

**VIRGINIA:  
IN THE CIRCUIT COURT OF RICHMOND CITY**

Matthan Wilson and Bryan Wright,

**Plaintiffs,**

**v.**

The Virginia State Board of Elections;  
Robert H. Brink in his official capacity as  
Chair of the Virginia State Board of  
Elections; John O'Bannon in his official  
capacity as Vice Chair of the Virginia  
State Board of Elections; Jamilah D.  
LeCruise in her official capacity as  
Secretary of the Virginia State Board of  
Elections; the Virginia Department of  
Elections,

**Defendants.**

**At Law No.** \_\_\_\_\_

**VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF  
AND PETITION FOR WRIT OF MANDAMUS**

Plaintiffs Matthan Wilson and Bryan Wright, by and through the undersigned attorneys, for their Verified Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandamus, allege as follows:

**INTRODUCTION**

1. Under Virginia's ballot qualification laws, before an independent candidate may be listed on the ballot, they must meet certain criteria and be qualified by the Virginia State Board of Elections (the "Board"). Among the criteria is the requirement that an independent candidate submit oaths from thirteen electors who pledge their support for the

candidate in the upcoming election (“Elector Oaths”), and a petition of at least 5,000 signatures of registered voters supporting the candidate’s inclusion on the ballot, including 200 voter signatures from each congressional district. In this way, Virginia ensures that ballots are not overcrowded with frivolous candidacies, and that candidates whose names are listed on the ballots presented to voters have at least “a modicum of voter support.” *Munro v. Socialist Workers Party*, 479 U.S. 189, 196 (1986).

2. This case involves Kanye West’s qualification to appear as an independent candidate for President of the United States on the Virginia ballot in the November 3, 2020 general election despite his clear failure to meet the minimum candidacy requirements.

3. The Virginia Department of Elections’ (the “Department”) decision to qualify West as a candidate was based on Elector Oaths that were obtained by fraudulent means and/or rife with violations of Virginia law and other disqualifying errors. Based on Plaintiffs’ review, *at least eleven of the thirteen* Elector Oaths submitted by West are invalid.

4. As of the date of this Complaint, Plaintiffs have obtained evidence demonstrating that at least three of the Elector Oaths were obtained under false pretenses. News reports indicate that number is even greater. In each of the three cases of fraud that Plaintiffs have confirmed, the elector has submitted an affidavit stating that they do not support West’s candidacy for President; they have not committed to voting for him in the November election; and they were misled into signing the Elector Oath because the person

who convinced them to sign either withheld information about what they were signing, or led them to believe that the Elector Oath had a different purpose. In addition to the three fraudulent oaths, another eight Elector Oaths are invalid for other disqualifying reasons.

5. Article 1, Section 6 of the Virginia Constitution provides that, in the Commonwealth, “all men . . . have the right of suffrage.” The affirmative guarantee of the right to vote, however, means nothing if a candidate can qualify for the ballot based on fraud, and injured members of the electorate are denied any meaningful recourse. As the Supreme Court of Virginia has long recognized, “the perpetuity of our institutions and the preservation of the liberty of the people depend upon honest and fair elections; and the highest public policy requires that the laws should be so framed and administered as to secure fair elections.” *Booker v. Donohoe*, 95 Va. 359, 367-68 (1897).

6. Defendants are gatekeepers of the Commonwealth’s democratic process and have a plain duty to ensure that the only candidates who appear on Virginia’s ballots are those who have met minimum ballot access qualifications under Virginia law. Furthermore, in this case, they have a clear duty to revisit and reverse their decision to qualify West’s candidacy and to take all appropriate action to ensure that the fraud that permeates the Elector Oaths does not taint the November presidential election.

7. The Virginia Department of Elections Handbook recommends that local registrars send ballots to printers 60 days before an election. This year, that deadline falls on September 4. Moreover, absentee ballots must be mailed no later than September 19,

2020. *See* Va. Code Ann. § 24.2-612; 42 U.S.C. § 20302(a)(8)(A). Thus, immediate injunctive relief is appropriate and necessary to protect Plaintiffs from serious, irreparable harm.

