No. 25A_____

IN THE

# Supreme Court of the United States

DON SCOTT, IN HIS OFFICIAL CAPACITY AS SPEAKER OF THE VIRGINIA HOUSE OF DELEGATES, *et al.*,

*Applicants,*

*v.*

RYAN T. MCDOUGLE, VIRGINIA STATE SENATOR AND LEGISLATIVE COMMISSIONER FOR THE VIRGINIA REDISTRICTING COMMISSION, *et al.*,

*Respondents.*

**ON EMERGENCY APPLICATION TO THE SUPREME COURT OF VIRGINIA**

## EMERGENCY APPLICATION FOR STAY


JAY JONES
Attorney General

TILLMAN J. BRECKENRIDGE
Solicitor General

OFFICE OF THE ATTORNEY GENERAL
202 North Ninth Street
Richmond, VA 23219
(804) 786-2071
solicitorgeneral@oag.state.va.us

*Attorneys for the Commonwealth of Virginia*

MATTHEW A. SELIGMAN
*Counsel of Record*

GRAYHAWK LAW, P.C.
3015 Main Street, Suite 330
Santa Monica, CA 90405
(310) 571-5993
matthew@grayhawklaw.com

*Attorney for Applicants Don Scott, Scott Surovell, and L. Louise Lucas*



132154

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

## PARTIES TO THE PROCEEDING

Applicants are Don Scott, in his official capacity as Speaker of the Virginia House of Delegates; Scott Surovell, in his official capacity as Majority Leader of the Virginia Senate; L. Louise Lucas, in her official capacity as President *Pro Tempore* of the Virginia Senate; and the Commonwealth of Virginia. Applicants are the appellants before the Supreme Court of Virginia.

Respondents are Ryan McDougle, William Stanley, Terry Kilgore, and Virginia Trost-Thornton. Respondents are appellees before the Supreme Court of Virginia.

Respondents also include G. Paul Nardo, in his official capacity as the Clerk of the Virginia House of Delegates; Susan Clarke Schaar, in her official capacity as the Clerk of the Virginia Senate; Tara Perkinson, in her official capacity as Chief Deputy Clerk of the Virginia Senate; and Charity D. Hurst, in her official capacity as the Clerk of Court of the Tazewell Circuit Court, who were appellants before the Supreme Court of Virginia and were named as defendants in the Circuit Court of Tazewell County.

## PROCEEDINGS BELOW

- *McDougle v. Scott*, No. CL25-1582-00 (Va. Cir. Ct., Tazewell Cnty. Jan. 27, 2026)
- *Scott v. McDougle*, Record No. 260127 (Va. May 8, 2026)

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases**

**Constitutional Provisions**



**Statutes**

**Other Authorities**

TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FOURTH CIRCUIT

Days before Virginia's deadline to begin administering the 2026 election for members of the United States House of Representatives, the Supreme Court of Virginia invalidated an amendment to the Commonwealth's Constitution that authorizes the General Assembly to adopt new congressional maps. The Court purported to find a procedural flaw in the amendment's passage and ratification: that the General Assembly failed to pass the amendment prior to the "next general election" before passing it a second time and referring the amendment to the people for their approval. The basis for that holding was the Court's view that, contrary to the Constitution's own definition of the term "election" to refer to a single day in November, the term instead encompasses the entire period of early voting beginning in September. Based on that novel and manifestly atextual interpretation, the Court overrode the will of the people who ratified the amendment by ordering the Commonwealth to conduct its election with the congressional districts that the people rejected.

A stay is warranted because the decision by the Supreme Court of Virginia is deeply mistaken on two critical issues of federal law with profound practical importance to the Nation. The decision below violates federal law in two separate ways. First, it predicated its interpretation of the Virginia Constitution on a grave misreading of federal law, which expressly fixes a single day for the "election" of Representatives and Delegates to Congress. *See* 2 U.S.C. § 7. Where a state court's decision on purportedly state-law grounds was "interwoven with the federal law," this

Court may intervene to ensure that the state court's decision complies with federal law. *Michigan v. Long*, 463 U.S. 1032, 1040 (1983). *See also Three Affiliated Tribes of Fort Berthold Rsrv. v. Wold Eng'g, P.C.*, 467 U.S. 138, 153 (1984) (vacating state supreme court decision whose interpretation of state statute "rest[ed] on a misconception of federal law"). Second, by rejecting the plain text of the Virginia Constitution's definition of the term "election" to adopt its own contrary meaning, the Supreme Court of Virginia "transgressed the ordinary bounds of judicial review such that it arrogated to itself the power vested in the state legislature to regulate federal elections." *Moore v. Harper*, 600 U.S. 1, 36 (2023) (cleaned up). Either violation is sufficient for this Court to reverse the decision below. Accordingly, there is a "reasonable probability that this Court will grant certiorari and will then reverse the decision below." *Maryland v. King*, 567 U.S. 1301, 1302 (2012) (Roberts, C.J., in chambers) (cleaned up).

The irreparable harm resulting from the Supreme Court of Virginia's decision is profound and immediate. By forcing the Commonwealth to conduct its congressional elections using districts different from those adopted by the General Assembly pursuant to a constitutional amendment the people just ratified, the Supreme Court of Virginia has deprived voters, candidates, and the Commonwealth of their right to the lawfully enacted congressional districts. *See, e.g.*, *Abbott v. Perez*, 585 U.S. 579, 602 (2018) ("[B]arring the State from conducting this year's elections pursuant to a statute enacted by the Legislature . . . would seriously and irreparably harm the State."); *King*, 567 U.S. at 1303 (Roberts, C.J., in chambers) ("[A]ny time a

State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." (cleaned up)).

The equities weigh heavily in favor of granting a stay of the decision below pending this Court's consideration of the case. The Virginia Supreme Court's decision amounts to judicial defiance of the Commonwealth's Constitution and the statutes enacted by the General Assembly lawfully establishing congressional districts to be used in the upcoming 2026 election. *See Abbott v. League of United Latin Am. Citizens*, 146 S. Ct. 418, 419 (2025) (granting interim stay of lower court injunction barring use of a new congressional map in the 2026 election).

For these reasons, Applicants respectfully ask this Court to stay the decision of the Supreme Court of Virginia pending a forthcoming petition for writ of certiorari and, should certiorari be granted, resolution of the merits. Applicants also request entry of an immediate administrative stay while the Court considers this application.

## DECISIONS BELOW

Applicants seek an immediate administrative stay and a stay of the May 8, 2026, judgment and mandate of the Supreme Court of Virginia pending the timely filing and disposition of a petition for a writ of certiorari in this Court and, if certiorari is granted, pending final judgment of this Court. The trial court's decision is reproduced at App. 47a-52a. The decision of the Supreme Court of Virginia is reproduced at App. 1a-46a.

## JURISDICTION

The trial court entered its order on January 27, 2026. App. 52a. Applicants timely appealed to the Court of Appeals of Virginia on January 28, 2026. App. 233a-

234a. The Court of Appeals moved to certify the case to the Supreme Court of Virginia. App. 229a-232a. The Supreme Court of Virginia granted the motion. App. 225a-228a. The Supreme Court of Virginia issued its decision in the case on May 8, 2026. App. 1a-46a. Later that day, Applicants filed a motion in that court to stay its decision pending review by this Court. App. 53a-56a. As of the filing of this application, the Supreme Court of Virginia has not acted on that motion.

This Court has jurisdiction to review the final judgment of the Supreme Court of Virginia under 28 U.S.C. § 1257(a). Applicants specially set up and preserved federal claims under the Elections Clause, U.S. Const. art. I, § 4, cl. 1, the Supremacy Clause, and the federal Election Day statutes, including 2 U.S.C. § 7, and the Supreme Court of Virginia adjudicated those claims. This application is authorized by Supreme Court Rule 23 and 28 U.S.C. § 2101(f), which permit a Justice of this Court to stay enforcement of a judgment subject to certiorari review. The All Writs Act, 28 U.S.C. § 1651(a), also authorizes interim relief necessary or appropriate in aid of this Court's jurisdiction. Applicants sought stay relief below on May 8, 2026. As of the filing of this application, the Supreme Court of Virginia has not acted on that request, and the imminent federal-election deadlines make effective relief unavailable from that court in time.

## STATEMENT OF THE CASE

This application arises from the adoption of an amendment to the Virginia Constitution that authorizes the General Assembly to adopt congressional maps in certain circumstances.

## I. Constitutional Framework.

Article XII, Section 1 of the Virginia Constitution establishes the procedural framework for proposing and adopting an amendment. Va. Const. art. XII, § 1. That framework proceeds in four steps.

