



LOOK AHEAD AMERICA

Date: October 19, 2023
For Immediate Release

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LAA Takes Legal Action Against Virginia Attorney General

Washington DC — In response to the Virginia Attorney General’s decision to prevent Look Ahead America (LAA) from telling voters the truth about the cost of failing to vote, LAA has taken legal action. This morning, LAA’s attorneys have filed a motion for a preliminary injunction and a temporary restraining order against Virginia’s Attorney General in Federal Court along with a lawsuit for violating the organization’s first amendment rights.

LAA’s Executive Director Matt Braynard made the following statement:

Our Founders knew that speaking the truth could be dangerous, and they enshrined the protections for speech in our First Amendment for exactly that reason.

Unfortunately, Virginia’s Attorney General has taken action to deny our organization’s right to speech at a critical moment: when we are educating Virginia voters about the rights and benefits that they put at risk when they fail to vote. Not only has the Attorney General violated our First Amendment rights, he has done so by wildly misapplying Virginia law. This precedent would have a chilling effect not only on our political speech but the speech of others as well.

Our organization has never been afraid to speak out when others chose to remain silent. We were the first to demand justice for the January 6th protesters who were being unfairly persecuted by the US Department of Justice when we petitioned the DOJ and FBI for charges to be dropped against nonviolent offenders all the way back in January of 2021. We have led the way demanding election integrity that has resulted in convictions and criminal referrals for violating election laws.

And now we have taken steps to protect not only our First Amendment rights but the First Amendment rights of all Virginians with our legal action against the Attorney General.

Our nation will not be saved by cowards. America First, America Forever.

The legal filings can be found at <https://LookAheadAmerica.org/VALawsuit>. Matt Braynard is available for interviews. Please reach out to Julie Fisher at julie.fisher@lookaheadamerica.org or at 202.709.6252.

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and his office are in violation of the First Amendment to the United States Constitution in attempting to silence Plaintiff's messaging.

4. Second, Plaintiff will be irreparably harmed in the absence of a preliminary injunction. Should this enforcement be allowed, it would chill not only Look Ahead America's free speech but also that of anyone else who is emphasizing the importance of voting due to critical issues on the upcoming ballots.

5. Third and fourth, the balance of the equities and the public interest are in favor of a preliminary injunction. Defendant faces no harm if a preliminary injunction is entered awaiting a determination of constitutionality. In addition, the public interest weighs strongly in favor of granting Plaintiff's motion. The public certainly has a strong interest in protecting the freedom of speech and ensuring that criminal laws do not overstep into protected territory. Moreover, the public has an interest in having clear and comprehensible laws on the books that are not unnecessarily vague and difficult to understand and follow.

STATEMENT OF FACTS SUPPORTING EXPEDITED HEARING

6. Plaintiff seeks only to preserve the *status quo*. A temporary restraining order and expedition are essential because Defendants seek to silence Plaintiff's efforts in the shadow of an election occurring in weeks. An immediate temporary restraining order and ruling on this motion for preliminary injunction is necessary as soon as possible to preserve get out the vote efforts of Plaintiff. If this occurs, Plaintiff will be irreparably harmed as the election will occur without critical efforts to encourage voters to vote before the election.

WHEREFORE, Plaintiff respectfully moves this Court for a temporary restraining order and preliminary injunction prohibiting Defendants from enforcing Va. Code §§ 24.2-1005.1 and 24.2-1005 until this Court can issue a final judgment.

Dated: October 18, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing was electronically filed with the Clerk of Court using the Court's CM/ECF system, which will cause a copy to be sent to all counsel of record.

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Attorney for Look Ahead America

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The Office of the Attorney General for the Commonwealth of Virginia (“VA OAG”) has threatened imminent criminal prosecution of Plaintiff Look Ahead America and its staff and volunteers due to their protected First Amendment Activities. Indeed, Look Ahead America is engaged in community outreach aimed at informing the electorate about important issues that are at stake in upcoming elections and informing them about how they can get out to vote in the election.

Contrary to the VA OAG’s threadbare contentions, the materials at issue in this case are not intimidating or threatening to anyone. Rather, they are informing voters, in emphatic terms, of the rights that could be lost depending on the officials elected in the impending elections. Indeed, Look Ahead America is not encouraging any voter to give their ballot or vote in support of a specific candidate or to give their vote in support of a specific issue. Look Ahead America is encouraging all Virginians to vote in the impending elections. Judicial intervention is urgently needed because the VA OAG has indicated that enforcement is likely imminent, silencing get out the vote efforts in the shadow of the Virginia 2023 general elections taking place in only a couple of weeks.

