

VIRGINIA:

FILED
CIVIL INTAKE

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX 2025 JUN 24 A 8:58
Civil Division

CHRISTOPHER J. FALCON
CLERK, CIRCUIT COURT
FAIRFAX, VA

_____)
L. LOUISE LUCAS, President *Pro Tempore*)
of the Senate of Virginia, and AARON R.)
ROUSE, RUSSET W. PERRY, R. CREIGH)
DEEDS, ADAM P. EBBIN, SCHUYLER T.)
VANVALKENBURG, JENNIFER D.)
CARROLL FOY, SADDAM AZLAN)
SALIM, and KANNAN SRINIVASAN,)
Members of the Senate of Virginia,)

Plaintiffs,)

v.)

CHARLES STIMSON, Rector of the Board)
of Visitors of George Mason University,)

and)

THOMAS E. GOTWALD, President of the)
Board of Visitors of Virginia Military)
Institute,)

and)

ROBERT D. HARDIE, Rector of the Board)
of Visitors of the University of Virginia,)

Defendants)
_____)

Case No. CL 2025 2025 09205

COMPLAINT FOR DECLARATORY RELIEF AND INJUNCTIVE RELIEF

Plaintiffs, L. LOUISE LUCAS, President *Pro Tempore* of the Senate of Virginia, and AARON
R. ROUSE, RUSSET W. PERRY, R. CREIGH DEEDS, ADAM P. EBBIN, SCHUYLER T.
VANVALKENBURG, JENNIFER D. CARROLL FOY, SADDAM AZLAN SALIM, and KANNAN
SRINIVASAN, Members of the Senate of Virginia and the Senate Privileges and Elections Committee,

state as follows in support of their Complaint:

1. This is a complaint to enforce the constitutional prerogatives of the Virginia General Assembly.
2. Two core constitutional powers of the General Assembly are at issue here. Article VIII, Section 9 of the Constitution of Virginia authorizes the General Assembly to create and maintain a system of higher education in the Commonwealth, with each institution to be governed by a Board of Visitors. By statute, the members of those Boards of Visitors are, as pertinent here, appointed by the Governor “subject to confirmation by the General Assembly.” Va. Code § 23.1-1300(A). Those appointments thus implicate the General Assembly’s constitutionally enshrined confirmation authority, as set forth in Article V, Section 11 of the Constitution of Virginia. If the General Assembly “refuse[s] to confirm” a gubernatorial appointment, then that appointee cannot take or continue in office.
3. In February and April of 2025, Governor Youngkin appointed eight individuals to the Boards of Visitors of the University of Virginia (“UVA”), George Mason University (“GMU”), and the Virginia Military Institute (“VMI”). The Governor submitted those appointments to the General Assembly for confirmation on May 30, 2025.
4. The General Assembly promptly refused to confirm those appointments, which failed even to pass a threshold committee vote. More specifically, on June 9, 2025, the Virginia Senate Privileges & Elections Committee voted 8-4 to refuse confirmation of each of the appointments at issue here. That should have been the end of the matter: Pursuant to settled Senate rules and practice, rejection by the Privileges & Election Committee is a rejection by the Senate, because (absent extraordinary circumstances not present here) confirmation cannot move forward in the Senate after

such a rejection. And because confirmation would require affirmative approval by both the Senate and the House of Delegates, the Senate's action here undoubtedly constitutes a "refus[al] to confirm" Governor Youngkin's appointments by the General Assembly.

5. Rather than respect this clear separation of powers principle enshrined in the Constitution and laws of the Commonwealth, Governor Youngkin and the Executive Department have chosen nullification, advising the Rectors of UVA's and GMU's Boards of Visitors and the President of VMI's Board of Visitors that the rejected members may still serve despite the General Assembly's refusal to confirm their appointments. In so doing, Governor Youngkin and the Executive Department have refused to recognize the rejection of those appointments by a coequal branch of government, in open defiance of the Constitution of Virginia and 50 years of tradition in the Commonwealth.

6. The Executive Department's actions leave the defendants here—who bear responsibility for determining whether to seat the now-rejected appointees—in an untenable position and eagerly in need of this Court's guidance. Likewise, Plaintiffs have no choice but to bring this action to protect and vindicate the Virginia Senate's constitutional and statutory authority, as well as to protect their own votes from gubernatorial nullification. This Court therefore should issue a declaratory judgment stating that the General Assembly's rejection of the appointments at issue prevents them from serving, and it should enjoin the defendants from permitting the rejected nominees to serve on those Boards.