8. The Plaintiffs seek declaratory and injunctive relief and a writ of mandamus. Specifically, the Plaintiffs ask the Court to ensure the integrity of the democratic process and prevent serious and irreparable injury to them and the Virginia electorate by: (i) declaring that the notice of qualification issued by the Department of Elections to West as announced on August 28, 2020 is contrary to Virginia law, and therefore, invalid; (ii) declaring that the fraudulent and invalid Elector Oaths submitted by West do not count toward the statutorily required minimum to qualify the Petition; (iii) protecting the Plaintiffs and voters from further irreparable harm and requiring Defendants to fulfill their duty of safeguarding the integrity of Virginia elections by (a) ordering Defendants to strike fraudulent and invalid Elector Oaths from West's petition to qualify for the ballot; (b) enjoining Defendants from qualifying West's candidacy on the basis of any fraudulent or otherwise invalid Elector Oaths; and (c) enjoining the Board and their agents, officers, and employees, and any person who acts in concert therewith, from printing West's name on ballots for the November 2020 general election unless and until a thorough investigation establishes that he has met minimum statutory requirements to appear on the ballot.

## **JURISDICTION AND VENUE**

9. This Court has jurisdiction to grant declaratory and injunctive relief under the Virginia Declaratory Judgment Act, Va. Code Ann. § 8.01-184, which authorizes the Court to declare rights, status, and other legal relations among the parties and to issue injunctive relief as necessary to effectuate the judgment. *See also* Va. Code Ann. § 8.01-186 (authorizing further relief based on a declaratory judgment “whenever necessary or proper”). The Court also has jurisdiction under Va. Code Ann. § 17.1-513.

10. Venue is appropriate under Va. Code Ann. § 8.01-261(2) because this is an action “against one or more officers of the Commonwealth in an official capacity,” each of whom has official offices in Richmond, Virginia.

## **PARTIES**

11. Plaintiff Matthan Wilson is a registered voter in the Commonwealth of Virginia, residing in Suffolk, Virginia. Mr. Wilson was led to sign an Elector Oath for West under false pretenses. He would not have signed the Elector Oath but for those false pretenses. He does not intend to vote for West or support his candidacy.

12. Plaintiff Bryan Wright is a registered voter in the Commonwealth of Virginia, residing in Suffolk, Virginia. Mr. Wright was led to sign an Elector Oath for West under false pretenses. He would not have signed the Elector Oath but for those false pretenses. He does not intend to vote for West or support his candidacy.

13. Defendant Virginia State Board of Elections, is responsible for, among other things, “supervis[ing] and coordinat[ing] the work of the county and city electoral boards and of the registrars to obtain uniformity in their practices and proceedings and legality and purity in all elections.” Va. Code Ann. § 24.2-103. The Board’s principal offices are in Richmond, Virginia.

14. Defendants Robert H. Brink, John O’Bannon, and Jamilah D. LeCruise are named in their official capacities as members of the Board.

15. Defendant Virginia Department of Elections (the “Department of Elections” or “Department”) is responsible for, among other things, approving the final list of candidates who have qualified to be included on Virginia’s ballots. Va. Code Ann. § 24.2-612 (stating county general registrars should send proposed lists of qualified candidates to the Department of Elections, who shall “promptly advise the general registrar of the accuracy of the list”). The Department’s principal offices are in Richmond, Virginia.

## **FACTUAL BACKGROUND**

### **A. Submission of Declaration of Candidacy and Elector Oaths**

16. On or about August 21, 2020, Kanye West submitted a Declaration of Candidacy for President of the United States (“Declaration”) to the Department. West’s Declaration states that he is running for President in the November 3, 2020 General Election and that his party affiliation is Independent. His vice-presidential running mate is Michelle Tidball. Along with his Declaration, West submitted thirteen Elector Oaths and a

petition containing approximately 10,000 signatures from purported registered voters in Virginia.

17. Under Virginia law, a third party or “independent” candidate seeking to be listed on the presidential ballot must file a petition with the Board on or before the seventy-fourth day before the election. Va. Code Ann. § 24.2-543(A). This year that deadline fell on August 21, 2020.

18. The petition “shall be signed by at least 5,000 qualified voters and include signatures of at least 200 qualified voters from each congressional district.” *Id.*

19. The petition must be accompanied by notarized oaths of thirteen identified electors (“Elector Oaths”) who are required by law to vote for the President and Vice President listed on the petition. *See id.*; Va. Code Ann. § 24.2-203.<sup>1</sup> The Elector Oath specifically states that the elector “will, if elected, cast his ballot for the candidates for President and Vice President named in the petition.” *Id.* § 24.2-543(A). To qualify, a candidate must submit at least one Elector Oath from a resident of each of Virginia’s eleven