Therefore, Look Ahead America requests that the Court promptly schedule a hearing and enter a preliminary injunction prior to October 26, 2023, prohibiting the Virginia Attorney General’s Office from enforcing Va. Code §§ 24.2-1005.1 and 24.2-1005 against Look Ahead America. This will permit the court time to reach a final decision on the merits of this critical constitutional dispute, while preventing the chilling of speech before the upcoming Virginia election. Plaintiff thus respectfully

requests that the Court grant an immediate temporary restraining order and rule on the motion for preliminary injunction as soon as possible.

BACKGROUND

Recently, Look Ahead America began distributing political materials highlighting issues in the upcoming elections and encouraging voters to vote. Exhibit A. The upcoming election has the possibility of impacting 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. Thus, the materials serve as a reminder of these important issues and why it is important to vote. Further, the materials provide guidance on the various methods for voting in the upcoming election.

Shockingly, on October 10, 2023, Defendant issued a letter to Look Ahead America asserting that it was in violation of two Virginia criminal code sections. Exhibit B. Specifically, the letter alleges that criminal penalties under Va. Code §§ 24.2-1005 and 24.2-1005.1 may apply to these materials. Accordingly, Look Ahead America, through counsel, responded to this letter with a letter of its own on October 15, 2023. Exhibit C. In the letter, Look Ahead America explained that the statutes are inapplicable because the materials did not seek to impede any voters, rather, they encouraged people to vote. Look Ahead America further explained that the materials were not “patently false,” because the issues addressed in the materials are at issue in this upcoming election and did not intimidate or threaten any individual to give their vote to a specific candidate or in support of a specific issue.

Counsel for Look Ahead America met with Defendant on October 17, 2023, to address these concerns. Unfortunately, the parties were not able to come to an agreement. Accordingly, Look Ahead America now moves for a preliminary injunction prohibiting Defendants from enforcing Va. Code §§ 24.2-1005.1 and 24.2-1005 until the Court can issue a final judgment.

ARGUMENT

In Virginia, a court “may not grant injunctive relief unless a party has shown that party would suffer irreparable harm without the injunction, and that the party has no adequate remedy at law.” *May v. R.A. Yancey Lumber Corp.*, 297 Va. 1, 17–19 (2019) (citing *Wright v. Castles*, 232 Va. 218, 224 (1986)). Indeed, “[a] temporary injunction allows a court to preserve the status quo between the parties while litigation is ongoing. *Id.* (citing *Iron City Sav. Bank v. Isaacsen*, 158 Va. 609 (1932)).

A plaintiff seeking a preliminary injunction generally 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) that the balances of equities tip in his favor, and (4) that the injunction is in the public interest. *See Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 21 (2008)).

Plaintiff satisfies the four-factor test for a preliminary injunction. Plaintiff is likely to prevail on the merits of its constitutional claims, will likely suffer irreparable harm in the absence of a preliminary injunction preserving the status quo, and the balance of harms and public interest favor interim relief.

I. Look Ahead America is Likely to Succeed on the Merits.

Look Ahead America is likely to succeed on the merits of its claims that the statutes at issue are inapplicable or unconstitutional as written or applied.

a. Va. Code § 24.2-1005.1 facially does not apply to Look Ahead America's materials.

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 facially inapplicable here where Look Ahead America is obviously not intending to impede any voter in the exercise of his or her right to vote. Rather, Look Ahead America is seeking to ensure that as many people vote in the upcoming election as possible. Even the Virginia Attorney General's Office was unable to point to any instance of materials distributed by Look Ahead America that was not an attempt to get *more people to vote*. Therefore, this statutory section is plainly inapplicable, and the Virginia Attorney General's Office's threat of enforcement is a violation of the First Amendment as it is attempting to silence a nonprofit from performing voter education and outreach that is not prohibited by this statute.

b. Va. Code § 24.2-1005 is similarly inapplicable.

Va. Code § 24.2-1005 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.” This creates a plain reading requiring a finding that a person (1) intimidated, threatened, or coerced, (2) another person in the giving of their ballot or to deter a person from voting.