Parties

7. Plaintiffs AARON R. ROUSE, RUSSET W. PERRY, R. CREIGH DEEDS, ADAM P. EBBIN, SCHUYLER T. VANVALKENBURG, JENNIFER D. CARROLL FOY, SADDAM AZLAN SALIM, and KANNAN SRINIVASAN (the "Voting Members") are Members of the Senate of

Virginia. Each Voting Member serves on the Senate Privileges and Elections Committee (the “P&E Committee”), and Senator ROUSE is the Chairman of that Committee. Each Voting Member voted to refuse to confirm the rejected nominees. Their eight votes were sufficient to defeat those nominees because the full Committee comprises 15 Senators. Because the Governor and the Executive Department have continued to insist that the rejected nominees can serve, they have nullified the Voting Members’ votes and, in turn, the authority of the P&E Committee, which was delegated to it through the rules and procedures of the Senate. The Voting Members therefore have a direct and substantial interest in the outcome of this litigation. Indeed, their injury could not be more stark: their votes were sufficient to, and did in fact, cause the rejection of nominations for which the Voting Members are tasked with reviewing in exercising the General Assembly’s constitutional prerogatives. That authority has been nullified by the actions of the Governor and the Executive Department.

8. Plaintiff, L. LOUISE LUCAS is the President *Pro Tempore* of the Senate of Virginia and Chair of the Senate Finance and Appropriations Committee. She joins this suit in her official capacity to protect the legislative prerogatives and constitutional authority of the Virginia Senate, as the continued service of the now-rejected appointees effects a nullification of the General Assembly’s actions.

9. Defendants ROBERT D. HARDIE, and CHARLES STIMSON are sued in their official capacities as Rectors of the Boards of Visitors of UVA and GMU, respectively. Defendant THOMAS E. GOTWALD is sued in his official capacity as President of the Board of Visitors of VMI. Defendants are sued nominally, and Plaintiffs do not accuse them of any wrongdoing. On information and belief, Defendants will be represented in this action by the Attorney General of Virginia, who has publicly

advanced an interpretation of the law that would, despite the principles and authorities discussed below, somehow permit the rejected appointees to continue to serve until sometime in 2026.

Jurisdiction and Venue

10. This Court has jurisdiction over this matter pursuant to Va. Code Ann. § 8.01-184, which provides for declaratory judgments to determine the rights, status, and legal relations of parties, and *id.* § 8.01-620, which authorizes Circuit Courts to award injunctions.

11. This Court has personal jurisdiction over the Defendants because, on information and belief, they reside in this Commonwealth, and because each of the Defendants has transacted business within this Commonwealth within the meaning of Va. Code Ann. § 8.01-328.1.1.

12. Venue is proper under Va. Code Ann. §§ 8.01-261.15.c and 8.01-263 because one of the Defendants, Charles Stimson, serves as the Rector of George Mason University, which is located within Fairfax County, Virginia, and the constitutional questions presented affect the governance of that institution.

Statement of Facts

I. The Powers of the General Assembly and the Senate

13. The Senate of Virginia was created by the Virginia Constitution of 1776 and is authorized by the Constitution of Virginia as the upper chamber of the General Assembly pursuant to Article IV, Section 2 of the Constitution of Virginia.

14. Legislative power of the Commonwealth is vested in both the Senate and the House of Delegates pursuant to Article IV, Section 1 of the Constitution of Virginia.

15. Article VIII, Section 9 of the Constitution of Virginia authorizes the General Assembly

to create and maintain a system of higher education in the Commonwealth.

16. Using that power, the General Assembly has authorized the creation of multiple institutions of higher education in Virginia by legislative enactment. The relevant institutions here are:

- The University of Virginia, *see* Va. Code Ann. § 23.1-2200;
- George Mason University, *see* Va. Code Ann. § 23.1-1500; and
- Virginia Military Institute, *see* Va. Code Ann. § 23.1-2500.

17. Each of the relevant enactments provides that the Board of Visitors of each institution **“shall at all times be under the control of the General Assembly.”** *See* Va. Code Ann. §§ 23.1-1500.1, 23.1-2200.1, 23.1-2500.1 (emphasis added). Among other things, the Boards of Visitors are delegated authority by the General Assembly to regulate the institutions, manage the funds and budget of the institutions, appoint professors and fix their salaries, and set tuition. *E.g.*, Va. Code Ann. § 23.1-1301.A.1-5.

18. Consistent with the General Assembly’s ongoing control of Virginia’s institutions of higher education, Members of the Boards of Visitors at issue here are appointed by the Governor “subject to confirmation by the General Assembly.” Va. Code Ann. § 23.1-1300(a).