1. *First approval by the General Assembly.* Section 1 provides that "[a]ny amendment or amendments to this Constitution may be proposed in the Senate or House of Delegates" and must "be agreed to by a majority of the members elected to each of the two houses." *Id.*
2. *Intervening General Election.* If the proposed amendment passes both houses, then "such proposed amendment or amendments shall be . . . referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates." *Id.*
3. *Second approval by the General Assembly.* After the next general election, "at such regular session or any subsequent special session of that General Assembly the proposed amendment or amendments [must] be agreed to by a majority of all the members elected to each house." *Id.*
4. *Submission to the voters*. If the proposed amendment passes both houses a second time, then the General Assembly must "submit such proposed amendment or amendments to the voters . . . in such manner as it shall prescribe and not sooner than ninety days after final passage by the General Assembly." *Id.*

## II. Adoption of the Amendment.

On October 31, 2025, the General Assembly passed House Joint Resolution 6007, which proposed a constitutional amendment to authorize the General Assembly to modify Virginia's congressional districts in response to mid-decade redistricting in other states. H.J.R. 6007 (2024 Spec. Sess. I). On November 4, 2025, the House of Delegates was "elected biennially by the voters of the several house districts on the Tuesday succeeding the first Monday in November." Va. Const. art. IV, § 3.

The General Assembly convened for its next regular session on January 14, 2026. The General Assembly approved the proposed constitutional amendment a second time on January 16, 2026. H.J.R. 4 (2026 Sess.). Consistent with its obligations under Article XII, the General Assembly then scheduled a referendum for April 21, 2026. H.B. 1384 (2026 Sess.).

On April 21, 2026, the people of the Commonwealth approved the proposed constitutional amendment. *See 2026 April 21 Special*, Virginia Dep't of Elections (Apr. 30, 2026), *available at* https://enr.elections.virginia.gov/results/public/virginia/elections/2026-April-21-Special/reports (last visited May 10, 2026).

## III. Proceedings Below.

On October 28, 2025, before the General Assembly passed the proposed constitutional amendment, respondents sued in the Circuit Court of Tazewell County to challenge the amendment process.[1] On January 27, 2026, the circuit court issued

[1] The suit named as defendants G. Paul Nardo, the Clerk of the Virginia House of Delegates; Susan Clarke Schaar, the Clerk of the Virginia Senate; Tara Perkinson, Chief Deputy Clerk of the Virginia Senate; and Charity D. Hurst, the Clerk of Court of the Tazewell Circuit Court. Applicant Don Scott, the Speaker of the Virginia House of Delegates, intervened.

an order that held, as relevant here, that "following the October 31, 2025, . . . passage of House Joint Resolution 6007 there HAS NOT BEEN an ensuing general election of the House of Delegates, and such ensuing general election CANNOT occur until 2027." App. 50a. The court therefore "PROHIBITED the proposed amendment from being submitted to the voters for their consideration." App. 52a (cleaned up).

Speaker Scott appealed and the Commonwealth intervened. The Court of Appeals of Virginia moved the Supreme Court of Virginia to certify the case to that Court pursuant to Virginia Code Section 17.1-409(B)(1). App. 229a-232a. The Supreme Court of Virginia declined to stay the circuit court's order and granted the Court of Appeals' motion. App. 225a-228a.[2] It then scheduled briefing and argument so that the case would be submitted on April 27, 2026, six days after the referendum. On April 21, the people voted to ratify the amendment and allow mid-cycle redistricting under amended guidelines.

On May 8, 2026, the Supreme Court of Virginia affirmed, with four justices in the majority and three justices dissenting. After discussing its view on the purported evils of partisan gerrymandering, the Court held that the General Assembly violated the Virginia Constitution's requirement that it refer the proposed amendment to its session after the "next general election." The Court acknowledged that the case turned on the meaning of "election," but it began its analysis with a policy rationale that the "intervening House of Delegates election [in which the General Assembly] might be able to get the sentiment of the people on an amendment [it] had acted upon

[2] Applicants Scott Surovell, Majority Leader of the Virginia Senate, and L. Louise Lucas, President *Pro Tempore* of the Virginia Senate, intervened as appellants in the Supreme Court of Virginia.

previously." App. 12a (quoting Proceedings and Debates of the House of Delegates Pertaining to the Amendment of the Constitution 498 (Extra. Sess. 1969) (Statement of Del. Slaughter)). In the Court's view, the General Assembly frustrated the "clear purpose of the intervening election requirement" because many voters had cast their ballots during the early voting period before the General Assembly first passed the proposed amendment. App. 13a (cleaned up).

The Court proceeded to rely on a variety of other considerations while ignoring the text of the Constitution itself. To inform the "historical meaning" of the term "election," the Court noted that the successive historical iterations of the Constitution's provision for amendment "since the constitutional-amendment provision was first included in 1870" did not "categorically limit[] the definition of 'election' to a single day." App. 14a. The Court next presented an "imagine[d]" conversation between a hypothetical voter and an election official while participating in early voting. According to the Court, the voter would be "bewildered" by being told that they could vote early in an election that takes place on Election Day. App. 15a. The Court then cited various dictionaries that define the term "election" as the act of choosing or selecting, none of which addressed whether early voting takes place before the election. App. 15a-17a. The Court proceeded to recount some of the early history of voting in America before acknowledging that "the events of the mid-1800s led to laws establishing a single day for casting and receiving votes" while conceding that "modern election protocols eventually cycled back to the historical practice of permitting defined time frames for casting and receiving votes in an election."

App. 18a-19a. Lastly, the Court turned to this Court's decision in *Foster v. Love*, 522 U.S. 67 (1997), to infer that "[t]he 'combined actions' that define the term 'election', include citizens casting votes, from the beginning of the early-voting period until Election Day, and the officers of election receiving these votes and closing the polls on 'Election Day.'" App. 19a (quoting *Foster*, 522 U.S. at 71).

The Court finally turned to the Virginia Constitution's text only to disregard it. The Court acknowledged that Article IV, Section 3 provides that members of the House of Delegates "shall be elected . . . on the Tuesday succeeding the first Monday in November." Va. Const. art. IV, § 3. But, the Court reasoned, that provision "never uses the word 'election' and makes no attempt to define that unmentioned term." App. 20a. In the Court's view, "[t]he noun phrase 'general election' in Article XII, Section 1 is not the same as the verb phrase 'shall be elected' in Article IV, Section 3" and "[t]his material variation connotes a variation in meaning." App. 22a (cleaned up). The Court did not acknowledge the other provisions of the Constitution defining the term "election."

The Court rejected several arguments offered by the dissent. First, addressing the Virginia statutes that expressly define the "general election" as taking place on a single day in November, the Court "place[d] little or no interpretative weight on these statutory definitions," despite the fact that their materially identical predecessor statutes were enacted by the first General Assembly sitting under the new Constitution, "given their expressly stated inapplicability when 'context requires a different meaning.'" App. 24a (quoting Code § 24.2-101). The Court did not purport to

explain how the "context" of the intervening election procedure in Article XII "requires a different meaning" of the term than the statutes regulating the intervening election. Second, the Court rejected the argument that its novel interpretation of "general election" conflicts with Article II, Section 9 of the Virginia Constitution. That section provides that "[n]o voter, during the time of holding any election at which he is entitled to vote, shall be compelled to perform military service, except in time of war or public danger, nor to attend any court as suitor, juror, or witness." Va. Const., art. II, § 9. As the dissent explained, under the majority's interpretation, this provision would close the Commonwealth's courts for nearly a quarter of the year. The Court responded that "this clever argument is a story of the tail wagging the dog that has no tail," but gave no reasons why the argument was incorrect. App. 26a. Third, the Court rejected the dissent's argument that the majority's interpretation conflicts with Article IV, Section 4's provision that "[a]ny person may be elected" to the General Assembly "who, at the time of the election, is twenty-one years of age." Va. Const. art. IV, § 4. According to the Court, the phrase "'at the time of the election' means the time when a Senator or Delegate is deemed elected as the successful candidate" in this provision even though it holds that "general election" in Article XII includes the period of early voting. App. 26a-27a. The Court did not offer a basis for these inconsistent meanings. Finally, the Court rejected the argument that its interpretation of "general election" conflicts with federal law. In its view, this Court's statement in *Foster* that the federal Election Day statute requires the election be "consummated" on Election Day meant that early voting was

part of the "election." App. 27a-28a. The Court did not address the fact that the federal appellate cases unanimously held exactly the opposite.

