IN THE
COURT OF APPEALS OF VIRGINIA

Record No. _____

COLONEL MATTHEW D. HANLEY
(In His Official Capacity as Superintendent of the Virginia State Police),

Defendant,

v.

RAUL WILSON, et al.,

Plaintiffs.

PLAINTIFFS' RESPONSE IN OPPOSITION TO NONPARTY JAY JONES'S EMERGENCY MOTION FOR EXTENSION OF TIME TO FILE NOTICE OF APPEAL

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Counsel for Plaintiffs

December 3, 2025

Pursuant to Rule 5A:2, Plaintiffs Raul Wilson, Wyatt Lowman, Virginia Citizens Defense League, Gun Owners of America, Inc., and Gun Owners Foundation file this Response in Opposition to Nonparty Jay Jones's Emergency Motion for Extension of Time to File Notice of Appeal ("Mot."), and state as follows:

INTRODUCTION

This case involves a state constitutional challenge to Va. Code § 18.2-308.2:5 (the "Act"), which mandated a system of governmental preclearance before Virginians could purchase any firearm for value. This so-called "universal background check" regime applied not only to commercial sales through licensed firearm dealers (which for decades have been, and remain, separately regulated by both state and federal law), but also to all private sales between individual residents of Virginia (such as family members and neighbors), compelling these individuals to route their transactions through licensed firearms dealers and to comply with the litany of corresponding statutes and regulations applicable to licensed dealers.

As the circuit court found, this statutory scheme presented a serious problem for legal adults under the age of 21. Although these adults are perfectly eligible to possess handguns under federal and Virginia law, federal law precludes licensed dealers from transferring handguns to this subset of the adult population, which prevents the completion of their background checks. *See* 18 U.S.C. § 922(b)(1) (prohibiting licensed dealers from delivering any firearm other than a rifle or shotgun

to persons under the age of 21). Thus, by mandating dealer-administered background checks for *all* firearm sales, even private ones, the Act operated to entirely prohibit 18-to-20-year-old Virginians from purchasing handguns, which are the "quintessential" and "most popular weapon chosen by Americans for self-defense." *District of Columbia v. Heller*, 554 U.S. 570, 629 (2008).

In 2020, the circuit court temporarily enjoined Defendant's enforcement of the Act as applied to 18-to-20-year-old handgun purchasers, finding that it violated Plaintiffs' rights to keep and bear arms under Article I, Section 13 of the Virginia Constitution. *Elhert v. Settle*, 105 Va. Cir. 326 (Lynchburg Cir. Ct. 2020). And on October 16, 2025, following a bench trial and extensive briefing to determine the appropriate permanent remedy, the circuit court struck the Act in its entirety, finding it non-severable under the factors recited in *Ayotte v. Planned Parenthood*, 546 U.S. 320 (2006). *See* Mot. Ex. B. The court did not "hold[] that background checks are unconstitutional." *Id.* at 8. Rather, the court concluded that as-applied relief could not cure the remaining "constitutional deficiencies in the enforcement of the Act." *Id.*

On December 1, 2025, the deadline for the Attorney General to file a notice of appeal in the circuit court lapsed, and none was filed. That was the current Attorney General's – Jason Miyares's – decision to make. Indeed, the Attorney General is singularly vested with the constitutional and statutory authority to

represent the Commonwealth in this matter. No other person can claim such authority while Attorney General Miyares remains in office. And in office he will remain until January 17, 2026.