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<sup>1</sup> *See also* Va. State Bd. of Elections, *Oath for Electors for President and Vice-President; Independent and Third Party*, [https://www.elections.virginia.gov/media/formwarehouse/campaign-finance/2020/ELECT-543\\_Oath\\_for\\_Electors\\_for\\_President\\_and\\_Vice\\_President\\_Independent\\_and\\_Third\\_Party.pdf](https://www.elections.virginia.gov/media/formwarehouse/campaign-finance/2020/ELECT-543_Oath_for_Electors_for_President_and_Vice_President_Independent_and_Third_Party.pdf); Va. State Bd. of Elections, *How to Run for Office For Independent Candidates or Third Party Political Organizations*, 4-5, [https://www.elections.virginia.gov/media/formwarehouse/becomingacandidate/candidatebulletins/2020/2020-11-03\\_Presidential\\_Independent\\_and\\_Third\\_Party\\_Candidate\\_Bulletin\\_rev\\_7-16-20.pdf](https://www.elections.virginia.gov/media/formwarehouse/becomingacandidate/candidatebulletins/2020/2020-11-03_Presidential_Independent_and_Third_Party_Candidate_Bulletin_rev_7-16-20.pdf).

congressional districts. The remaining two electors may reside anywhere in Virginia. *Id.* § 24.2-203.

20. Va. Code Ann. § 24.2-504 states that “[o]nly a person fulfilling all the requirements of a candidate shall have his name printed on the ballot for the election.”

**B. Qualification for the Ballot Despite Reports of Fraud**

21. Beginning on or around August 21, 2020, media outlets began reporting that several of West’s purported electors were misled into signing the Elector Oath and did not intend to act as an elector for West or support his candidacy. *See* New York Magazine article, “Kanye West’s Presidential Campaign is Both Proceeding and Unraveling” (attached hereto as Exhibit A).

22. Media outlets report that West has been disqualified from the ballot in five states: Illinois, Montana, Ohio, West Virginia, and Wisconsin. In Ohio, the information and signature on West’s nominating petition and his statement of candidacy did not match those on petitions circulated to be signed. He filed an insufficient number of valid signatures in Illinois, Montana, and West Virginia. In Wisconsin, West did not file on time.

23. On August 28, 2020, Susan Swecker, the Chairwoman of the Democratic Party of Virginia, sent a letter to Chairman Brink, urging the Board not to certify West’s candidacy based on his failure to submit the requisite number of valid Elector Oaths (attached hereto as Exhibit B). Swecker’s letter included affidavits from two voters, Matthan Wilson and Samantha Durant, who were misled into signing the Elector Oaths



and wished to withdraw them. Both voters have also submitted declarations in support of this Verified Complaint.

24. That same day, despite clear evidence showing that West did not submit thirteen valid Elector Oaths, state elections officials confirmed that West would appear on the ballot as an independent candidate for President.

**C. At least eleven of West’s Elector Oaths are invalid.**

25. News reports indicate that at least seven of West’s Elector Oaths were obtained under false pretenses. Thus far, it has been independently confirmed that three of the reported seven fraudulent Elector Oaths—those signed by Plaintiffs Wilson and Wright, and Declarant Durant—were indeed obtained under false pretenses. An additional eight Elector Oaths are invalid for other reasons; news reports also indicate that several of them were obtained under false pretenses. Each invalid Elector Oath is discussed below.

**The Three Elector Oaths Obtained Under False Pretenses**

**Plaintiff Matthan Wilson**

26. On or about August 11, 2020, Plaintiff Matthan Wilson was approached by a representative of the West campaign while he was riding his bike. Wilson Affidavit, ¶ 2 (attached hereto as Exhibit C). The representative asked Wilson to sign to be an “elector for the state” and told him that his name “would be entered into a pool to be individually

picked to be part of the Electoral College.” *Id.* at ¶ 3. Wilson was not told that he was committing to vote for West or any other candidate. *Id.*

27. At the time Wilson signed the Elector Oath, he did not know he was signing to be an elector for West: “Kanye West’s name was never mentioned.” *Id.* at ¶ 6.

28. Wilson learned that the document he signed was to be an elector for the West campaign only after being contacted by a news reporter. *Id.* at ¶ 7.

29. The West campaign obtained Wilson’s signature “under false pretenses.” *Id.* at ¶ 6.

30. Wilson would not have signed the Elector Oath had he been told the truth about the meaning of the document he was signing. Wilson never intended, and does not presently intend, to serve as an elector for the West campaign or to perform the duties of elector for West’s campaign. *Id.* at ¶¶ 6, 8.