The Court concluded that the General Assembly therefore "violated the intervening-election requirement in Article XII, Section 1 of the Constitution of Virginia" and "[t]his violation irreparably undermine[d] the integrity of the resulting referendum vote and renders it null and void." App. 30a. The Court ordered that "the congressional district maps issued by this Court in 2021 pursuant to Article II, Section 6-A of the Constitution of Virginia remain the governing maps for the upcoming 2026 congressional elections." App. 30a.

Applicants moved the Supreme Court of Virginia to stay its mandate on May 8, 2026. App. 53a-56a. The Supreme Court of Virginia has not acted on that motion. This application followed.

## REASONS FOR GRANTING THE APPLICATION

"In deciding whether to issue a stay," this Court considers: "(1) whether the applicant is likely to succeed on the merits, (2) whether it will suffer irreparable injury without a stay, (3) whether the stay will substantially injure the other parties interested in the proceedings, and (4) where the public interest lies." *Ohio v. EPA*, 603 U.S. 279, 291 (2024). Justices of this Court have also considered whether there is "'a reasonable probability' that this Court will grant certiorari [and] . . . will then reverse the decision below." *Maryland*, 567 U.S. at 1302 (Roberts, C.J., in chambers) (quoting *Conkright v. Frommert,* 556 U.S. 1401, 1402 (2009) (Ginsburg, J., in chambers)). Each consideration weighs in favor of granting the application.

## I. This Court is Likely to Grant Review and Reverse.

This Court is likely to grant certiorari and reverse the Supreme Court of Virginia's decision because it is deeply mistaken on two critical issues of federal law with profound practical importance.

### A. The Supreme Court of Virginia's Decision Was Predicated on a Grave Misunderstanding of Federal Law.

The decision below relied on its mistaken understanding of the meaning of the term "election" in federal law as a basis for its interpretation of that same term in the Virginia Constitution. Where "a state court decision fairly appears . . . to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion," this Court may review the interwoven federal law issue. *Long*, 463 U.S. at 1040-41. This Court's "role when a state court's interpretation of state law has been influenced by an accompanying interpretation of federal law" is to correct the lower court's "misapprehensions" about the scope of federal law. *Three Affiliated Tribes*, 467 U.S. at 152.

1. The Virginia Supreme Court's decision was interwoven with a grave misinterpretation of federal election law in two ways. First, the Court based its "definition" of "election" on federal law. The Court relied on this Court's decision in *Foster v. Love* to reason that "[w]hen the law speaks of an 'election,' it 'plainly refer[s] to the combined actions of voters and officials meant to make a final selection of an officeholder.'" App. 19a (quoting *Foster*, 522 U.S. at 71 and citing *Millsaps v. Thompson*, 259 F.3d 535, 547 (6th Cir. 2001); *Voting Integrity Project, Inc. v.*

*Keisling*, 259 F.3d 1169, 1175 (9th Cir. 2001); *Voting Integrity Project, Inc. v. Bomer*, 199 F.3d 773, 775-76 (5th Cir. 2000)). To reach its critical conclusion, it inferred, again based on *Foster*, that "[t]he 'combined actions' that define the term 'election' . . . include citizens casting votes, from the beginning of the early-voting period until Election Day, and the officers of election receiving these votes and closing the polls on 'Election Day.'" App. 19a (quoting *Foster*, 522 U.S. at 71). The Court then adopted what it saw as the "short and clear" "definition" from federal law: "'History confirms that 'election' includes both ballot casting and ballot receipt.'" App. 19a-20a (quoting *Republican Nat'l Comm. v. Wetzel*, 120 F.4th 200, 209 (5th Cir. 2024), *cert. granted sub nom.*, *Watson v. Republican Nat'l Comm.*, 146 S. Ct. 355 (2025)).

The Supreme Court of Virginia's interpretation of Article XII of the Virginia Constitution thus rested materially on its understanding of federal election law in *Foster* and the federal circuit court cases upholding early voting under the federal election day statutes. The "most reasonable explanation [is] that the state court decided the case the way it did because it believed that federal law required it to do so." *Long*, 463 U.S. at 1041. Where, as here, a state court indicates that state and federal law are "identical," its decision "does not rest on an independent and adequate state ground." *Pennsylvania v. Muniz*, 496 U.S. 582, 588 n.4 (1990). *See also Florida v. Powell*, 559 U.S. 50, 57-58 (2010) (finding no independent and adequate state ground where state supreme court "trained on what [federal law] demands, rather than on what [state] law independently requires"); *Fitzgerald v. Racing Assn. of*

*Central Iowa*, 539 U.S. 103, 106 (2003) (holding state court decision relied on federal law where "same analysis" applied).

Second, the Court unavoidably relied on its conception of federal election law to reject the dissent's argument that "[b]y extending elections in the Commonwealth of Virginia beyond a single day, the majority's formulation would directly conflict with the federal mandate that elections for federal offices be held on a single day." App. 27a. The Court again invoked *Foster* and the federal circuit court cases upholding early voting that characterize the "election" as "consummated" on the date of the "election" established by federal statute. App. 27a-28a. Based on its reading of those federal cases, it concluded that "[n]o persuasive, much less binding, federal law supports the dissent's implied claim that our interpretation of Article XII, Section 1 violates the Supremacy Clause of the United States Constitution." App. 28a.

2. The understanding of federal law on which the Virginia Supreme Court based its ruling was gravely mistaken. It simply ignored the federal statutes that settle the question: "The Tuesday next after the 1st Monday in November, in every even numbered year, is established as the day for the election, in each of the States and Territories of the United States, of Representatives and Delegates to the Congress commencing on the 3d day of January next thereafter." 2 U.S.C. § 7 (emphasis added); *see also* 2 U.S.C. § 1; 3 U.S.C. § 1. As Applicants explained in their briefs to the Virginia Supreme Court, the interpretation that "an 'election' included any time at which a ballot may be cast" entails that "every state—including Virginia—that permits early absentee voting would violate the federal 'mandate to hold all elections

for Congress and the Presidency on a single day throughout the Union'" that this Court recognized in *Foster*. App. 154a (quoting *Foster*, 522 U.S. at 70) (cleaned up). *See also* App. 197a-198a.

The Virginia Supreme Court blatantly misreads the federal circuit cases upholding early voting in a way that, as the dissent explained, would render early voting unlawful. According to the decision below, the circuit court decisions upheld early voting because early voting was part of the "election" that includes the "'combined actions of voters and officials meant to make a final selection of an officeholder.'" App. 19a (quoting *Foster*, 522 U.S. at 71). That is the opposite of their true holding. The circuit cases held, as they must considering the clear text of the federal Election Day statutes, that early voting is lawful because it does not expand the duration of the "election" itself. As the Ninth Circuit explained, "[t]he *Foster* definition of 'election' implies that there is only a single election day . . . when the election is 'consummated,' even though there are prior voting days." *Keisling*, 259 F.3d at 1175. It is precisely because early voting precedes the general election, and does not expand it, that early voting is consistent with the federal definition of a single "day for the election."

This settled understanding of federal election law is common ground in *Watson v. Republican National Committee*, which is currently pending before this Court. The issue in that case is whether the federal Election Day statutes require that all mail-in ballots be received by the end of Election Day. As the respondent in *Watson* put it, "Congress has established the Tuesday following the first Monday in November as

the uniform day for federal elections." Brief of Respondent in Opposition, at 1 (U.S., No. 24-1260) (Aug. 11, 2025) (citing 2 U.S.C. §§ 1, 7; 3 U.S.C. § 1). In contrast to the decision below, respondent there further recognized the unquestioned lawfulness of early voting under those statutes, acknowledging that "the circuits unanimously agree that early voting doesn't violate the election-day statutes." *Id.* at 13 (citing *Keisling*, 259 F.3d at 1176; *Millsaps*, 259 F.3d at 544-46; *Bomer*, 199 F.3d at 776). *See also* Brief of Respondent, at 16 (U.S., No. 24-1260) (Feb. 9, 2026); Oral Argument Transcript at 73 ("[U]nder our theory, early voting is permissible . . . because of this idea that the Election Day is the date where the election is consummated.").

As the United States explained as *amicus curiae*, "[i]f the 'election' occurs whenever voters make their final choice, early voting would stretch the contest beyond 'the day' set by law; but early voting does not present that problem if 'the election' is the day when the ballot box closes and officials must be in receipt of all timely votes." Brief of United States, at 3 (U.S., No. 24-1260) (Feb. 17, 2026). *See also id.* at 7 (rejecting "reading [that] would invalidate early voting, because it would stretch 'the election' for days beyond 'the day' on which it must occur."); *id.* at 15 (rejecting reading that "an 'election' is the conclusive choice made by voters when they mark and submit their ballots" because under that reading "early voting would plainly be barred by the federal election-day statutes") (cleaned up); Oral Argument Transcript at 131 ("We agree with both sides that early voting is still acceptable" under federal Election Day statutes).