19. The Constitution of Virginia also provides the consequences when the General Assembly refuses to confirm one of the Governor’s appointments:

No person appointed to any office by the Governor, whose appointment is subject to confirmation by the General Assembly, under the provisions of this Constitution or any statute, shall enter upon, or continue in, office *after the General Assembly shall have refused to confirm his appointment*, nor shall such person be eligible for reappointment during the recess of the General Assembly to fill the vacancy caused by such refusal to confirm. Const. of Va., Art. V, § 11 (2025) (emphasis added).

20. The General Assembly thus possesses the sole power to create institutions of higher education in the Commonwealth of Virginia; used that power to create UVA, GMU, and VMI; and explicitly provided that those institutions would remain under the control of the General Assembly. Critical to that Constitutional and legislative oversight, the General Assembly retains the power to reject any appointment to those Boards of Visitors, and no appointee may continue to serve on those Boards of Visitors from the moment the appointment fails to obtain legislative confirmation.

II. The 2024-25 Special Session and the 2025 Regular Session of the General Assembly

21. On April 17, 2024, Governor Youngkin called the General Assembly into special session pursuant to Article IV, Section 6 of the Constitution of Virginia. *See* Ex. 1.

22. The General Assembly first met for that special session on May 13, 2024. That same date, it organized itself for the special session by adopting House Joint Resolution No. 6001 which, *inter alia*, authorized the General Assembly to take up in its special session “(iv) the election of judges and other officials subject to the election of the General Assembly; or (v) appointments subject to the confirmation of the General Assembly. . . .” H.J.R. 6001, 2024 Special Session I (May 13, 2024) (attached hereto as Exhibit 2).

23. The General Assembly opened its regular session on January 8, 2025. *See* Ex. 3. The 2025 regular session adjourned on February 22, 2025. *Id.*

24. Although the regular session adjourned, the special session did not. Indeed, on April 11, 2025, the General Assembly further amended its special session authorization to allow members to take up certain matters in addition to the items (including consideration of appointments) set forth in the original special session authorization. H.J.R. 6004, 2024 Special Session I (Apr. 11, 2025) (attached

hereto as Ex. 4).

25. The General Assembly remains in special session to this day. There has been no adjournment *sine die*.

III. The General Assembly's Refusal to Confirm the Appointments at Issue

26. On February 26, 2025—shortly after the conclusion of the General Assembly's regular session—Governor Youngkin appointed Jonathan Hartsock and Stephen Reardon to the VMI Board of Visitors, with the appointment subject to General Assembly confirmation pursuant to Va. Code Ann. § 23.1-1300. *See* Ex. 5.

27. Because those appointments had not yet been acted on by the General Assembly, the appointees were (consistent with historical practice) seated on the VMI Board of Visitors. Illustrating the urgency of the constitutional issues presented here, those appointees immediately began participating in significant official actions as Members of the Board: Just two days after their appointments, the VMI Board of Visitors, including Messrs. Hartsock and Reardon, voted not to renew the contract of VMI's Superintendent, Maj. Gen. (Ret.) Cedric T. Wins. *See* Dan Rosenzweig-Ziff, *VMI board won't renew contract of first Black superintendent*, The Washington Post (Feb. 28, 2025), <https://www.washingtonpost.com/education/2025/02/28/vmi-board-cedric-wins-contract-racism/>.

28. Also on February 26, 2025, Governor Youngkin appointed Charles J. Cooper, William D. Hansen, and Maureen Ohlhausen to the GMU Board of Visitors, with the appointments subject to General Assembly confirmation pursuant to Virginia Code § 23.1-1300. *See* Ex. 5. Those new members, too, began promptly participating in meetings, with Ohlhausen and Cooper first participating in a board meeting on February 27, 2025, *see* Ex. 6, and Hansen first participating in a meeting on April

1, 2025, *see* Ex. 7.

29. On April 11, 2025, Governor Youngkin appointed Kenneth Cuccinelli to the UVA Board of Visitors, Caren Merrick to the GMU Board of Visitors, and Jose J. Suarez to the VMI Board of Visitors, with the appointments subject to General Assembly confirmation pursuant to Virginia Code § 23.1-1300. *See* Ex. 8. Mr. Cuccinelli was appointed to replace U. Bertram (“Bert”) Ellis, a previous appointee of Governor Youngkin’s whom the Governor had subsequently removed from the Board. Again, the appointees promptly began participating in board meetings, with Suarez first participating in a meeting on April 16, *see* Ex. 9; Merrick on April 17, *see* Ex. 10; and Cuccinelli on April 29, *see* Ex. 11.