As discussed above, no reasonable reading of the materials at issue from Look Ahead America could find that they were attempting to deter any person from voting. Therefore, the only issue presented here is whether the materials constitute intimidation, threats, or coercion and whether those messages were in conjunction with a voter’s giving of their vote.

The Office of the Attorney General singled out two sections of Look Ahead America’s materials in its cease-and-desist letter. Indeed, their letter claimed “[s]ome of these materials contain statements that are intimidating or threatening to voters.” Exhibit B. Specifically, the letter quoted 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.

Exhibit B. The letter then concludes “[t]hese statements are patently false and can serve no other purpose than to intimidate, threaten, or coerce a potential voter.” *Id.*

First, rather than being “patently false,” all the issues highlighted in Look Ahead America’s materials are at issue in upcoming elections. Indeed, eligibility for

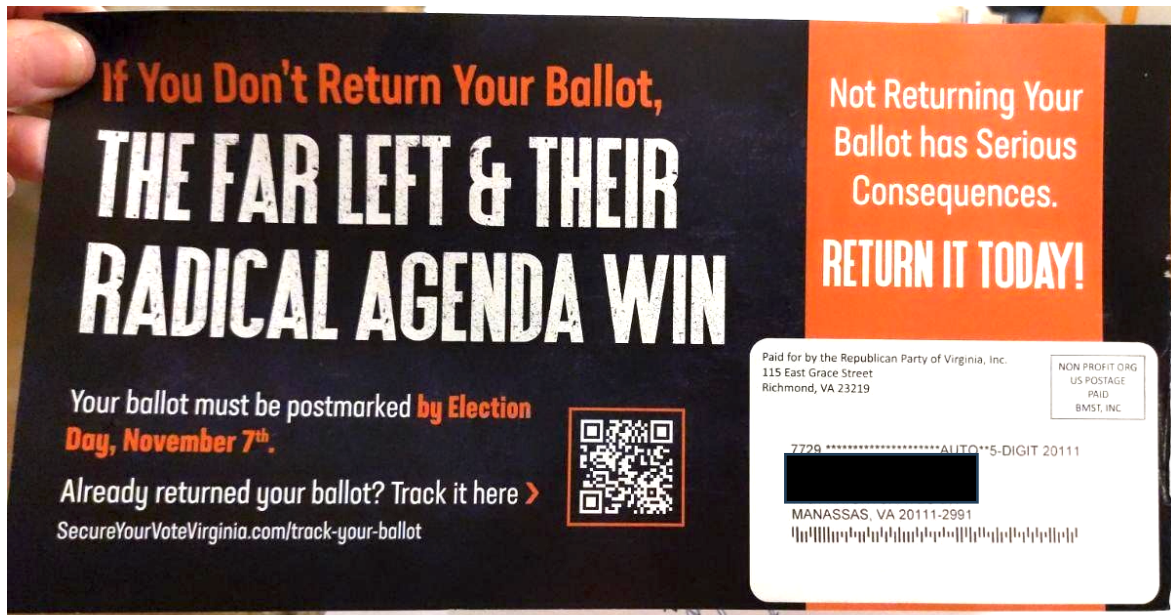
social security income, Medicare eligibility, unemployment benefits, child tax credits, child custody rights, and whether a person has a right to a concealed carry permit could be changed by the individuals elected in coming elections. Apart from eligibility, both the Social Security Trust Fund and Medicare are projected to become insolvent within the decade. Far from being “patently false,” these statements remind voters of the importance of this and future elections 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 Look Ahead America’s message about the importance of getting out to vote because of key issues that could be changed by the next elected representatives.

¹ ACLU of Virginia, *Mary Bauer: Get Out and Vote in this Unprecedented Election!*, YOUTUBE (Oct. 6, 2023), <https://www.youtube.com/watch?v=5wONR5qfHdw>.

² *Virginia Elections 2023*, ACLU OF VIRGINIA, <https://www.acluva.org/en/voters-rights> (last visited Oct. 18, 2023).

The Republican Party of Virginia similarly uses emphatic language in its mailers to inform voters about important issues that could be impacted by the impending elections, including: “Biological boys competing against biological girls in high school sports,” “Abortions up until the moment of birth,” and “Early release for violent criminals”:



These mailers state: “Not Returning Your Ballot Has Serious Consequences. RETURN IT TODAY!” The Virginia Office of the Attorney General’s reading of the statutes could endanger all these statements from the ACLU and the Republican Party of Virginia, and countless other organizations who attempt to get out the vote, as discussed in more detail below.