### **Plaintiff Bryan Wright**

31. On August 11, 2020, Plaintiff Wright was approached by representatives of West’s campaign. Wright Affidavit, ¶ 2 (attached hereto as Exhibit D). The representative asked Wright to sign a “petition” to get West on the ballot as an independent candidate. *Id.* at ¶ 3. The representative presented Wright with a document and represented that it was a petition. *Id.* Wright signed the document under the false pretense that it was a petition, not an Elector Oath.

32. Wright did not know he was signing to act as an elector for West's campaign. *Id.* at ¶ 5. At no time during the conversation between Wright and the representative was the word "elector" ever mentioned, nor did anyone "describ[e] the positions and responsibilities of the role." *Id.*

33. Wright believes that he was not properly identified as an elector. He seeks to withdraw his Elector Oath immediately. *Id.* at ¶¶ 7, 8.

34. Wright never intended, and does not presently intend, to serve as an elector for the West campaign or to perform the duties of elector for West's campaign. *Id.*

35. Wright is a "committed Republican" and currently does "not commit to supporting Kanye West or Michelle Tidball." *Id.* at ¶ 9.

36. Wright would not have signed the Elector Oath had he been told the truth about the meaning of the document he was signing. *Id.* at ¶ 10 ("If I had known that by signing the form, I committed to act as an elector for Kanye West and Michelle Tidball, and to vote for them as an elector, I never would have done so.").

### **Declarant Samantha Durant**

37. Yet another purported elector, Samantha Durant, states that her Elector Oath was obtained under false pretenses. Durant Affidavit, at ¶ 6 (attached hereto as Exhibit E).

38. On or about August 11, 2020, Durant was approached by representatives of an independent political campaign. *Id.* at ¶ 2. The representatives asked Durant "to sign a 'petition' to get an independent candidate on the ballot." *Id.* at ¶ 3.

39. Durant was presented with a document, which she signed. No one notarized the document in Durant's presence. *Id.* at ¶¶ 4, 5.

40. At the time Durant signed the document, she did not know she was signing to be an elector for the West campaign. *Id.* at ¶ 6. Neither the word "elector" nor the responsibilities for being an elector were ever mentioned to her. *Id.*

41. Durant believes her signature was obtained under false pretenses. *Id.* at ¶ 6.

42. Durant did not intend, nor does she currently intend, to perform the duties of an elector on behalf of Kanye West or Michelle Tidball. *Id.* at ¶¶ 8, 9.

43. Durant seeks to immediately withdraw her Elector Oath for Kanye West and Michelle Tidball's campaign. *Id.* at ¶ 9.

#### **The Eight Additional Invalid Elector Oaths**

44. In addition to the three Elector Oaths that were procured under false pretenses, an additional eight Elector Oaths are otherwise invalid and should not count towards the thirteen Elector Oath requirement. News reports also indicate that several of the eight Elector Oaths were obtained under false pretenses.

45. *First*, eight of the thirteen Elector Oaths were notarized by a single notary, Bria Fitzgerald, who was herself an elector and entitled to compensation in that role. *See* Oaths notarized by Fitzgerald attached hereto as Exhibits F-M (McCrary, Wright, Swider, Cupp, Brown, Cutler, Wilson, and Durant). Of the Eight Elector Oaths that were notarized by Fitzgerald, three were obtained under false pretenses as discussed above (Wright,

Wilson, and Durant), and should be declared invalid on that basis alone. The other five are invalid because they were obtained in violation of the Virginia Notary Act.

46. Pursuant to Va. Code Ann. § 24.2-205, “[e]ach elector shall receive the sum of fifty dollars per day” while discharging his or her official duties, as well as reimbursement for mileage.

47. As an elector, Fitzgerald had a financial interest in seeing that the West campaign obtain the required thirteen Elector Oaths.

48. The Virginia Notary Act provides:

No notary shall perform any notarial act with respect to any document, writing, or electronic document to which the notary or his spouse is a party, or in which either of them has a direct beneficial interest, or where the notary is a signatory or is named in the document to be notarized . . . Any notary who violates the provisions of this section shall be guilty of official misconduct. A notarial act performed in violation of this section shall not automatically be void for such reason, but shall be voidable in the discretion of any court of competent jurisdiction upon the motion of any person injured thereby.

Va. Code Ann. § 47.1-30.

49. The Virginia Notary Public Handbook (the “Notary Handbook”) provides: “Notaries should not notarize any document when there is any possibility that the contents

of the document will benefit them or their spouse.” *See* <https://www.commonwealth.virginia.gov/media/governorviriniagov/secretary-of-the-commonwealth/pdf/2017-December-15-revised-Handbook-.pdf> at 15.