30. On May 30, 2025, the Secretary of the Commonwealth, Kelly Gee, formally communicated the appointments (and sent the required disclosures to aid the General Assembly’s review) to Senator ROUSE, who is the Chairman of the P&E Committee. *See* Ex. 12. The P&E Committee is responsible for considering gubernatorial appointments.

31. The Senate promptly considered and refused to confirm those appointments. On June 6, Senator ROUSE introduced a Senate Joint Resolution No. 6001 (“SJR6001”), which, if passed, would confirm the appointments of Hartsock, Reardon, Cooper, Hansen, Ohlhausen, Cuccinelli, Merrick, and Suarez. The bill was referred to the P&E Committee on that same date. On June 9, 2025, the P&E Committee voted 8-4 not to report SJR6001 to the floor of the Senate. *See* Ex. 13. Each of the Voting Members voted not to report SJR6001. *See* Ex. 14.

32. Under Article IV, Section 11 of the Virginia Constitution, “[n]o bill shall become a law unless, prior to its passage . . . it has been referred to a committee of each house, considered by such

committee in session, and reported.” The failure to report SJR6001 to the floor was therefore a refusal to confirm these appointments. (Although the Senate could, in theory, “discharge” the P&E Committee from considering SJR6001, that step would require a majority vote of the Senate, *see id.*—a nonsensical proposition when the majority of the P&E Committee and the majority of the Senate are from the same political party. Likewise, although the Senate Rules allow for reconsideration of Committee actions, a motion for reconsideration must be “made by a Senator voting with the prevailing side”—meaning that one of the Voting Members who voted against the rejected appointees would have to switch their vote. *See* Virginia Senate Rules Section XIV, ¶¶ 48(a)-(b). That is not a remotely plausible scenario, *especially given that the Voting Members are plaintiffs in this lawsuit*, and certainly not a reason to understand the P&E Committee’s action as anything other than a refusal to confirm the appointments at issue here. Indeed, no motion to reconsider has even been attempted in the General Assembly since the “massive resistance” to school desegregation in the 1950s.)

33. Indeed, in the 2025 regular session of the General Assembly, 224 bills and resolutions failed in Senate committee without action on the floor of the Senate or transmission to the House of Delegates. The same logic applies to confirmations: the P&E Committee’s rejection of the appointments at issue is a refusal by the General Assembly to confirm the appointments.

IV. The Governor and Executive Department’s Rejection of the General Assembly’s Actions

34. The Governor has sought to nullify the General Assembly’s rejection of his appointments. The day after the General Assembly rejected these appointments, the Governor’s spokesman gave a statement to the Washington Post in which he asserted that the General Assembly had not validly refused confirmation of the appointments at issue here. *See* Laura Vozzella & Dan

Rosenzweig-Ziff, *Virginia Senate Democrats reject Youngkin's university board picks*, The Washington Post (June 10, 2025), <https://www.washingtonpost.com/dc-md-va/2025/06/10/youngkin-cuccinelli-virginia-university-boards>.

35. The next to advance a nullification rationale on the Governor's behalf was the Attorney General of the Commonwealth, Jason Miyares (the "Attorney General"). After Scott Surovell, the Majority Leader of the Senate, sent the Defendants (among others) a letter making clear that the General Assembly had rejected the appointments at issue, the Attorney General responded, claiming that "the authority to refuse a confirmation . . . rests with the General Assembly as a whole, not a Senate committee," and that "[t]he recommendation of a Senate committee cannot be elevated to an act of the General Assembly." *See* Ex. 15. The Secretary of Education of the Commonwealth, Aimee R. Guidera, later sent a letter to Members of the Boards of Visitors of all Virginia institutions of higher education echoing the Attorney General's conclusion and rationale.

36. The Attorney General's assertion, however, fundamentally misunderstands the General Assembly's legislative process, in which agreement of *both* Chambers of the General Assembly is necessary to take legislative action, and in which both Chambers rely on their constituent committees to review legislation. A committee's refusal to report a bill to the full Senate is not a mere "recommendation," such that bill nonetheless proceeds to the full Senate for a vote. Rather, a committee's rejection of the bill is—absent special circumstances not present here—the end of the road. The Attorney General's position, by contrast, would mean that no appointment has been "refused" by the Senate unless and until the full body votes it up or down. That is inconsistent with settled practice, and it is not how the Senate has chosen to conduct its legislative business.