Second, Look Ahead America’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. 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. Moreover, it is nonsensical for the Virginia Attorney General’s Office to state that these messages are threatening at all since an organization can have no ability or intent to take away the rights enumerated. It is only the federal or state governments that may take away these rights as is commonly known by voters and the law, of which every person is presumed to be aware. Therefore, this statutory section is inapplicable, and the Virginia Attorney General’s Office’s threat of enforcement is a violation of the First Amendment as it is attempting to silence a nonprofit from performing voter education and outreach that is not prohibited by this statute.

c. If Va. Code § 24.2-1005 is applicable, then it would be rendered unconstitutional.

If this Court were to find that Va. Code § 24.2-1005 applies, then it is likely that the statute is rendered unconstitutional by its overbreadth and chilling effect under the First Amendment or because it is unconstitutionally vague.

The First Amendment to the United States Constitution provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. I. An individual's rights to speak, assemble, and petition the government for redress of grievances are afforded the strongest presumption against infringement. *See Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 816 (1984) (“[P]olitical speech is entitled to the fullest possible measure of constitutional protection.”). Moreover, “speech on ‘matters of public concern’ . . . is ‘at the heart of the First Amendment’s protection.’” *Snyder v. Phelps*, 562 U.S. 443, 451–52 (2011) (quoting *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 758–59 (1985)).

Indeed, the First Amendment reflects “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” *Snyder*, 562 U.S. at 452. That is because “speech concerning public affairs is more than self-expression; it is the essence of self-government.” *Id.* Accordingly, “speech on public issues occupies the highest rung of the hierarchy of First Amendment values and is entitled to special protection.” *Id.*

“The primary question is whether the message conveyed . . . was of such a nature as to come within the ambit of the First Amendment Protection, or whether it must be placed in the categories of speech which the Supreme Court has held are not protected.” *Allen v. District of Columbia*, 187 A.2d 888, 889 (D.C. 1963) (citing *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942)).

Here, the message contained in Look Ahead America’s materials was that there is an upcoming election, and there are many important issues and rights that could be impacted by the results. Therefore, Look Ahead America is encouraging all voters to get out to vote on the issues they care about and the rights they want to protect.

The only allegation made by the Virginia Attorney General’s Office is that this message is somehow “threatening”. They have not even specified whether this supposed threat is to deter or coerce votes. The United States Supreme Court recently revisited the doctrine of true threats that are outside the protection of the First Amendment. *Counterman v. Colorado*, 600 U.S. 66 (2023). Indeed, the Supreme Court affirmed that “[t]rue threats of violence are outside the bounds of First Amendment protection and punishable as crimes.” *Id.* at 69. In this case, the Court found that a true threats exception requires a showing that a Defendant have at least a mental state of recklessness for a statute to be constitutional. *Id.*

The *Counterman* Court delved into the history of the true threats doctrine, finding that “[t]rue threats are ‘serious expression[s]’ conveying that a speaker means to ‘commit an act of unlawful violence.’” *Id.* at 74 (citing *Virginia v. Black*, 538 U.S. 343, 359 (2003)). Indeed, the Court held that “[t]rue threats subject individuals to ‘fear of violence’ and to the many kinds of ‘disruption that fear engenders.’” *Id.* (citing *Black*, 538 U.S. at 360).

One of the reasons First Amendment protections exist is to prevent “[t]he speaker’s fear of mistaking whether a statement is a threat; his fear of the legal

system getting that judgment wrong; his fear, in any event, of incurring legal costs” leading him to “swallow words that are in fact not true threats.” *Id.* at 78.

This case is a clear example of something that is not a threat of violence, as the materials are only making people aware that they could lose certain rights and that certain issues could be impacted by the impending elections. Indeed, there is no indication that any action, violent or otherwise, would be taken against them whether they vote or not. At worst, the message in these materials is that if you do not vote, then you could lose these rights. That message is simply not a threat of any action that would be taken on the part of Look Ahead America and is certainly not a threat of violence.

As discussed above, each of the issues identified in the materials is indeed an issue that the impending elections will affect. So, the statements are not false, and therefore are not outside the First Amendment protections due to falsity. Therefore, there is no exception that would apply to prevent Look Ahead America’s statements from being protected under the First Amendment.