50. The Notary Handbook also provides that “no notary who is a paid employee of a political campaign, including a referendum or petition effort, shall perform a notarial act in regard to petitions for that campaign.” *Id.*

51. Given Fitzgerald’s financial interest in the West campaign obtaining the thirteen required Elector Oaths, each of the Elector Oaths notarized by Fitzgerald were obtained in violation of the Virginia Notary Act. They should each be deemed invalid and should not count toward the requirement to submit thirteen Elector Oaths.

52. *Second*, Fitzgerald’s Elector Oath (attached hereto as Exhibit N) should be deemed invalid because the commission of the person who notarized it, Desiree Lorraine Rios, expired in June 2018. *See* Notary Search Form, attached hereto as Exhibit O.

53. The Notary Handbook provides that after a notary’s term has expired, the notary “must not act as such unless a new commission has been obtained. Acting under an expired commission may constitute a criminal offense.” Notary Handbook at 5. Furthermore, Virginia law states that, “[a]ny person who shall willfully act as, or otherwise impersonate, a notary public while not lawfully commissioned as a notary public or other official authorized to perform notarial acts, shall be guilty of a Class 6 felony.” Va. Code Ann. § 41.1-29.

54. *Third*, the Elector Oaths of two additional electors—Sharell Hunter-Moore (attached hereto as Exhibit P) and Shaquille Saunders (attached hereto as Exhibit Q)—contain notary sections that were not properly completed. In the space where the elector’s full name is required to be printed, the notary’s name was printed instead.

55. *Finally*, not only was Durant’s Elector Oath obtained under false pretenses and notarized by Fitzgerald, who has a financial interest in this matter, but Fitzgerald failed to notarize Durant’s Elector Oath in her presence. *See* Exhibit E, Durant Affidavit, ¶ 5.

56. Notarizing a document after the fact is yet another violation of the Virginia Notary Act. Va. Code Ann. § 47.1-15(1) (stating in relevant part, that “[a] notary shall not ... Notarize a document if the signer is not in the presence of the notary at the time of notarization”). Thus, Durant’s Elector Oath is invalid for at least three reasons, each of which provides an independent basis for invalidating her oath: (a) it was obtained under fraudulent pretenses; (b) it was notarized by Fitzgerald, who has a financial interest in this matter; and (c) it was not notarized by Fitzgerald in Durant’s presence.

57. In sum, of the thirteen Elector Oaths submitted by West, at least eleven are positively riddled with fraud and/or other disqualifying errors, as set forth below:

<b>Elector Oath</b>	<b>Reason(s) Invalid</b>
(1) Matthan Wilson	Obtained under false pretenses; Fitzgerald, an elector, was the notary
(2) Bryan Wright	Obtained under false pretenses; Fitzgerald, an elector, was the notary

<b>Elector Oath</b>	<b>Reason(s) Invalid</b>
(3) Samantha Durant	Obtained under false pretenses; Fitzgerald, an elector, was the notary
(4) Ashia McCrary	Fitzgerald, an elector, was the notary; news reports indicate that Elector Oath was obtained under false pretenses
(5) Bria Fitzgerald	Notary's commission expired
(6) Marie Swider	Fitzgerald, an elector, was the notary
(7) Kelsey Cupp	Fitzgerald, an elector, was the notary
(8) Courtney Brown	Fitzgerald, an elector, was the notary
(9) Sariah Cutler	Fitzgerald, an elector, was the notary
(10) Sharell Hunter-Moore	Improperly completed notary section
(11) Shaquille Saunders	Improper completely notary section

58. Because West has failed to meet the minimum statutory requirement of thirteen valid Elector Oaths, he is not qualified to appear on the general election ballot as an independent candidate for President in Virginia.

59. Absentee ballots are required to be mailed to voters no later than September 19, 2020. Unless West's qualification is reversed or enjoined, local jurisdictions will print ballots that include West among the candidates for election for President, in clear violation of Virginia and federal law. Thus, immediate relief, whether in the form of a temporary injunction or a writ of mandamus or both, is necessary and appropriate.



**COUNT ONE**  
**Violation of Va. Code Ann. §§ 24.2-543(A), 24.2-504**

60. Plaintiffs incorporate by reference each of the allegations contained in the foregoing paragraphs of this Verified Complaint as though set forth fully herein.

61. As previously stated, under Va. Code Ann. § 24.2-543(a), a third party or independent candidate seeking to be listed on the presidential ballot must file a petition with the State Board of Elections by noon of the seventy-fourth day before the election. This petition must be accompanied by notarized oaths of thirteen identified electors who are required by law to vote for the President and Vice President listed on the petition. At least one elector must be a resident of each of Virginia's eleven congressional districts, and two electors may be residents of any Virginia congressional district.

