, Va. Code § 24.2-1005, as quoted in your letter, applies to “any person who intimidates, threatens, or coerces, or attempts to intimidate, threaten, or coerce, any other person in giving his vote or ballot or who intimidates, threatens, or coerces, or attempts to intimidate, threaten, or coerce a voter to deter or prevent him from voting.”

Your letter generally alleges that “[s]ome of these materials contain statements that are intimidating or threatening to voters.” Specifically, you quote the following from the materials:

Failure to vote may result in a loss of: Social Security Income, Medicare Eligibility, Unemployment Benefits, Child Tax Credits and Child Custody Rights, Concealed Carry Permit. ...

Failure to vote may also result in seizure of personal assets, including but not limited to firearms, bank accounts, cars, and real estate. ...

[g]etting an absentee ballot . . . may prevent the loss of government benefits, tax credits, and seizure of your personal assets.

Your letter concludes “[t]hese statements are patently false and can serve no other purpose than to intimidate, threaten, or coerce a potential voter.” Therefore, you appear to have made two allegations: (1) these statements are false, and (2) these statements are meant to intimidate, threaten, or coerce a voter in giving his or her vote.

First, rather than being “patently false,” all the issues highlighted in my client’s materials are at issue in upcoming elections. Indeed, eligibility for social security income, Medicare eligibility, unemployment benefits, child tax credits, child custody rights, and whether a person has a right to a concealed carry permit could be changed by the individuals elected in coming elections. Apart from eligibility, both the Social Security Trust Fund and Medicare are projected to become insolvent within the decade. Far from being “patently false,” these statements remind voters of the importance of this election and voting to secure rights that may be important to them.

Moreover, other organizations engage in similar efforts to remind voters what issues are on the ballot. Mary Bauer, Executive Director of the Virginia ACLU, on October 6, 2023, stated: “It’s hard to imagine an election that’s more important than this one... the issues that you care about, abortion, LGBTQ rights, voting [rights,] those issues are all on the ballot this year.”¹ The ACLU of Virginia’s website also states: “This year, your vote matters up and down the ballot, from big races making headlines all the way to local school board elections ... because whether we’re talking abortion, classroom censorship, LGBTQ+ rights, or criminal legal reform, Virginia is a beacon and a leader in the South. But to keep it that way, we have to vote on Nov. 7.”² These messages are akin to my client’s message about

¹ <https://www.youtube.com/watch?v=5wONR5qfHdw>

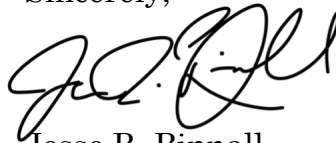
² <https://www.acluva.org/en/voters-rights>

getting out to vote because of key issues that could be changed by the next elected representatives.

Second, my client's materials are not intimidating or threatening any individual to give their vote to a specific candidate or to give their vote in support of a specific issue, and the materials are clearly not seeking to prevent anyone from voting. Rather, the materials distributed are encouraging people to cast a vote because important issues that are likely important to all Virginia citizens are at issue in this election. Pursuant to its nonprofit status with the Internal Revenue Service, my client is allowed to distribute information to voters and engage in nonpartisan get-out-the-vote activities. Communications such as these are squarely within the protections of the First Amendment, as they are disseminating nonpartisan political information for voters about issues presented in upcoming elections.

If you disagree with our assessments of these statutes and their applicability to my clients' materials, please feel free to respond as soon as possible or reach out directly to set up a time to meet and discuss the materials at issue. Given the impending elections, I expect a timely response as your letter is interfering with the actions of a nonprofit and election related activities.

Sincerely,

A handwritten signature in black ink, appearing to read "Jesse R. Binnall", written in a cursive style.

Jesse R. Binnall

cc: Commissioner of Elections Susan Beals, Susan.Beals@elections.virginia.gov
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