As to vagueness, “[a]n enactment may be found void for vagueness under either of two related theories . . . [1] if a statute ‘fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits’ . . . [or 2] if ‘it authorizes or even encourages arbitrary and discriminatory enforcement.’” *Boyd v. Cnty. of Henrico*, 42 Va. App. 495, 517 (2004) (citing *Hill v. Colorado*, 530 U.S. 703, 732 (2000)).

When making the determination “whether a criminal statute provides fair warning of its prohibitions,” a court must look to “the basis of the statute itself and the other pertinent law, rather than on the basis of an *ad hoc* appraisal of the subjective expectations of particular defendants.” *Id.* (citing *Bouie v. Columbia*, 378 U.S. 347, 355 n.5 (1964)). Indeed, the “proper test focuses on whether a reasonable person could have understood what the . . . ordinance literally proscribed. *Id.* (citing *Hill*, 530 U.S. at 733). Notably, the inclusion of a “scienter requirement” can protect a law from a vagueness challenge. *Id.*

Here, the statute plainly does not provide people of ordinary intelligence a reasonable opportunity to understand what conduct it permits because it is exceptionally vague. While this may be the intent with a statute of this nature to allow it to sweep up many things, this particular statute has passed the point of no return. The vague wording, particularly in conjunction with the Virginia Office of the Attorney General’s broad interpretation, would allow it to apply to almost any get-out-the-vote effort. Convincing voters to exercise their franchise is inherently an attempt to get them to vote their ballot generally and involves some message about a compelling reason to do so, often citing the high stakes in the election. Indeed, the ACLU example discussed above included similar messaging about the potential loss of abortion and voting rights if you fail to vote.³ The Republican Party of Virginia tells voters that failure to cast their ballot has “serious consequences,” it lists out various consequences—such as “[e]arly release for violent criminals”—and tells the voter:

³ *Supra*, nn. 1–2.

“RETURN [YOUR BALLOT] TODAY!”⁴ In either case, the messaging about the high stakes of an election, and the potential consequences of sitting out the election are just as easily swept up by the vagueness of § 24.2-1005.

The second test for vagueness also applies here. A statute may be found to be unconstitutionally vague where it authorizes or even encourages arbitrary and discriminatory enforcement. Here, it is readily apparent that this statute would authorize discriminatory enforcement based on the views and potentially even the politics of the persons in the Virginia Attorney General’s Office. Whether a political message is “threatening,” “coercive,” or “intimidating” is often difficult to review objectively. While some persons of a belief may find something threatening, others would not. The exceptional vagueness left open here would allow and encourage the selective enforcement of this statute. Therefore, should the interpretation that the Virginia Office of the Attorney General advances be accepted, then the statute would be unconstitutionally vague and must be struck down.

II. Look Ahead America will suffer irreparable harm.

Look Ahead America will suffer irreparable harm if this Court does not issue an order preventing enforcement by the Virginia Office of the Attorney General. As outlined in the October 10, 2023, letter and reiterated during the October 17, 2023, meeting between Look Ahead America’s counsel and the Virginia Office of the Attorney General, the Virginia Office of the Attorney General intends to enforce this section regardless of any issues pertaining to free speech. This enforcement would

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chill not only Look Ahead America's free speech but also that of anyone else who is emphasizing the importance of voting due to critical issues on the upcoming ballots.

This chilling of speech will especially cause irreparable harm as the election is approaching in only two weeks, and this threat would silence critical get-out-the-vote efforts in those last weeks. This is the definition of an irreparable harm. Unless this Court grants an injunction, there would be no way to remedy the loss of get-out-the-vote efforts over the next weeks before this election.

III. Balance of the Equities and Public Interest Favor Injunction.

The balance of equities and public interest also favors granting Look Ahead America's motion. "These factors merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). Unlike the irreparable harm Look Ahead America will suffer absent interim relief, there is no harm to the Virginia Office of the Attorney General by preventing enforcement of these statutes while it is determined if they are constitutional so as to prevent interference in the upcoming elections.

In addition, the public interest weighs strongly in favor of granting Plaintiff's motion. The public certainly has a strong interest in protecting the freedom of speech and ensuring that criminal laws do not overstep into protected territory. Moreover, the public has an interest in having clear and comprehensible laws on the books that are not unnecessarily vague and difficult to understand and follow. The Constitution entrusts this Court to determine whether these statutes and the Virginia Office of the Attorney General's interpretation of them are constitutional and enforceable.