62. Pursuant to Va. Code Ann. § 24.2-504, “[o]nly a person fulfilling all the requirements of a candidate shall have his name printed on the ballot for the election.”

63. At least three of the thirteen Elector Oaths (those signed by Wilson, Wright, and Durant) were obtained under fraudulent pretenses and should be deemed invalid.

64. An additional eight Elector Oaths (those signed by McCrary, Swider, Cupp, Brown, Cutler, Hunter-Moore, Saunders, and Fitzgerald) contain disqualifying errors and should be deemed invalid.

65. Only Elector Oaths that were not procured by fraud and which were properly notarized and completed should be counted towards the required thirteen Elector Oaths to

meet the ballot qualifications. When the fraudulent and improper Elector Oaths are removed from the count, West does not meet the statutory requirement.

66. Because West’s Petition does not meet the statutory requirements to qualify for the ballot, the Board’s notice of sufficiency sent to West is contrary to Virginia law. Instead, West’s petition for candidacy must be declared legally insufficient, and he must be disqualified from appearing on the General Election ballot.

**COUNT TWO**  
**Violation of the Right to Vote under**  
**Article I, Section 6 of the Virginia Constitution**

67. Plaintiffs incorporate by reference each of the allegations contained in the foregoing paragraphs of this Verified Complaint as though set forth herein.

68. The Virginia Constitution affirmatively decrees “[t]hat all elections ought to be free; and that all men... have the right of suffrage.” Va. Const. art. I, § 6. “[T]he right to vote is the right to participate in an electoral process that is necessarily structured to maintain the integrity of the democratic system.” *Burdick v. Takushi*, 504 U.S. 428, 441 (citing *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983); *Storer v. Brown*, 415 U.S. 724, 730 (1974)).

69. Indeed, as the Virginia Supreme Court has explained, “[h]owever fair the general election may be, if at that election men have no choice but to vote for candidates who have been nominated by fraudulent practices at primaries . . . the effect of the election

must be the consummation of a fraud and the defeat of the will of the people.”  
*Commonwealth v. Willcox*, 111 Va. 849, 860 (1911).

70. Here, the inclusion on the ballot of a candidate whose nominating petition contains fraudulent oaths, improper notarizations and other disqualifying errors, in direct violation of the right of suffrage affirmatively set forth in Article I, Section 6 of the Virginia Constitution.

71. By allowing West—a candidate whose place on the ballot has been obtained through fraud, and who otherwise cannot meet the minimum standards for ballot qualification under Virginia law—to be listed on the ballot, Defendants will burden the right to vote because the wrongful inclusion of West on the ballot will divert votes to an unqualified candidate. *See McLain v. Meier*, 637 F.2d 1159, 1163 (8th Cir. 1980) (describing system of listing first on the ballot candidates of party that received the most votes in the last North Dakota congressional election as “burden[ing] the fundamental right to vote possessed by supporters of the last-listed candidates” by providing an advantage, i.e. diverting votes, to the first-listed candidate); *Gould v. Grubb*, 536 P.2d 1337, 1343 (Cal. 1975) (describing statute that prioritized ballot order by incumbency as “inevitably dilut[ing] the weight of the vote of all those electors who cast their ballots for a candidate who is not included within the favored class”).

72. Indeed, if West were wrongfully included on the ballot, voters who would otherwise support legitimate candidates are likely to be deceived into casting their ballot

for West, despite him being unqualified to appear on the ballot because his nominating petition contains fraudulent oaths, improper notarizations and other disqualifying errors. *See Jamerson v. Womack*, 26 Va. Cir. 145, 145 (1991), *aff'd*, 244 Va. 506 (1992) (stating that voter suffers injury where a law “dilute[s] voting power and diminish[es] the effectiveness of representation”).

73. Defendants’ qualification of West’s nominating Petition, and imminent inclusion of his name on the ballot, in violation of Virginia law, furthers no compelling, or even legitimate, state interest that could justify the infringement on the fundamental right to vote. *See Pulliam v. Coastal Emergency Servs. of Richmond, Inc.*, 257 Va. 1, 20–21 (1999) (describing voting as a “fundamental right” that requires the application of “the ‘strict scrutiny’ test, i.e., the law must be necessary to promote a compelling or overriding governmental interest” (citing *Etheridge v. Med. Ctr. Hosps.*, 237 Va. 87, 97 (1989))).