Even so, Virginia's presumptive *next* Attorney General now seeks to insert himself into this case, merely because he *would have* made a different decision regarding appeal *were he* the Attorney General. So, in his *private* capacity as a *private* citizen represented by *private* counsel, Jay Jones has filed an unprecedented "emergency" motion to extend this case's appellate filing deadline until after *he* takes office. And in his rush to do so, Jones violated Rule 5A:2, which requires a movant to seek and state the parties' positions on the relief sought – Plaintiffs' included.[1]

To Plaintiffs' knowledge, this sort of *nonparty* relief has never even been sought in a Virginia court – much less granted. And for good reason. Jay Jones is seeking relief that only the Commonwealth – through its Attorney General – can

[1] Rule 5A:2(a) provides that, "[f]or all motions in cases when all parties are represented by counsel … the statement by the movant must also indicate whether the other parties consent to the granting of the motion, or intend to file responses in opposition." Jones failed to comply with this Rule. Instead, his counsel emailed counsel for the parties at 6:41 PM on December 1, 2025 and merely announced his intention to file the Motion. Plaintiffs' counsel responded 8 minutes later by email, indicating that Plaintiffs would oppose such a motion. But 3 minutes after that, Jones's counsel sent a second email attaching the Motion and indicating that it already had been filed electronically. *See* Email Exchange, Exhibit 1.

seek. Thus, in order to grant Jones's requested relief, this Court would have to treat *him* as the Commonwealth's legal representative. He is not.

This Court should check this premature, illegitimate – and indeed unconstitutional – assertion of power, and Plaintiffs respectfully request that Jay Jones's frivolous nonparty Motion be dismissed or alternatively denied.

ARGUMENT

I. VIRGINIA LAW VESTS THE ATTORNEY GENERAL WITH THE AUTHORITY TO SEEK LEGAL RELIEF, NOT THE SO-CALLED "ATTORNEY GENERAL ELECT."

Nonparty Jay Jones requests an extension of time "to ensure Virginia's elected officials who will be principally responsible for addressing the trial court's order have a full opportunity to determine whether an appeal is warranted." Mot. at 4. But Virginia's *currently* elected officials already have had that opportunity,[2] and they declined to appeal the circuit court's reasoned decision. Jones may disagree with that decision but, as a private citizen, it is not his decision to undo. Indeed, what Jones effectively seeks is this Court's sanction to begin his term early, and ultimately to reverse the lawfully made decisions of those currently in office. Jones's frivolous Motion has no basis in Virginia law, undermines the constitutional structure, and it should be dismissed.

[2] Jones also claims the need for "adequate time to get into office and coordinate with the Governor" (Mot. at 3) – of course, the "Governor" is Glenn Youngkin, not Abigail Spanberger.

The Attorney General is a constitutional officer who "shall be elected by the qualified voters of the Commonwealth at the same time and for the same term as the Governor," and "shall perform such duties … as may be prescribed by law...." Va. Const. art. V, § 15. Virginia law specifies both the timing of the Attorney General's term and the scope of his duties. The term of the current Attorney General, Jason Miyares, will expire "on the Saturday after the second Wednesday in January following the[] election," or January 17, 2026. Va. Code § 24.2-210. Until then, General Miyares remains "*the* chief executive officer of the Department of Law...." *Id.* § 2.2-500 (emphasis added). And as its chief executive officer, it is General Miyares alone who "shall … render[] and perform[]" "[a]ll legal service in civil matters for the Commonwealth," "including the conduct of all civil litigation" on behalf of the Department of State Police Defendant here. *Id.* § 2.2-507(A). In other words, the current Attorney General has the *exclusive* power to represent the Commonwealth in this case.

In stark contrast, the so-called "Attorney General Elect" is no constitutional officer at all. Indeed, Jay Jones's self-styled title appears nowhere in Virginia law. Thus, the "Attorney General Elect" holds no constitutional or statutory power, and he has no "duties" to "perform." He is the "chief executive officer" of nothing, and has no authority to represent the Commonwealth or its interests in *any* litigation. As a legal (rather than political vernacular) term, the "Attorney General Elect" is a

figment of Jay Jones's imagination – no more powerful or duty-bound than the ordinary citizen. Jones may be slated to *become* the next Attorney General in January, but that confers no retroactive authority to begin participating in or directing the Attorney General's cases now.