CONCLUSION

Plaintiff respectfully moves this Court for an immediate temporary restraining order and a preliminary injunction prohibiting Defendants from enforcing Va. Code §§ 24.2-1005.1 and 24.2-1005 until the Court can issue a final judgment.

Dated: October 18, 2023

Respectfully submitted,

/s/ Jason C. Greaves

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that the foregoing was electronically filed with the Clerk of Court using the Court's CM/ECF system, which will cause a copy to be sent to all counsel of record.

/s/ Jason C. Greaves

Jason C. Greaves, VA Bar No. 86164

Attorney for Look Ahead America

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

LOOK AHEAD AMERICA, INC.,

Plaintiff,

v.

JASON S. MIYARES,
ATTORNEY GENERAL FOR THE
COMMONWEALTH OF VIRGINIA,
in his official capacity,

Defendant.

Case No. 1:23-cv-1421

COMPLAINT

1. Plaintiff Look Ahead America brings this civil action seeking declaratory and injunctive relief pursuant to 42 U.S.C. § 1983, for violations of the First Amendment to the United States Constitution, and the Declaratory Judgment Act, 28 U.S.C. § 2201.

PARTIES

2. Plaintiff Look Ahead America, Inc. is a 501(c)(3) nonprofit entity incorporated in Washington, D.C. Look Ahead America engages in community outreach including education of voter’s rights and responsibilities and get-out-the-vote activities.

3. Defendant Jason S. Miyares is the Attorney General for the Commonwealth of Virginia.

JURISDICTION AND VENUE

25. This Court has subject-matter jurisdiction because this case arises under the Constitution and laws of the United States. 28 U.S.C. § 1331. This Court has jurisdiction to grant both declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202.

26. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiff's claim have occurred, and are occurring, in this District.

PERTINENT FACTS

4. The Defendant has threatened to bring an enforcement action against Plaintiff Look Ahead America and its staff and volunteers because of protected First Amendment Activity undertaken surrounding the 2023 Virginia elections.

5. On October 10, 2023, the Defendant sent a letter to Look Ahead America requesting that it cease and desist from distributing certain election materials. Exhibit B. The materials are attached at Exhibit A.

6. The next day, October 11, 2023, undersigned counsel responded to the letter from the Virginia Attorney General's Office explaining how the statutes cited are inapplicable and requesting a meeting to discuss the issues presented by the letter. Exhibit C.

7. On October 12, 2023, the Defendant responded that it was willing to meet to discuss the issues presented by its letter.

8. On October 17, 2023, undersigned counsel met with representatives of Defendant. During this meeting an agreement could not be reached as to the appropriate scope of the statutes cited by the Defendant and his office.

9. During this meeting, Defendant's representatives expressly indicated that they could not provide any legal opinion as to other language that would be acceptable, but Plaintiff could submit a request for an opinion from the Attorney General's Office. This, however, they could not promise would be provided in a timely fashion.

10. Moreover, Defendant's representatives represented that they reserved the right to bring criminal charges against not only Look Ahead America as an entity but also against its volunteers that were handing out the election related materials.

11. Due to this threat of imminent legal action chilling Look Ahead America's First Amendment rights, Look Ahead America brings this Complaint and subsequently filed motion for preliminary injunction seeking injunctive and declaratory relief against any enforcement action by the Defendant.

COUNT I

42 U.S.C. § 1983

(violation of First Amendment to the United States Constitution)

12. Plaintiff incorporates all prior allegations as if contained herein.

13. Defendant has sought to enforce Va. Code §§ 24.2-1005.1 and 24.2-1005 against Look Ahead America based on protected First Amendment activity, specifically the distribution of education information about the importance of voting in elections and how to vote.

14. The Defendant's interpretation of these statutes is overbroad and chills the freedom of speech guaranteed by the Virginia Constitution.

15. Indeed, 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.

16. This plainly does not apply to Look Ahead America who has in no way intended to impede any voter in the exercise of his or her right to vote. Instead, Look Ahead America is encouraging every voter to vote and providing information about how to vote.

17. Moreover, Va. Code § 24.2-1005 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."

18. Look Ahead America is not intimidating or threatening any individual to give their ballot or 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,

Look Ahead America is allowed to distribute information to voters and engage in nonpartisan get-out-the-vote activities.