The Supreme Court of Virginia's decision thus depended on a grave misreading of federal law that no other court, state or federal, has ever accepted and which numerous federal courts have expressly rejected. This Court is therefore reasonably likely to grant certiorari and reverse the decision below on that basis.

### B. The Supreme Court of Virginia's Decision Transgressed the Ordinary Bounds of Judicial Review.

This Court recently reaffirmed its "obligation to ensure that state court interpretations of that law do not evade federal law" in the context of federal elections. *Moore v. Harper*, 600 U.S. 1, 34 (2023). Although "the Elections Clause does not exempt state legislatures from the ordinary constraints imposed by state law," it also does not give "state courts . . . free rein" in rendering decisions invalidating a congressional map under state law. *Id.* at 34. The Court declined to articulate a specific standard beyond the command that state courts must "not transgress the ordinary bounds of judicial review" to "arrogate to themselves the power vested in state legislatures to regulate federal elections." *Id.* at 36. *See also id.* at 38-39 (Kavanaugh, J., concurring) (endorsing standard barring state courts from "impermissibly distort[ing]" state law as "deference . . . not abdication").

This is the rare case in which a state court's decision so dramatically departed from the text of the state constitution that it satisfied this exacting standard. Even with "the usual deference [this Court] afford[s] state court interpretations of state law," the decision below "impermissibly distorted" the Virginia Constitution "beyond what a fair reading required." *Moore*, 600 U.S. at 36 (quoting *Bush v. Gore*, 531 U.S. 98, 115 (2000) (Rehnquist, C.J., concurring)). *See also Bush*, 531 U.S. at 133 (Souter,

J., joined by Stevens, Ginsburg, and Breyer, JJ., dissenting) (considering whether state court interpretation "transcends the limits of reasonable statutory interpretation to the point of supplanting the statute enacted by the 'legislature' within the meaning of Article II"). The Virginia Supreme Court's decision ignores the text of the Virginia Constitution, and its resulting interpretation of "general election" is at war with the Constitution that the people of the Commonwealth adopted.

The text of the Virginia Constitution establishes that a "general election" is the legally operative event on a particular day on which a result is determined—not the entire period during which ballots may be cast during early voting. The Constitution uses the phrase "election" across multiple provisions. Article II, Section 6—the provision that governs apportionment of congressional districts and which the redistricting amendment amended—provides that "[t]he districts delineated in the decennial reapportionment law shall be implemented for the November general election." Va. Const. art. II, § 6. This provision unmistakably indicates that, as a matter of ordinary English usage, the "general election" takes place in "November," not over a three-month period beginning in September.

The text of Article VII, Section 4 even more directly refutes the Virginia Supreme Court's interpretation. That section provides that "[r]egular elections for [county and city] officers shall be held on Tuesday after the first Monday in November." Va. Const. art. VII, § 4. The decision below purports to distinguish that provision based on "context," App. 27a n.30, but fails to explain what context would justify treating an "election" for local officers as taking place on a single day whereas

an "election" for members of the General Assembly takes place over a period of months. That alleged different meaning is especially inexplicable because those two elections are often conducted simultaneously in November of odd-numbered years.

Two additional sections of Article IV provide that the members of the General Assembly "shall be elected . . . *on* the Tuesday succeeding the first Monday in November." Va. Const., art. IV, §§ 2, 3 (emphasis added). The decision below suggested that by using the verb "elected," this section does not indicate that the "election" took place on that single day in November. That anomalous interpretation is at odds with the straightforward understanding, consistent across state and federal law, that a candidate is "elected" on the day of the "election."

Constitutional history demonstrates an unchanging text that confirms this interpretation. The Virginia Constitution has set elections to take place on a single day for more than 150 years, long before the General Assembly established early absentee voting. *See* Va. Const. art. IV, §§ 41-42 (1902) (members of the General Assembly "shall be elected . . . on the Tuesday succeeding the first Monday in November"); Va. Const. art. V, §§ 2-3 (1870) (members of the General Assembly "shall be elected . . . on the Tuesday succeeding the first Monday in November"). And the Virginia Constitution has long required that the General Assembly refer amendments to the next session after a "general election." *See* Va. Const. art. XV, § 1 (1902) ("such proposed amendment shall be . . . referred to the General Assembly at its first regular session held after the next general election"); Va. Const. art. XII, § 1 (1870) ("such proposed amendment shall be . . . referred to the general assembly to

be chosen at the next general election"). This constitutional history establishes that the General Assembly must pass the proposed amendment before an election taking place on a single day in November.

Virginia's statutes governing elections—including the version enacted by the first General Assembly sitting under the 1971 Constitution—further corroborate this interpretation. The Code defines "general election" to mean "an election held in the Commonwealth on the Tuesday after the first Monday in November or on the first Tuesday in May." Code § 24.2-101. *See also id.* § 24.2-603 (setting polling place hours "on the day of the election"). The Code further provides that voter "registration records shall be closed during the 10 days before a primary or general election." Code § 24.2-416. Finally, the Code provides that "[a]bsentee voting in person shall be available on the forty-fifth day *prior* to any election." Code § 24.2-701.1(A) (emphasis added). Virginia law thus defines early absentee voting as taking place prior to an election, not constituting part of the election. Absentee ballots cast before Election Day are then counted "on the day of the election." Code § 24.2-712(D). The first General Assembly's understanding of the term "general election" also referred to a single day. Act of Mar. 1, 1971, ch. 119, § 1, 1971 Va. Acts 203 (amending and reenacting § 24.1-1 of the Code of Virginia) ("'General election' means any election held in the Commonwealth on the Tuesday after the first Monday in November, or in the case of elections for the governing bodies of cities and towns on the first Tuesday in May, pursuant to Chapter 7, Article 1 (§ 24.1-95 et seq.) of this title"). The first legislature sitting after the Constitution's adoption demonstrates its meaning. *See*

*CFPB v. Cmty. Fin. Servs. Ass'n of Am., Ltd.*, 601 U.S. 416, 432-34 (2024) ("The practice of the First Congress" in first annual appropriations law, Act of Sept. 29, 1789, ch. 23, 1 Stat. 95, "provides contemporaneous and weighty evidence of the Constitution's meaning").

Finally, in the Proclamation following the ratification of the 1971 Constitution, Governor Linwood Holton announced that the Constitution had been ratified "by the votes cast in the general election on November 3, 1970," *not* "the votes cast in the general election starting on the day the first absentee ballot was cast through November 3, 1970." *See* Proclamation ("Pursuant to the requirements of Chapter 763 of the Acts of Assembly of 1970, I, Linwood Holton, Governor of Virginia, do hereby proclaim that by the votes cast at the general election on November 3, 1970, as ascertained and determined by the State Board of Elections at its meeting held on November 23, 1970, that all four proposals to amend the Constitution of Virginia were ratified as shown below.").

In summary, the text of the Virginia Constitution—along with the contemporaneous understandings of both the legislative and executive branches at the time of the Constitution's ratification—unquestionably refute the Virginia Supreme Court's interpretation. All that remains is the Virginia Supreme Court's policy-driven preferences that, contrary to the Constitution's text, (1) "election" means something different in one place in the Constitution than it does *everywhere else* in the Constitution, in statutes, and under federal law, and (2) the General Assembly be required to pass a proposed constitutional amendment prior to the start

of early voting. Whatever the merits of that policy proposal, it is plainly not present in the Constitution that the people of the Commonwealth adopted.

The Supreme Court of Virginia thus defied the combined sovereignty of the people of the Commonwealth who ratified the 1971 Constitution that governs the process for amendment, two General Assemblies who passed the amendment, and the people who ratified the amendment in 2026. By so dramatically departing from the text and structure of the Virginia Constitution, the Virginia Supreme Court's decision thus impermissibly transgressed the ordinary bounds of judicial review. This Court is therefore likely to grant review and reverse the decision below on that basis.

## II. Applicants, Candidates, and Voters Would be Irreparably Harmed Absent a Stay and the Equities Weigh in Favor of Permitting the Commonwealth to Hold Elections Using the Maps Authorized By the Constitutional Amendment.