### **COUNT THREE**

#### **Violation of Plaintiffs’ Rights to Free Speech and Free Association Under the First and Fourteenth Amendments to the United States Constitution**

74. Plaintiffs incorporate by reference each of the allegations contained in the foregoing paragraphs of this Verified Complaint as though set forth herein.

75. The First Amendment to the U.S. Constitution protects fundamental rights of free speech and free association. U.S. Const. amend. I.

76. The First Amendment’s protections apply to states through its incorporation into the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. U.S. Const. amend. XIV, § 1; *Gitlow v. New York*, 268 U.S. 652, 666 (1925).

77. The circulation of a petition to secure a candidate’s position on a ballot—and an individual’s decision as to whether to sign it—is a form of “core political speech” protected under the First Amendment, *Meyer v. Grant*, 486 U.S. 414, 422 (1988), and further invokes the freedom of association, because a group of individuals join together to support a candidate’s nomination to appear on a ballot. *See Krislov v. Rednour*, 226 F.3d 851, 858 (7th Cir. 2000) (“Associating for the purpose of placing a candidate on the ballot is one of the actions protected by the First Amendment . . .”).

78. Not only does the First Amendment protect an individual’s right to affirmatively express a political opinion and affirmatively associate with a group of like-minded citizens, but it also protects *against* the compelled expression of a political view that an individual does not endorse and compelled association with a candidate or position that the individual does not support. *See Kusper v. Pontikes*, 414 U.S. 51, 58 (1973) (holding state statute that restricted voter’s ability to change their party registration “substantially abridged [their] ability to associate effectively with the party of [their] choice”).

79. Defendants’ qualification of the Petition to nominate Kanye West for President of the United States fails to meet statutory requirements under Virginia law to

qualify West as a candidate on the November 3, 2020 general election ballot, and thereby infringes upon the First Amendment rights of the Plaintiffs.

80. Specifically, Defendants' qualification forces Plaintiffs, who were unknowingly deceived into signing up as electors for Kanye West and his running mate Michelle Tidball, to associate with candidates whose Petition they never intended to sign and in fact do not support. It also forces Plaintiffs to have their signatures count as an expression of support for qualifying West and Tidball to appear on the general election ballot. This is an injury sufficient to state a claim for relief under the First and Fourteenth Amendments.

81. Plaintiffs' First Amendment claim is properly evaluated under the *Anderson-Burdick* balancing test, which requires a court to "weigh 'the character and magnitude of the asserted injury to the rights . . . that the plaintiff seeks to vindicate' against 'the precise interests put forward by the [Commonwealth] as justifications for the burden imposed by its rule,' taking into consideration 'the extent to which those interests make it necessary to burden the plaintiff's rights.'" *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)). Here, as described above, the burden on the First Amendment rights of the Plaintiffs are severe and ongoing, while the continued qualification of Kanye West's nominating Petition, and imminent inclusion of his name on

the November 3, 2020 general election ballot in violation of Virginia law, cannot be justified by any legitimate state interest.

**COUNT FOUR**  
**Violation of Plaintiffs’ Rights to Free Speech and Free Association Under**  
**Article I, Section 12 of the Virginia Constitution**

82. Plaintiffs incorporate by reference each of the allegations contained in the foregoing paragraphs of this Verified Complaint as set forth fully herein.

83. Article I, Section 12 of the Constitution of Virginia guarantees the freedom of speech and freedom of association. As the Supreme Court of Virginia has consistently ruled, “Article I, [Section] 12 of the Constitution of Virginia is coextensive with the free speech provisions of the federal First Amendment.” *Elliott v. Commonwealth*, 262 Va. 464, 473-74 (2004); *see also Tharpe v. Saunders*, 285 Va. 476, 480 (2013) (“The First Amendment to the Federal Constitution and article 1, section 12 of the Constitution of Virginia protect the right of the people to teach, preach, write, or speak any such opinion. . . .”) (citations and quotations omitted).

84. Thus, the circulation of a petition to secure a candidate’s position on the ballot—and an individual’s decision as to whether to sign it—constitutes protected political speech under Article I, Section 12 of the Constitution of Virginia and invokes the freedom

of association “for the purpose of placing a candidate on the ballot.” *Krislov*, 226 F.3d at 858.

85. Like the First Amendment, Article I, Section 12 of the Constitution of Virginia also protects against the compelled expression of a political view that an individual does not endorse and compelled association with a candidate or position that the individual does not support. *See Kusper*, 414 U.S. at 57.