19. 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.

20. The Defendant's Office's threat of enforcement is chilling First Amendment protected speech and is ripe for consideration of injunctive and declaratory relief before this Court.

COUNT II

Declaratory Judgment Act

21. Plaintiff incorporates all prior allegations as if contained herein.

22. Pursuant to the Declaratory Judgment Act, Plaintiff seeks a determination from this Court of the legal rights of the parties as there is an imminent controversy that cannot otherwise be resolved.

23. Defendant has put Plaintiff in the untenable position of being silenced or being prosecuted. There is a live controversy at this point, which a decision from this Court would redress and resolve. The Defendant's Office's threat of enforcement is chilling First Amendment protected speech and is ripe for consideration of declaratory relief before this Court.

PRAYER FOR RELIEF

24. WHEREFORE, Plaintiff asks this Court to enter judgment in his favor and to provide the following relief:

- a. A declaratory judgment that Va. Code §§ 24.2-1005.1 and 24.2-1005 do not apply to the actions of Look Ahead America;
- b. In the alternative, a declaration that Va. Code §§ 24.2-1005.1 and 24.2-1005 are an unconstitutional violation of the First Amendment to the United States Constitution;
- c. A preliminary and permanent injunction enjoining the Defendant from enforcing Va. Code §§ 24.2-1005.1 and 24.2-1005 against Look Ahead America;
- d. Plaintiff's reasonable costs and expenses, including attorneys' fees, as permitted by law; and
- e. Such other and further relief as the Court may deem just and proper.

Dated: October 18, 2023

LOOK AHEAD AMERICA, INC.
By Counsel

Respectfully submitted,

/s/ Jason C. Greaves
Jason C. Greaves, VA Bar No. 86164
Jesse R. Binnall, VA Bar No. 79292
Jared J. Roberts, VA Bar No. 97192
BINNALL LAW GROUP, PLLC
717 King Street, Suite 200
Alexandria, Virginia 22314
Phone: (703) 888-1943
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jason@binnall.com
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jared@binnall.com

Attorneys for Plaintiff

EXHIBIT A

WARNING FROM VIRGINIA VOTER ASSISTANCE

According to government records, one or more residents at this address has failed to vote in recent elections.

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 the seizure of personal assets, including but not limited to firearms, bank accounts, cars, and real estate.

See the reverse side for steps you can take to cast your ballot in the upcoming election.

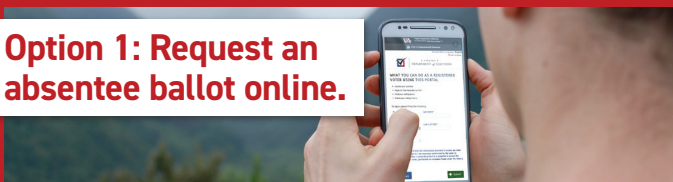


DEADLINE FOR RESPONSE IS PENDING

Instructions for Requesting an Absentee Ballot and for Voting In Person.

Getting an absentee ballot is free, easy, and can prevent the loss of government benefits, tax credits, and seizure of your personal assets. Choose any of the following options:

Option 1: Request an absentee ballot online.



You can make an online request for an absentee ballot to be mailed to you at Vote.Elections.Virginia.Gov/VoterInformation/Lookup/Absentee or scan this QR Code.

Option 2: Vote early in person.



You can vote in person at your local elections office or other designated early voting locations closer to you. Find addresses and hours at Vote.Elections.Virginia.Gov/VoterInformation/PublicContactLookup or scan this QR code.

Option 3: Vote on Election Day.



Election Day is on Tuesday, November 7th. You can find your local voting precinct at Vote.Elections.Virginia.Gov/VoterInformation/Lookup/Polling or you can scan this QR code. However, waiting to vote on Election Day is a dangerous risk since something can prevent you from making it to the polls at the last minute. We recommend Option 1 or Option 2 to ensure your vote is recorded.

**Virginia
Voter
Assistance**

You can text or call Virginia Voter Assistance at **571.648.8882**

Or email Help@VirginiaVoterAssistance.org

Other helpful information can be found at VirginiaVoterAssistance.org

Virginia Voter Assistance does not support or oppose candidates for public office.