If the Court does not enter a stay of the decision of the Supreme Court of Virginia, applicants will be irreparably harmed by being forced to hold an election using a congressional map other than the map authorized by the constitutional amendment and adopted by the General Assembly. This Court has repeatedly recognized that states, candidates, and voters suffer irreparable harm in such circumstances. *See, e.g.*, *Perez*, 585 U.S. at 602 ("injunctions barring the State from conducting this year's elections pursuant to a statute enacted by the Legislature . . . would seriously and irreparably harm the State"); *Maryland*, 567 U.S. at 1303 (2012) (Roberts, C.J., in chambers) ("That Maryland may not employ a duly enacted statute to help prevent these injuries constitutes irreparable harm."). *See also Malliotakis v. Williams*, 146 S. Ct. 809, 811 (2026) (Alito, J., concurring in grant of stay) ("Here, our

stay, far from causing disruption or upsetting legitimate expectations, eliminates much of the uncertainty and confusion that would exist" if state court decision were not stayed).

The equities similarly weigh heavily in favor of staying the decision below. The General Assembly and the people of the Commonwealth completed a constitutional process that, in the words of the Supreme Court of Virginia, is "laborious" and "painstaking" to adopt the congressional maps that the people and their representatives both thought proper. App. 9a. The decision below overthrows that democratic outcome just days before the Commonwealth must begin its preparations to administer the 2026 midterm election. The primary election is scheduled for August 4, 2026. Federal law requires absentee ballots to be sent to military and overseas voters no later than 45 days before Election Day. 52 U.S.C. § 20302(a)(8). Virginia law similarly requires that domestic absentee ballots be sent and in-person early voting to start 45 days before Election Day. Va. Code §§ 24.2-612, 24.2-701.1(A). For the August 4 primary, those statutory mailings must begin June 18, 2026. Election administrators must finalize the ballot order by May 28, 2026. This Court should not permit the Supreme Court of Virginia to short-circuit that process by overturning the Commonwealth's lawfully adopted maps at the last minute.

This Court has already recognized that certainty over the congressional maps governing the 2026 midterm elections is an emergency interest of the highest order. *See Abbott*, 146 S. Ct. at 419; *Malliotakis*, 146 S. Ct. at 809. The same principle applies here. A stay would not change election rules on the eve of voting; it would

preserve the congressional map authorized by the political branches and the voters before candidates, parties, election officials, and voters are forced to organize the 2026 federal election under a different map imposed by a divided state court.

The window for orderly administration of Virginia's congressional elections is closing rapidly. This Court should act now to preserve the status quo while it considers the grave federal questions the decision below raises.

## CONCLUSION

Applicants respectfully request that the Chief Justice enter an immediate administrative stay pending disposition of this application and stay the May 8, 2026, judgment and mandate of the Supreme Court of Virginia pending the timely filing and disposition of Applicants' petition for a writ of certiorari and, if certiorari is granted, pending final judgment of this Court. Should certiorari be denied, the stay should terminate automatically.

Dated: May 11, 2026


JAY JONES
Attorney General

TILLMAN J. BRECKENRIDGE
Solicitor General

OFFICE OF THE ATTORNEY GENERAL
202 North Ninth Street
Richmond, VA 23219
(804) 786-2071
solicitorgeneral@oag.state.va.us

*Attorneys for the Commonwealth of Virginia*

MATTHEW A. SELIGMAN
*Counsel of Record*

GRAYHAWK LAW, P.C.
3015 Main Street, Suite 330
Santa Monica, CA 90405
(310) 571-5993
matthew@grayhawklaw.com

*Attorney for Applicants Don Scott, Scott Surovell, and L. Louise Lucas*

# APPENDIX

## APPENDIX TABLE OF CONTENTS

Present: All the Justices

DON SCOTT, IN HIS OFFICIAL CAPACITY, ET AL.

v. Record No. 260127

RYAN T. MCDOUGLE, VIRGINIA STATE SENATOR, ET AL.

OPINION BY
JUSTICE D. ARTHUR KELSEY
MAY 8, 2026

FROM THE CIRCUIT COURT OF TAZEWELL COUNTY

On March 6, 2026, the General Assembly of Virginia submitted to Virginia voters a proposed constitutional amendment that authorizes partisan gerrymandering of congressional districts in the Commonwealth. We hold that the legislative process employed to advance this proposal violated Article XII, Section 1 of the Constitution of Virginia. This constitutional violation incurably taints the resulting referendum vote and nullifies its legal efficacy.[1]

I.

This case comes to us with a historical background. It does not determine the outcome of the legal disputes presently before the Court, which are entirely procedural — but it does explain the context in which these disputes have arisen.

From Madison's era[2] to the present, political parties of every stripe have offered if-by-whiskey arguments supporting partisan gerrymandering. Since that time until today, these arguments have been criticized by thoughtful jurists and legal scholars. "[P]artisan gerrymanders," Justice Kagan has observed, "deprive[] citizens of the most fundamental of their

[1] For the sake of simplicity, we will collectively refer to the appellants as the "Commonwealth" and the appellees as the "Claimants."

[2] *See* Pauline Maier, Ratification: The People Debate the Constitution, 1787-1788, at 440-52 (2010). *See generally Madison's Election to the First Federal Congress, October 1788-February 1789*, National Archives: Founders Online, https://perma.cc/2GVH-HXN5.

constitutional rights: the rights to participate equally in the political process, to join with others to advance political beliefs, and to choose their political representatives." *Rucho v. Common Cause*, 588 U.S. 684, 721-22 (2019) (Kagan, J., joined by Ginsburg, Breyer, and Sotomayor, JJ., dissenting).

Echoing Justice Kagan's warnings, Professor A.E. Dick Howard advocated that Virginia should amend its Constitution to discourage, if not outright prohibit, partisan gerrymandering by the legislature. *See generally* A.E. Dick Howard & William Antholis, *The Virginia Constitution of 1971: An Interview with A.E. Dick Howard*, 129 Va. Mag. Hist. & Biography 347, 365-66 (2021). He trenchantly argued that partisan gerrymandering "undermines democracy itself." A.E. Dick Howard & Rebecca Green, *A Chance To End Gerrymandering in Virginia*, Virginian-Pilot, Dec. 9, 2018, at 19A.[3] "Many people inveigh against partisan gerrymandering," he observed while advocating for the constitutional amendment to establish Virginia's redistricting commission, but "we in Virginia are about to do something about it." A.E. Dick Howard, *Redistricting Commission Amendment Is a Landmark, But Work Remains To Put It in the Virginia Constitution*, Richmond Times-Dispatch, Mar. 19, 2019, at 11A.

A year after that optimistic prediction, Virginians voted by a wide margin to reform the redistricting process in the Commonwealth in an effort to end partisan gerrymandering.[4] They

---

[3] These views are widely shared by prominent scholars, historians, and political scientists. *See, e.g.*, Brent Tarter, Gerrymanders: How Redistricting Has Protected Slavery, White Supremacy, and Partisan Minorities in Virginia 1 (2019); Samuel S.-H. Wang, *Three Tests for Practical Evaluation of Partisan Gerrymandering*, 68 Stan. L. Rev. 1263, 1272 (2016); Charles Backstrom, Leonard Robins, & Scott Eller, *Establishing a Statewide Electoral Effects Baseline*, *in* Political Gerrymandering and the Courts 145, 148 (Bernard Grofman ed., 1990).

[4] *See also* Henry L. Chambers, Jr., *Readying Virginia for Redistricting After a Decade of Election Law Upheaval*, 55 U. Rich. L. Rev. 227, 273 (2020) ("The [Virginia Redistricting Commission] is an attempt to address partisan gerrymandering and is consistent with the Supreme Court's invitation for states to do so in *Rucho v. Common Cause*.").

adopted Article II, Section 6-A of the Constitution of Virginia to create the Virginia Redistricting Commission. Under the 2020 amendment, if this bipartisan commission could not reach a consensus, the responsibility to achieve the amendment's ultimate goal — ridding political partisanship as much as possible from the redistricting task — would become the constitutional responsibility of the Supreme Court of Virginia.

In 2021, partisan disputes in the Virginia Redistricting Commission deadlocked the 16-member commission. When the task fell to us pursuant to Article II, Section 6-A, we unanimously ordered that the prior district maps be replaced with wholly new maps that commentators across a wide spectrum of political views later deemed to be free of partisan bias.[5] We understood then, as we do today, that "[n]o tenet of free government is more fundamental than fairness in voting and representation." Howard & Green, *supra*, at 19A. This "enduring principle," *id.*, served as the anchoring ideal of Article II, Section 6-A of the Constitution of Virginia and the ultimate goal of our constitutionally assigned redistricting task.