Accordingly, Jay Jones cannot seek to extend a deadline of a filing that he lacks the authority to file in the first place. It is the *current* Attorney General, and that individual only, who may seek an extension in this case. The Attorney General declined to do so, and no private citizen (or court) can second-guess that decision.

II. DISAGREEMENT WITH THE CURRENT ATTORNEY GENERAL'S LITIGATION PRIORITIES DOES NOT CONSTITUTE "GOOD CAUSE."

Even if Jay Jones *had* the authority to seek an extension here (and he does not), Jones nevertheless fails to satisfy the applicable "good cause" standard. In fact, he does not even mention – let alone address – that governing standard in his Motion.

Rule 5A:3(a) generally provides that "[t]he time[] prescribed for filing a notice of appeal … [is] mandatory...." However, "an extension of the time to file a notice of appeal … may be granted in the discretion of this Court on motion for good cause shown." *Id.*; *see also* Va. Code § 8.01-675.3 ("an extension may be granted, in the discretion of the Court of Appeals, on motion for good cause shown"). This Court has explained that the movant asserting "good cause" bears "'the burden … to show why a request should be granted or an action excused.'" *Reaves v. Tucker*,

67 Va. App. 719, 734 (2017). Importantly, "[g]ood cause requires evidence of uncontrollable circumstances," and without it, "Jones fail[s] to demonstrate the necessary good cause to warrant an extension of the appeal deadline." *Jones v. Va. Emp. Comm'n*, 2024 Va. Cir. LEXIS 42, at *4 (Norfolk Apr. 16, 2024). Even movants who are *actual* parties (much less nonparties seeking impertinent intervention) are typically granted extensions only in narrow, compelling circumstances beyond a litigant's control, such as incarceration during the 30-day appeal period. *See Matousek v. City of Virginia Beach*, Record No.1603-22-1 (Va. Ct. App. Sept. 26, 2023) (unpublished).

Mere disagreement with the current Attorney General's decision not to appeal a case is not "good cause" to extend the appellate deadline for nearly two months, well into a successor's term. As the oft-repeated maxim goes, "[e]lections have consequences." *Nat'l Venture Capital Ass'n v. Duke*, 291 F. Supp. 3d 5, 8 (D.D.C. 2017). And when Virginians elected the current Attorney General, they elected him to serve the entirety of his term. And among the matters they entrusted to him were the decisions regarding which cases should be appealed. The Attorney General carrying out his constitutional and statutory duties in a manner that the "Attorney General Elect" dislikes is not the sort of "uncontrollable circumstance[]" that warrants an extension here. Jay Jones has failed to show "good cause," and his frivolous Motion should be dismissed on that basis alone.

For this Court to decide otherwise would be a complete usurpation of the constitutional and statutory (1) duties of the office of Attorney General and (2) timing of the transfer of executive power, effectively ending the term of the Attorney General upon the election of his successor, rather than the following January as prescribed by statute. Such a finding would have boundless implications, permitting both the current "Attorney General Elect" and others in the future to dictate the track and fate of every single case in which the Commonwealth or its agencies, departments, or divisions is a party – beginning the moment the election results are known or certified. Such a result would invite utter chaos as two individuals battle for the mantle of the Commonwealth's legal department. That cannot be the law.

III. JAY JONES'S CONSTITUTIONAL ARGUMENTS RANGE FROM INCOHERENT TO NONSENSICAL.

Absent any legal reason to extend the appellate filing deadline, Jay Jones superficially poses "additional constitutional questions" that the ruling below purportedly raises. Mot. at 4. First, Jones doubts whether "a single Virginia trial court can enjoin a validly enacted law Commonwealth-wide as it applies to parties not before the court...." *Id.* (citing *Trump v. CASA, Inc.*, 606 U.S. 831 (2025)). And second, Jones posits that only "a majority of the Supreme Court of Virginia" can "hold an Act of the General Assembly unconstitutional...." *Id.* (citing Va. Const. art. IV [sic, VI], § 2, and II A.E. Dick Howard, Commentaries on the Constitution of

Virginia 726 (1974)). Neither "question" warrants an extension here, and in fact Jones is grossly wrong on both theories.