37. To this day, the Governor and the Attorney General continue to insist that the appointees at issue are eligible to serve—and indeed are still serving—on the Boards of Visitors of UVA, VMI, and GMU.

COUNT I – DECLARATORY RELIEF

38. All preceding paragraphs are incorporated herein.

39. An actual controversy exists between the branches of the government in the Commonwealth of Virginia.

40. Plaintiffs seek a declaratory judgment establishing:

- a. Constitutional Authority of the General Assembly: That the Virginia General Assembly possesses exclusive constitutional authority to confirm or refuse confirmation of gubernatorial appointments to university Boards of Visitors, and that such authority may be exercised through committee action without requiring full legislative floor votes.
- b. Immediate Legal Effect of Refusal: That the General Assembly’s refusal to confirm the appointments on June 9, 2025, immediately terminated the eligibility of the appointees at issue to serve on their respective Boards of Visitors pursuant to Article V, Section 11 of the Constitution of Virginia.
- c. Prohibition on Continued Service: That rejected appointees are constitutionally prohibited from “enter[ing] upon, or continue[ing] in, office” following the General Assembly’s refusal to confirm their appointments.
- d. Prohibition on Reappointment: That rejected appointees are constitutionally ineligible for reappointment during the current recess of the General Assembly to fill vacancies caused by the refusal to confirm.
- e. Board Member Duties: That Board of Visitors members who knowingly permit continued service by rejected appointees would violate their constitutional and statutory duties, constituting grounds for removal under Virginia Code § 23.1-3100.
- f. Legislative Supremacy in University Governance: That Virginia’s public universities operate “under the control of the General Assembly,” and that Boards of Visitors must comply with legislative confirmation requirements as a fundamental aspect of democratic governance and accountability.

COUNT II – INJUNCTIVE RELIEF

41. All preceding paragraphs are incorporated herein.

42. Allowing rejected appointees to continue serving violates the Virginia Constitution and undermines the General Assembly’s constitutional role in university governance, causing irreparable harm to:

- a. The constitutional separation of powers and legislative authority over public institutions;
- b. The integrity of the confirmation process established by the Virginia Constitution and Code;
- c. Public confidence in the rule of law and proper governance of taxpayer-funded institutions; and
- d. The accountability mechanisms designed to ensure qualified, independent governance of Virginia’s public universities.

43. No adequate remedy exists at law to address ongoing constitutional violations by public officials acting in contravention of clear constitutional mandates.

44. The public interest strongly favors enforcement of constitutional requirements and ensuring that Virginia’s public universities operate under lawful governance structures as mandated by the Virginia Constitution and Code.

45. Plaintiffs therefore request that the Court enter a permanent injunction:

- a. Prohibiting Defendants from allowing Kenneth Cuccinelli and the other seven rejected appointees to participate in any Board of Visitors activities, meetings, votes, or decisions;
- b. Requiring Defendants to immediately cease any recognition of the rejected appointees as Board members;
- c. Prohibiting Defendants from treating the rejected appointees as having any authority, voting rights, or official capacity with respect to their respective Boards of Visitors; and

- d. Requiring Defendants to comply with Article V, Section 11 of the Virginia Constitution and Virginia Code §§ 23.1-1300 and 23.1-2200 regarding Board composition and General Assembly confirmation authority.

WHEREFORE, the Plaintiffs, L. LOUISE LUCAS, AARON R. ROUSE, RUSSET W. PERRY, R. CREIGH DEEDS, ADAM P. EBBIN, SCHUYLER T. VANVALKENBURG, JENNIFER D. CARROLL FOY, SADDAM AZLAN SALIM, and KANNAN SRINIVASAN, request that this Court:

1. Exercise jurisdiction under §§ 8.01-184 and § 8.01-620 of the Code of Virginia to resolve the legal questions presented;
2. Enter declaratory judgment as set forth in Count I establishing the constitutional and statutory requirements governing Board of Visitors appointments and the legal effect of the General Assembly's refusal to confirm the appointees;
3. Enter permanent injunctive relief against Defendants as set forth in Count II prohibiting Defendants from allowing the rejected appointees to serve in any official capacity; and
4. Grant such other and further relief as this Court deems just and proper.

Dated: June 24, 2025

Respectfully submitted,

Sens. L. LOUISE LUCAS, AARON R.
ROUSE, RUSSET W. PERRY, R.
CREIGH DEEDS, ADAM P. EBBIN,
SCHUYLER T. VANVALKENBURG,
JENNIFER D. CARROLL FOY,
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