On October 31, 2025, during a disputed 2024 Special Session,[6] the General Assembly approved by a party-line vote a proposed amendment to the Constitution of Virginia that would

---

[5] *See, e.g.*, A.E. Dick Howard, *Who Belongs: The Constitution of Virginia and the Political Community*, 37 J.L. & Pol. 99, 146-47 (2022) ("The court set about its task with care and with results that, whatever critics might have expected, were a vast improvement on the old ways of doing redistricting."); *Redistricting Report Card*, Princeton Gerrymandering Project, https://perma.cc/C6SS-27YP (giving Virginia an overall "A" grade for its 2021 redistricting maps for the U.S. House, Virginia House of Delegates, and Virginia Senate and stating that the 2021 maps provide no partisan advantage); Deb Wake & Liz White, *A Frustrating, Complicated Process — That Worked*, Richmond Times-Dispatch, Jan. 12, 2022, at 17A ("Virginia's new districts have been lauded by a long list of nonpartisan analysts . . . that said Virginia's new districts are among the fairest in America.").

[6] Two procedural aspects of the special session are challenged in this case. First, the General Assembly in 2024 applied to the Governor for a special legislative session. *See* Va. Const. art. IV, § 6. The application stated that the special session would consider only "such matters as are provided for in the procedural resolution" for "such Special Session." H. J. Res. 428, Va. Gen. Assem. (Reg. Sess. 2024). The procedural resolution did not authorize the General

temporarily suspend Article II, Section 6-A. In its place, the proposed amendment authorizes the General Assembly to redraw congressional districts outside of the regular decennial-census redistricting as a response to other states that also redistrict outside of decennial-census redistricting or court-ordered redistricting. The proposed amendment would authorize such redistricting to take effect for the upcoming November 2026 congressional elections.

During the 2026 Regular Session that began in January, the General Assembly again voted by a party-line vote to approve the proposed amendment. In February 2026, the General Assembly enacted and published a new map for Virginia's 11 congressional districts contingent upon approval of the proposed constitutional amendment by a majority of the voters and upon certification of such results. These new districts replace the existing nonpartisan map (representing districts split 6-5 between the two major political parties) with a highly partisan gerrymandered map (representing expected districts divided 10-1 between the two major political parties).[7]

---

Assembly to propose constitutional amendments and required "unanimous consent" to consider matters not listed in the procedural resolution. H. J. Res. 6001, Va. Gen. Assem. (Spec. Sess. I 2024). The General Assembly later, on a party-line vote, expanded the scope of the Special Session to authorize legislative proposals to amend the Constitution of Virginia.

Second, the 2024 Special Session overlapped the 2025 Regular Session, which began in January 2025. This parallel-sessions anomaly raises serious issues. *See generally* Thomas Jefferson, A Manual of Parliamentary Practice 174-75 (1801); Mason's Manual of Legislative Procedure § 781(8), at 556 (2010 ed.); Manual of the Senate General Assembly of Virginia R. 56, at 136 (2024-2025 ed.); H. Res. 10, Va. Gen. Assem. (Reg. Sess. 2024); 5 Asher C. Hinds, Hinds' Precedents of the House of Representatives of the United States § 6690, at 857 (1907); 8 Clarence Cannon, Cannon's Precedents of the House of Representatives of the United States § 3375, at 823 (1935); 1 Lewis Deschler, Deschler's Precedents of the United States House of Representatives 13 (1976). Given our holding in this case, we need not resolve the parties' disputes on these two issues.

[7] *See* Richmond Times-Dispatch, *Virginia Democrats Make Comments on Redistricting*, at 0:42 to 1:47 (YouTube, Feb. 5, 2026), https://www.youtube.com/watch?v=G67DQWh79qQ; Senate of Virginia, *Senate Chamber on 2026-02-10*, at 1:57:29 to 1:57:54 (YouTube, Feb. 10, 2026), https://www.youtube.com/live/Ft9PWZd2rm8?si=JrJyd7s0ndtlHIVR&t=7049.

Under the proposed new map, approximately 47% of Virginians that voted for representatives of one of the major political parties in the last congressional election would now be represented by 9% of Virginia's delegation to the U.S. House of Representatives — while the approximately 51% of Virginians that voted for the other major political party would now be represented by 91% of Virginia's congressional delegation.[8]

The General Assembly first submitted the proposed constitutional amendment to Virginia voters on March 6, 2026 — the first day of early voting. The submission was accompanied by a ballot asking voters to answer "yes" or "no" to the question whether they wanted to "restore fairness" in the upcoming congressional elections. *See* 2026 Acts ch. 6, at sched. § 2. Voting started on March 6 and ended on April 21. Of the total number of all votes, approximately 45% were cast during the early voting period and approximately 55% were cast on the final day of the election.[9]

The Virginia Department of Elections reported on April 30 that 1,604,276 Virginians had cast "yes" votes in response to the "restore fairness" ballot question[10] and 1,499,393 Virginians had cast "no" votes.[11] Approximately 3.38% of the total votes separated the number of "yes" votes and "no" votes, and thus, the majority will of the people was secured by "yes" voters representing 1.69% of the total votes cast.

---

[8] *See generally 2024 November General*, Virginia Dep't of Elections (Mar. 5, 2025), https://perma.cc/7GRF-B44J?type=image (reporting the official results for the 2024 congressional election).

[9] *2026 April 21 Special*, Virginia Dep't of Elections (Apr. 30, 2026), https://perma.cc/ZKT7-YPBC (recording unofficial results by vote method).

[10] *See Proposed Amendment for April 2026 Special Election*, Virginia Dep't of Elections, https://perma.cc/G2LC-S3HW; *see also* 2026 Acts ch. 6, at sched. § 2.

[11] *2026 April 21 Special*, *supra* note 9 (recording the unofficial results demonstrating the percentage of votes for each side and the total number of votes).

II.

A.

In a constitutional republic, "[i]t is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). Chief Justice Marshall learned this truth two decades earlier from his former law professor, another Virginian, George Wythe. Sitting in our seat of judgment in 1782, Judge Wythe laid down the two cornerstones of judicial review: the "duty" to declare the constitutional boundaries of political power and the courage to "fearlessly" protect them. *See Commonwealth v. Caton*, 8 Va. (4 Call) 5, 8 (1782). His admonition was timeless:

> [I]f the whole legislature, an event to be deprecated, should attempt to overleap the bounds, prescribed to them by the people, I, in administering the public justice of the country, will meet the united powers, at my seat in this tribunal; and, pointing to the constitution, will say, to them, here is the limit of your authority; and, hither, shall you go, but no further.

*Id.*

Consistent with this Virginia tradition, "[t]he judiciary department has the power, and it is its duty, to pass upon the validity of a constitutional enactment when put in force" by legally questionable means. *Scott v. James*, 114 Va. 297, 304 (1912). A constitution by its very nature "declare[s] under what circumstances, and in what manner it shall be amended," and it is "the supreme law of the land, to which all persons, rulers, as well as citizens, must bow in obedience." 3 Joseph Story, Commentaries on the Constitution of the United States § 1609, at 473 (1833). It follows that the judiciary has the ultimate "authority to determine the validity of the proposal, submission, or ratification of constitutional amendments." *Harrison v. Day*, 201 Va. 386, 393 (1959) (citation omitted). "Where restrictions are imposed in the Constitution by

express language or necessary implication upon the power of the General Assembly, the restrictions may not be ignored." *Carlisle v. Hassan*, 199 Va. 771, 776 (1958).

B.

It is fair to ask whether we could have or should have reviewed the constitutionality of the proposed amendment prior to it being presented to the voters. But it is not a question the Commonwealth should ask. Throughout this litigation, the Commonwealth has insisted that we cannot lawfully decide this case prior to the referendum. In its motion for a stay in this case, the Commonwealth argued that longstanding Virginia precedent, *Scott v. James*, was "virtually indistinguishable" from this case and that it clearly held that "courts *cannot interfere to stop any of the proceedings* while this permanent law is in the *process of being made*," and "[o]nly '*upon the completion of the proceedings*, [if] the validity of the amendment is assailed[] on the ground that the several provisions of the Constitution have not been complied with, *then* the courts can pass upon the validity of the amendment.'" Emergency Mot. to Stay at 11-12 (emphases and alterations in original) (quoting *Scott*, 114 Va. at 304).[12] The Commonwealth concluded that

[12] *See also* Mot. for Admin. Stay & Vacatur at 11 ("The Supreme Court of Virginia has especially cautioned that courts may not 'arrest or interfere with the process of legislation' or enjoin the holding of an election while the amendment process is underway." (quoting *Scott*, 114 Va. at 298)); *id.* at 12 ("[J]ust as a court could not enjoin the General Assembly's transmission of a bill to the Governor for her veto or signature, a judicial injunction of the proceedings necessary to enact a constitutional amendment 'would manifestly be an unwarranted interference by the courts with the constitutional processes of the legislative department.' So, too, here." (quoting *Scott*, 114 Va. at 304)); *id.* at 14 ("[T]he underlying legal questions about the process and the ballot language can be adjudicated after the election, but they cannot be used as a vehicle to enjoin the election from taking place."); R. at 1701-02 (asserting that "[w]hat *Scott v. James* says is that you cannot interfere in the process of legislation while it is being made, and the constitutional amendment process is still ongoing" and that the "time to challenge the constitutionality . . . of an amendment" is established by *Scott* to be "after it has been adopted by the people"); *id.* at 1705-06 ("What we are saying is that the time to challenge the amendment is when it becomes law . . . . That is precisely what *Scott v. James* stands for."); *id.* at 1769-70 (arguing that *Scott v. James* counsels that a challenge to a constitutional amendment "is not justiciable until the people voted up or down" and that "a justiciable controversy, one that is ripe,

"[t]he lesson is clear: Courts may not preemptively invalidate a proposed constitutional amendment before it has been passed by the voters." *Id.* at 12 (citing *Scott*, 114 Va. at 304); *see also id.* at 14-15 ("*Scott* makes clear that the 'process' of amending the Constitution is not complete until the *voters* approve or reject the amendment." (emphasis in original) (quoting *Scott*, 114 Va. at 304)).