First, the Supreme Court's recent decision on "nationwide" (or "universal") injunctions in *Trump v. CASA* has quite literally no bearing on the relief the circuit court ordered below. In that case, the Supreme Court considered "whether, under the Judiciary Act of 1789, federal courts have equitable authority to issue universal injunctions" based upon the "sorts of equitable remedies 'traditionally accorded by courts of equity' at our country's inception." 606 U.S. at 839, 841. *CASA* plainly dealt with *federal* issues.

In contrast, this case is in a *different* court system with *different* statutes in play. In fact, Virginia law expressly answers Jay Jones's "question" as to the scope of relief in the affirmative: "Every circuit court shall have jurisdiction to award injunctions … whether the judgment or proceeding enjoined be in or out of the circuit, or the party against whose proceedings the injunction be asked resides in or out of the circuit." Va. Code § 8.01-620. This longstanding principle is nothing new. Virginia courts have long held "[t]hat if the clause under consideration be unconstitutional, it is void." *Kamper v. Hawkins*, 3 Va. 20, 32 (1788) (Nelson, J.). Void laws cannot be enforced against anyone. *See Herrera v. Commonwealth*, 24 Va. App. 490, 493 (1997) ("'An unconstitutional law is void and is not law. An offense created by it is not a crime.' … 'Once a statute has been declared

unconstitutional, the … courts thereafter have no jurisdiction over alleged violations....'"). Thus, there is no "uncertainty" as to whether "a single Virginia trial court" can enjoin an unconstitutional statute "Commonwealth-wide." Mot. at 4. It can, and numerous circuit courts have done so before, with none having been reversed on the grounds that only the Supreme Court of Virginia may declare a statute unconstitutional.

Jones's spurious claim that *only* the Virginia Supreme Court can "hold an Act of the General Assembly unconstitutional" does not even clear the starting gate. Mot. at 4. Article VI, Section 2[3] of the Virginia Constitution addresses only the Supreme Court of Virginia, and provides simply that the *Supreme Court of Virginia* cannot declare a law unconstitutional "except on the concurrence of at least a majority of all justices of the Supreme Court." That quorum provision is intended to make clear that no less than a majority of *that* court (*i.e.*, no single justice or division) may declare a law unconstitutional (overrule a co-equal branch of government). The Constitution says nothing about what *other* courts can or cannot do, and circuit courts in Virginia are courts of general jurisdiction.

Nor does Jones's citation to A.E. Dick Howard's Commentaries support his theory. To the contrary, Jones is hoisted by his own petard, as that treatise confirms that "a majority *of the full Court* must concur in a judgment declaring a law

[3] Erroneously cited as Article IV, Section 2 in the Motion. *See* Mot. at 4.

unconstitutional...." Howard, *supra*, at 726 (emphasis added). Otherwise, "[i]f the justices split evenly, *the trial court's decision stands*." *Id.* n.27 (emphasis added). Thus, Howard's Commentaries implicitly confirm that trial courts *can in fact* decide the constitutionality of Virginia laws – without any involvement from the Supreme Court.

To accept Jones's posited theory of constitutional adjudication would mean that no civil constitutional challenge could ever proceed in this Commonwealth. First, if no lower court had the power to adjudicate the constitutionality of state law, then a circuit court would be left to issue an advisory constitutional opinion that could not take effect until blessed by a majority of the Supreme Court. And, of course, the Attorney General would never appeal such a loss, thereby ensuring that no constitutional challenge would ever reach the Supreme Court. Second, if no court *other than* the Virginia Supreme Court can "hold an Act of the General Assembly unconstitutional" (Mot. at 4), that means litigants would have no option but to file their challenges directly *in* the Virginia Supreme Court, as they would lack redressability – and therefore standing – in the powerless courts below. But the Supreme Court of Virginia does not have original jurisdiction to hear civil constitutional cases for declaratory and injunctive relief – the *circuit courts* do. *See* Va. Code § 17.1-513 (circuit courts "have original and general jurisdiction of all civil cases"). Again, the constitutional and statutory plain text foreclose Jones's claim.