86. Defendants’ qualification of the Petition to nominate Kanye West for President of the United States fails to meet statutory requirements under Virginia law to qualify West as a candidate on the November 3, 2020 general election ballot, and thereby infringes upon the free speech rights of Plaintiffs under Article I, Section 12 of the Constitution of Virginia. Further, Defendants’ qualification forces Plaintiffs, who were unknowingly deceived into signing up as electors for Kanye West and his running mate Michelle Tidball, to associate with candidates whose candidacy they never intended to support and in fact do not support. It also forces the Plaintiffs to have their signatures count as an expression of support for qualifying West and Tidball to appear on the general election ballot. This is an injury sufficient to state a claim for relief under Article I, Section 12 of the Constitution of Virginia.

87. Defendants’ continued qualification of Kanye West’s nominating Petition, and imminent inclusion of his name on the November 3, 2020 general election ballot, in violation of Virginia law, furthers no compelling, or even legitimate, state interest that



could justify the infringement on the fundamental rights to free speech and free association. *See Pulliam*, 257 Va. at 20-21 (stating that a level of “more exacting review” applies to claims initiated under Article I, Section 12 of the Constitution of Virginia, under which infringement of an individual or entity’s rights to free speech and free association is only justified if “necessary to promote a compelling or overriding governmental interest.”).

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court hear this action pursuant to Va. Code Ann. §§ 8.01-186, 17.1-131, 17.1-513 and issue preliminary and permanent declaratory and injunctive relief:

- a. declaring that the notice of qualification issued by the Department of Elections to West on or about August 28, 2020 is contrary to Virginia law, and is therefore, invalid;
- b. declaring that the fraudulently obtained and invalid Elector Oaths submitted by West may not be counted towards the statutorily required minimum to qualify as a candidate;
- c. ordering Defendants to strike fraudulent and invalid Elector Oaths from the Petition to qualify West;
- d. enjoining Defendants from qualifying West’s Petition on the basis of any fraudulent or otherwise invalid Elector Oaths;

- e. enjoining Defendants and their agents, officers, and employees, and any person who acts in concert therewith, from printing West’s name on ballots for the November 2020 election unless and until a thorough investigation establishes that he has meet the minimum statutory requirements to appear on the ballot.

**PETITION FOR WRIT OF MANDAMUS**

88. In addition, the Plaintiffs, by and through the undersigned attorneys, hereby petition this Court for the issuance of a writ of mandamus directed to Defendants, and in support thereof state:

89. Plaintiffs incorporate by reference each of the allegations contained in the foregoing paragraphs of this Verified Complaint as though set forth fully herein.

90. Plaintiffs have a clear right to the relief they seek.

91. Defendants have a legal duty to ensure that only the names of the candidates who meet the requirements of Virginia law are placed on the ballots in the Commonwealth of Virginia. This duty flows generally from their oath as officers of the Commonwealth of Virginia to obey the Constitution of the Commonwealth of Virginia, Va. Code. Ann. § 49-1, and from their position as the state elections officials who “shall supervise and coordinate the work of the county and city electoral boards and of the registrars to obtain uniformity in their practices and proceedings and legality and purity in all elections,” Va

Code Ann. § 24.2-103, and who “shall . . . promote the proper administration of election laws.” *Id.*

92. Among those elections laws which Defendants are charged with enforcing are Va. Code Ann. § 24.2-504, which states that “[o]nly a person fulfilling all the requirements of a candidate shall have his name printed on the ballot for the election,” and Va. Code Ann. § 24.2-543 which requires an independent candidate for president to include the notarized oaths of thirteen electors as part of a complete petition to qualify for placement on the ballot. *Id.*

93. Plaintiffs have no adequate remedy at law.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court hear this action pursuant to Va. Code Ann. §17.1-131 and grant a writ of mandamus ordering Defendants to, in compliance with their duties under Va. Code Ann. § 24.2-103 and Va. Code Ann. § 24.2-504, not permit West’s name to be printed on ballots or appear on ballots until he has been properly determined to “fulfill all the requirements of a candidate.” *Id.*

By:

Dated: September 1, 2020



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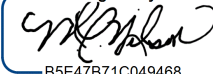
*\*Pro hac vice applications pending  
Attorneys for Plaintiffs*

**VERIFICATION**

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

September 1, 2020

\_\_\_\_\_  
Date

DocuSigned by:  
  
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Signature of Affiant

**VERIFICATION**

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

September 1, 2020

\_\_\_\_\_  
Date

DocuSigned by:  
*Bryan Wright*  
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Signature of Affiant