Having successfully insisted (over the objection of the Claimants)[13] that we postpone judicial review of the constitutional amendment until after the election process, it might be tempting for the Commonwealth to think that the final vote implicitly stacks the deck in its favor — perhaps enough so that the exercise of any judicial review could be viewed as an ultra vires effort to overturn the will of the people. If this supposition were true — that *Scott* forbids pre-election challenges and that "the will of the people" forbids post-election challenges — then judicial review of allegedly unconstitutional procedures used to adopt a constitutional amendment would not exist in the Commonwealth of Virginia.[14]

---

it won't exist until that legislative process . . . is complete, which is the time when it's voted up or down"); *id.* at 1810 (arguing that *Scott v. James* "explicitly" states that a court cannot "opine on a legislative resolution that is not yet law" and that "the final endpoint of that constitutional amendment process is the vote"); *id.* at 2070 (arguing "under *Scott v. James*, that the time for the Court's consideration of these constitutional issues is at the time the subject constitutional amendment is voted favorably upon and into existence by the voters").

[13] The Claimants asserted in a companion case from the same circuit court, *Koski v. Republican Nat'l Comm.* (Record No. 260169), that *Scott* could be distinguished and that we should issue our ruling before the parties and the citizenry engaged in the time, expense, and effort associated with a statewide referendum vote. *See* Resp. to Emergency Mot. to Stay (260169) at 25, 28-29. Given the "sui generis" nature of that case, *see Koski v. Republican Nat'l Comm.*, 305 Va. ___, ___ n.3, 926 S.E.2d 289, 291 n.3 (2026) (per curiam), we ruled in favor of the Commonwealth because *Scott* was not distinguishable.

[14] We respect and accept the representation of the Commonwealth's counsel that no such assertion can be made. At oral argument in this case, the Court asked the Commonwealth's counsel: "I don't understand that as a legal argument given that you asked us to invoke our, ironically enough named, *Scott* decision from over 100 years ago that specifically says you don't deal with any potential procedural irregularities before the people have voted. So saying that the people have voted yes after having said you don't even look as to whether there is any procedural

On the issues before us in this case, we hold that the ultimate vote margin plays no role in the analytics of our judicial review of the constitutionality of the pre-election constitutional-amendment process. Neither a high margin of success nor a single-digit margin, *supra* at 5, logically or legally matters. As we earlier explained:

> It cannot be overstated that *Scott* focused only on the timing of the exercise of judicial injunctive remedies — not on a court's constitutional power of judicial review. To be sure, *Scott* emphasized that "[t]he judiciary department has the power, and it is its duty, to pass upon the validity of a constitutional enactment when put in force, as well as upon the validity of an act of the legislature regularly passed and put in effect." If the electorate rejects the proposed amendment, any pending legal proceedings will be dismissed as moot. *If the electorate approves the proposed amendment, we then must exercise our constitutional duty to review lower courts' declaratory judgments before us on appeal and address de novo what equitable remedies, if any, are appropriate.*

*Koski v. Republican Nat'l Comm.*, 305 Va. ___, ___, 926 S.E.2d 289, 292 (2026) (per curiam) (emphasis added) (footnote and citations omitted).

C.

Article XII, Section 1 of the Constitution of Virginia mandates a detailed process governing the lawful adoption of constitutional amendments. These procedural requirements may seem laborious to some, perhaps even painstakingly so. The ambition of a constitution, James Madison said, is to create "a Government for perpetuity" grounded by "permanent principles and not on those of a temporary nature." Debates of the Virginia Convention (June

---

irregularity until after the people have voted doesn't add anything to the equation, does it?" Oral Argument Audio at 3:49 to 4:16. Counsel replied: "No. And to be perfectly clear, we are not arguing that this Court lacks jurisdiction to review whether the constitutional requirements of Article XII have been complied with. It does. Instead, I'm saying that on the merits this Court should not accept the challengers' arguments." *Id.* at 4:17 to 4:31. The Court again asked: "But the fact that there is a yes vote doesn't tell us anything about those merits?" *Id.* at 4:32 to 4:35. Counsel correctly answered: "No. It does not." *Id.* at 4:35 to 4:36.

12, 1788) (remarks of James Madison), *reprinted in* 10 The Documentary History of the Ratification of the Constitution 1184, 1206 (John P. Kaminski & Gaspare J. Saladino eds., 1993). For this reason, amending the Constitution "necessitate[s] compliance with the requirements of a deliberately lengthy, precise, and balanced procedure." *Coleman v. Pross*, 219 Va. 143, 153 (1978). "[S]trict compliance with these mandatory provisions is required in order that all proposed constitutional amendments shall receive the deliberate consideration and careful scrutiny that they deserve." *Id.* at 154.

The opening sentence of Article XII, Section 1 states the first requirement for the non-convention method of amending the Constitution of Virginia. In pertinent part, it provides:

> Any amendment or amendments to this Constitution may be proposed in the Senate or House of Delegates, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be . . . referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates.

Under this provision, the General Assembly can propose amendments but cannot adopt them. The inverse is also true. Virginia voters can adopt or reject amendments but cannot propose them. This constitutional-amendment process of dividing power between the people and their politicians has withstood the test of time "for more than one hundred years." *Coleman*, 219 Va. at 153. And it has remained so for the half-century since *Coleman*.

To guard against hasty changes to the Commonwealth's organic law, Article XII, Section 1 also slow-walks the constitutional-amendment process. The General Assembly must twice vote in favor of a proposed amendment at two separate legislative sessions with an intervening election of the House of Delegates. This gives voters two opportunities — one indirect, the other direct — to voice their views on the proposed amendment. The first is during the intervening-election period between the two legislative sessions. Voters can support or defeat

candidates for the House of Delegates who either endorse or oppose the proposed amendment.[15] If the General Assembly votes against it at the next legislative session, the process ends there. If the General Assembly votes in favor of the proposal, voters get a second direct opportunity to vote the proposed amendment up or down at the ballot box. The efficacy of the second popular vote depends in part upon the reliability of the first.

"The reasoning behind this," Delegate Slaughter stated in 1969 during the General Assembly's debates over the later 1971 amendments to the Virginia Constitution, "is that Constitutions should not be changed lightly."[16] *See* Debates of the House of Delegates, *supra*

---

[15] *See* John J. Dinan, The American State Constitutional Tradition 43 (2006) (recounting the historical purpose of the intervening-election requirement as "permitt[ing] the people to register their approval of amendments indirectly, by giving them a chance in an intervening election to unseat legislators who had supported an unpopular amendment"); Walter Fairleigh Dodd, The Revision and Amendment of State Constitutions 120-23 (1910) (recognizing that most states during the nineteenth-century had adopted an intervening-election requirement for constitutional amendments); G. Alan Tarr, *Popular Constitutionalism in State and Nation*, 77 Ohio St. L.J. 237, 270-71 (2016) (stating that "[m]any states initially required passage of proposed amendments in two successive legislative sessions with an intervening election, so that the people could by their votes express their views on proposed amendments, and fifteen states retain some form of that requirement today" and that "the two-session requirement does give the people a chance to render a verdict by unseating legislators").