WARNING FROM VIRGINIA VOTER ASSISTANCE

According to government records, one or more residents at this address has failed to vote in recent elections. Failure to vote may result in a loss of:

- Social Security Income
- Medicare Eligibility
- Unemployment Benefits
- Child Tax Credits and Child Custody Rights
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Failure to vote may also result in the seizure of personal assets, including but not limited to firearms, bank accounts, cars, and real estate.

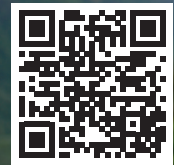
See the reverse side for steps you can take to cast your ballot in the upcoming election. ►

DEADLINE FOR RESPONSE IS PENDING

Instructions for Requesting an Absentee Ballot and for Voting In Person

Getting an absentee ballot is free, easy, and can prevent the loss of government benefits, tax credits, and seizure of your personal assets. Choose any of the following options:

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Option 2: Vote early in person.



You can vote in person at your local elections office or other designated early voting locations closer to you. Find addresses and hours at Elections.Virginia.Gov/Casting-a-Ballot/Early-Voting-Office-Locations/ or scan this QR code.

Option 3: Vote on Election Day.



Election Day is on Tuesday, November 7th. You can find your local voting precinct at Vote.Elections.Virginia.Gov/VoterInformation/Lookup/Polling or you can scan this QR code. However, waiting to vote on Election Day is a dangerous risk since something can prevent you from making it to the polls at the last minute. We recommend Option 1 or Option 2 to ensure your vote is recorded.

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Or email Help@VirginiaVoterAssistance.org

Other helpful information can be found at VirginiaVoterAssistance.org

EXHIBIT B



COMMONWEALTH of VIRGINIA
Office of the Attorney General

Jason S. Miyares
Attorney General

202 North 9th Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120

October 10, 2023

VIA EMAIL

Virginia Voter Assistance
(571) 648-8882

Help@VirginiaVoterAssistance.org

Re: Cease and Desist Distribution of Misinformation to Voters in Virginia

Dear Virginia Voter Assistance:

It has come to our attention that you are distributing election-related materials—including mailers, flyers, and door hangers—containing false and/or misleading information to voters in Loudoun, Prince William, and Fauquier Counties. Some of these materials contain statements that are intimidating or threatening to voters. For example, one of the messages states: “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.” It further states: “Failure to vote may also result in seizure of personal assets, including but not limited to firearms, bank accounts, cars, and real estate.” Another message states that “[g]etting an absentee ballot . . . may prevent the loss of government benefits, tax credits, and seizure of your personal assets.” These statements are patently false and can serve no other purpose than to intimidate, threaten, or coerce a potential voter.

We ask that you immediately cease and desist from distributing any materials that contain such intimidating, threatening, or coercive information. Continuing to distribute these communications may result in criminal penalties under various provisions of Title 24.2 of the Code of Virginia. *See, e.g.*, Va. Code §§ 24.2-1005 (“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 is guilty of a Class 1 misdemeanor.”); 24.2-1005.1 (“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.”).

Note that our request to cease and desist from this conduct applies to any Virginia localities in which you are distributing false, intimidating, or threatening election materials—not only to your activities in Loudoun, Prince William, and Fauquier Counties.

Please confirm acknowledgement of this letter within three (3) business days of receipt. Failure to acknowledge receipt of this letter, and failure to cease and desist from the unlawful conduct described herein, may result in criminal prosecution as described above.

Sincerely yours,



Travis S. Andrews
Assistant Attorney General

Cc: Look Ahead America (by certified mail and email, Info@LookAheadAmerica.org)
Commissioner of Elections Susan Beals (by email, Susan.Beals@elections.virginia.gov)

EXHIBIT C



**BINNALL
LAW GROUP**

P: 703-888-1943 • F: 703-888-1930
717 King Street, Suite 200 • Alexandria, VA 22314

Jesse R. Binnall
PARTNER

D: 571-467-6566
E: jesse@binnall.com

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.”

Office of Attorney General

October 11, 2023

Page 2 of 3

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>

Office of Attorney General

October 11, 2023

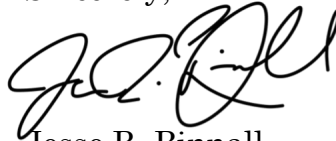
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getting out to vote because of key issues that could be changed by the next elected representatives.

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
Leslie A.T. Haley, LHaley@oag.state.va.us
Dennis W. Polio, DPolio@oag.state.va.us