

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

ROBERT UPDEGROVE <i>et al.</i> ,	)	
	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 1:20-cv-01141-CMH-JFA
	)	
MARK HERRING <i>et al.</i> ,	)	
	)	
	)	
Defendants.	)	

**DEFENDANTS’ MOTION TO DISMISS THE COMPLAINT**

Defendants Attorney General Mark R. Herring and Senior Assistant Attorney General R. Thomas Payne, II move this Court for an order dismissing the complaint under Fed. R. Civ. P. 12(b)(1) and 12(b)(6). This motion is based on the accompanying memorandum, the declaration submitted in support of the motion, and any further arguments defendants may make.

As set forth more fully in the accompanying memorandum, the complaint should be dismissed for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1) because plaintiffs’ pre-enforcement challenge to the Virginia Values Act does not satisfy Article III’s case or controversy requirement. The complaint should also be dismissed under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted because plaintiffs’ allegations do not assert any infringement on the rights to free speech or freedom of religion, and the Act would survive strict scrutiny in any event.

Pursuant to the Court’s order dated October 9, 2020, counsel for defendants will appear before the Court to present this motion at a hearing scheduled for Friday, January 15, 2021, at 10:00 a.m. See Dkt. 19.

WHEREFORE, defendants respectfully request that the Court grant their motion and dismiss the complaint.

Dated: November 16, 2020

Respectfully submitted,

**MARK HERRING**  
**R. THOMAS PAYNE, II**

By: /s/ Jessica Merry Samuels  
Jessica Merry Samuels (VSB No. 89537)  
*Assistant Solicitor General*

Mark R. Herring  
*Attorney General*

Toby J. Heytens (VSB No. 90788)  
*Solicitor General*

Erin B. Ashwell (VSB No. 79538)  
*Chief Deputy Attorney General*

Michelle S. Kallen (VSB No. 93286)  
Martine E. Cicconi (VSB No. 94542)  
*Deputy Solicitors General*

Samuel T. Towell (VSB No. 71512)  
*Deputy Attorney General*

Jessica Merry Samuels (VSB No. 89537)  
*Assistant Solicitor General*

Office of the Attorney General  
202 North Ninth Street  
Richmond, Virginia 23219  
(804) 786-6835 – Telephone  
(804) 371-0200 – Facsimile  
solicitorgeneral@oag.state.va.us

**CERTIFICATE OF SERVICE**

I hereby certify that on November 16, 2020, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel who have appeared, including:

Charles Douglas Welty  
C. Douglas Welty LLC  
2111 Wilson Boulevard  
Suite 800  
Arlington, VA 22201  
cdwelty@weltyblair.com

*Counsel for Plaintiffs*

*/s/ Jessica Merry Samuels*  
Jessica Merry Samuels