Perhaps most absurdly of all, Jones's theory would mean that *this Court* has erred in holding all manner of Virginia Code sections unconstitutional, as recently as this year. *See, e.g.*, *Williams v. Panter*, 83 Va. App. 520, 527 (2025) ("This Court holds that the circuit court did not err in concluding that Code § 20-124.2(B2) is unconstitutional as applied to the facts of this case."). That cannot be, and Jones's incoherent legal theory serves as no basis for granting an extension in this case.

CONCLUSION

For the foregoing reasons, Jay Jones's frivolous nonparty Motion should never have been filed in the first place, and thus should be dismissed. In the alternative, Jay Jones has not demonstrated the "good cause" necessary to extend the deadline to appeal, and his Motion should be denied.

Respectfully submitted,

RAUL WILSON
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VIRGINIA CITIZENS DEFENSE LEAGUE
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GUN OWNERS FOUNDATION

BY: 

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE AND FILING

I certify that an electronic copy of this response was filed with the Clerk of this Court in Portable Document Format (PDF) on December 3, 2025 via the VACES system. I further certify that a copy of this motion has been served by e-mail on all counsel of record on December 3, 2025:

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David G. Browne

Exhibit 1

David Browne

From: David Browne
Sent: Monday, December 01, 2025 6:49 PM
To: Matt McGuire
Cc: cbrown@oag.state.va.us; pburgess@oag.state.va.us; wjo@mindspring.com; Rob Olson
Subject: Re: Wilson v. Haney, Case No. CL20000582-00 (Lynchburg City Cir. Ct.) -- forthcoming motion

Plaintiffs oppose the motion.

David G. Browne
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(804) 573-9220

> On Dec 1, 2025, at 6:41 PM, Matt McGuire <mmcguire@arktouros.co> wrote:
>
> Dear Counsel:
>
> Attorney General Elect Jones's transition team has previously written to counsel for Defendant inquiring as to whether a notice of appeal, or in the alternative, a motion for extension of time would be filed in this matter. Having not received a response and the Lynchburg City Circuit Court Clerk's office having no record of a notice of appeal being filed as of 4pm ET, Attorney General Elect Jones intends to move immediately in the Court of Appeals of Virginia for an extension of time with respect to filing a notice of appeal.
>
> Due to the expediency of the matter and the lack of earlier response from Defendant to email correspondence from earlier today, the motion will be filed imminently. We are writing to you all here to advise you of the motion, and we will represent that, due to the urgency, we were unable to obtain your position in advance.
>
> Best,
> Matt
>
> --
> Matt McGuire
> Partner
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> www.arktouros.co

David Browne

From: Matt McGuire <mmcguire@arktouros.co>
Sent: Monday, December 01, 2025 6:52 PM
To: cbrown@oag.state.va.us; pburgess@oag.state.va.us; David Browne; wjo@mindspring.com
Subject: Wilson v. Haney, Case No. CL20000582-00 (Lynchburg City Cir. Ct.) -- service of as-filed emergency motion for extension of time to file notice of appeal
Attachments: Wilson-v-Col.-Hanley-Opinion-Letter.pdf; AGElectJonesEmergencyMotionforExtension.pdf; Final order.pdf

Dear Counsel:

Attached please find the as-filed emergency motion for extension of time to file a notice of appeal and exhibits that was filed earlier this evening with the Court of Appeals of Virginia.

Best,
Matt

--
Matt McGuire
Partner
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