[16] At oral argument, the Commonwealth attempted to sideline these statements by arguing that they were made in a different context. *See* Oral Argument Audio at 15:05 to 16:41. We disagree. The purpose of the intervening-election requirement in Article XII, Section 1 was raised during the debates as support for rejecting an amendment to Article XII, Section 2 that would have allowed a constitutional convention to be called by a simple majority of the General Assembly rather than a two-thirds vote. Delegate Slaughter successfully argued that because the convention method is already "a quicker method and faster," a two-thirds vote should remain to provide "an overriding necessity to act more quickly, and possibly hastily." Proceedings and Debates of the House of Delegates Pertaining to the Amendment of the Constitution 498 (Extra. Sess. 1969) [hereinafter Debates of the House of Delegates]. Delegate Slaughter pointed to the intervening-election requirement in Article XII, Section 1 as an analogous requirement in the non-convention amendment method to prevent the Constitution from being "changed lightly." *Id.* The acknowledgment that the convention method was "a quicker method and faster," *id.*, than the non-convention method also confirms the intention for the latter to be a slower, more deliberative process. For similar reasons, the replacement of the 90-day pre-publication period with a 90-day delay before submission to the people in order to inform the people of the substance of the amendment does not refute the stated purpose for the intervening-election

note 16, at 498. "Not only would there be an intervening House of Delegates election where you might be able to get the sentiment of the people on an amendment you had acted upon previously, but upon reflection the General Assembly might decide not to submit the amendment." *Id.*[17]

In this case, voting in the general election for the House of Delegates began on September 19, 2025, and ended on Election Day, November 4, 2025. The General Assembly voted for the first time to propose the constitutional amendment to the electorate on October 31, 2025. By that date, over 1.3 million votes had been cast in the general election, which was approximately 40% of the total vote for that election cycle.[18]

The Commonwealth sees nothing wrong with this sequencing because, under its interpretation, the term "general election" in Article XII, Section 1 only means the last day of the election, November 4, otherwise known as "Election Day." Because Election Day was four days after the October 31 vote to propose the constitutional amendment to Virginia voters, the Commonwealth concludes that there was an intervening election between the 2024 Special

---

requirement — promoting deliberation so that the Constitution would not be "changed lightly," *id.*

[17] This reasoning is in accord with those states that decided to keep their intervening-election requirements for amending their state constitutions when many states eliminated the requirement in the latter half of the 1800s in order to allow for faster amendments to the constitution. *See* Dinan, *supra* note 15, at 43-44 (recognizing that "some delegates were reluctant to dispense with the consecutive-legislatures requirement, because this provision was seen as promoting deliberation in the amending process" and noting that "some states therefore chose to retain their consecutive-legislatures requirements").

[18] *See 2025 November General*, Virginia Dep't of Elections (Dec. 1, 2025), https://perma.cc/P4GF-DEAS?type=image (reporting the total votes by method, including early voting, mailed absentee voting, and Election Day voting); *Early Voting in Virginia 2025 November General*, VPAP, https://perma.cc/QPF9-N8H8 (reporting the cumulative number of ballots cast by each day of the election period).

Session (which included the first legislative vote for the constitutional amendment) and the later 2026 Regular Session (which included the second legislative vote).

In other words, under the Commonwealth's view, the four-day period (which included a weekend) was the "intervening" period during which Virginia voters could find out what the proposed amendment actually said, whether their preferred candidate supported or opposed it, and whether they wanted to use their vote to express a view on the subject. This view appears to be wholly unprecedented in Virginia's history. "In the half century since adoption of Virginia's 1971 constitution, the General Assembly has approved 63 amendments for placement on the ballot and voters have ratified 54 of them." John Dinan, *Virginia's Constitution: An Influential and Resurgent Declaration of Rights*, State Court Report (June 3, 2025), https://perma.cc/CC68-Y9XU. Of these 63 prior proposals, the Commonwealth has identified none in which the General Assembly passed a proposed amendment after voting in the general election had already begun.

As for the 1.3 million or so Virginians in this case who had voted before October 31, the Commonwealth concedes that the "clear purpose" of the intervening-election requirement was to provide them with the constitutionally protected "*opportunity* to elect the House of Delegates that will participate in the second legislative vote on the proposed amendment." Appellants' Br. (Commonwealth) at 14 (emphasis in original). But early voters squandered that opportunity, the Commonwealth contends, by accepting the Commonwealth's invitation to cast their votes during the 42 days of voting prior to the four-day period between October 31 (the day the legislature voted to amend the Constitution) and November 4 (the last day of voting in the election). Under this thesis, early Virginia voters unknowingly forfeited their constitutionally protected opportunity to vote for or against delegates who favor or disfavor amending the Constitution by

not anticipating a legislative vote on a constitutional amendment four days before the last day of voting. To be sure, under the Commonwealth's logic, the legislative vote could just as well have been one day before. *See* Oral Argument Audio at 25:32 to 25:44 (arguing that "Election Day *is the election*. So anything that gets passed must be passed before Election Day" (emphasis added)).

The Commonwealth's position finds no support from the text of Article XII, Section 1 or the historical meaning of the term "election." The predecessor of Article XII, Section 1 first appeared in the 1870 Constitution of Virginia. That constitution set forth a 3-month publication requirement prior to the intervening election that also used the expression "time of making such choice" to describe the "next general election" required by the provision to occur between the first and second legislative votes proposing a constitutional amendment. *See* Va. Const. art. XII (1870). The 1902 and 1928 Constitutions replaced "time of making such choice" in the publication clause with the "time of such election." *See* Va. Const. art. XV, § 196 (1902); Va. Const. art. XV, § 196 (1928). The 1971 Constitution removed the pre-publication requirement,[19] thus leaving only the phrase "next general election" to reference the intervening-election requirement. *See* Va. Const. art. XII, § 1. Not one of these expressions since the constitutional-amendment provision was first included in 1870 categorically limited the definition of "election" to a single day.

[19] *See* Debates of the House of Delegates, *supra* note 16, at 496 ("We struck out any reference to publication because of some question about what sort of publication might be required."); 2 A.E. Dick Howard, Commentaries on the Constitution of Virginia 1175 (1974) ("When at the 1969 session the Assembly dropped the publication requirement and instead inserted into section I the ninety-day delay, it avoided what otherwise could have been a troublesome problem of what the law means by 'publication.'").

Before evaluating the exegesis of the term "election" by legal scholars and courts, it is worth observing that the Commonwealth's view would be unrecognizable to the average citizen. That perspective should not be scorned but praised. As we have repeatedly said, "the words of a Constitution are to be understood in the sense in which they are popularly employed, unless the context or the very nature of the subject indicates otherwise," and thus, "we are guided by the principle that *the Constitution was written to be understood by the voters*." *Old Dominion Comm. for Fair Util. Rates v. State Corp. Comm'n*, 294 Va. 168, 185 (2017) (emphasis added) (first quoting *Howell v. McAuliffe*, 292 Va. 320, 368 (2016); then quoting *District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008)).

With that perspective, imagine one of the over one million Virginians who had voted in person before Election Day in 2025 walking into a polling place. The voter says to the officer of election, "I am here to vote in the election." The officer of election responds, "we are not conducting an election here." "But that's why I am here," the voter replies. "Maybe so, but let me explain," the officer of election insists, "you can vote in the election, but we are not conducting an election today. Elections are only conducted on Election Day."

Legal scholars and courts would have the same bewildered reaction as the hypothetical average citizen. The definition of "election" has always broadly denoted the "act of choosing." 1 Samuel Johnson, Dictionary of the English Language 697 (1755) (altering archaic spelling); 1 Noah Webster, An American Dictionary of the English Language 646 (1828).[20] Most, if not

[20] *See also* Nathan Bailey, An Universal Etymological English Dictionary 297 (7th ed. 1735) (defining election as "Choosing or Choice" (altering archaic spelling)); 1 John Ash, The New and Complete Dictionary of the English Language 322 (1775) (defining election as "[t]he act of choosing"); William Perry, Royal Standard English Dictionary 166 (1st Am. ed. 1788) (defining election as "act of choosing"); 1 Thomas Sheridan, A Complete Dictionary of the English Language 439 (3d ed. 1790) (defining election as "[t]he act of choosing" (altering archaic spelling)); John Walker, A Critical Pronouncing Dictionary and Expositor of the English

all, law lexicons treat this popular meaning as the technical definition of the word. *See* Black's Law Dictionary 653 (12th ed. 2024) (defining "election" as "[t]he process of selecting");[21] 1 John Bouvier, A Law Dictionary 460 (1864) ("This term, in its most usual acceptation, signifies the choice which several persons collectively make . . . ."); J.J.S. Wharton, Law Lexicon 263 (Edward Hopper ed., 2d Am. ed. 1860) (defining election as "the act of selecting").[22]

---

Language 230 (1791) (defining election as "[t]he act of choosing" (altering archaic spelling)); James Barclay, A Complete and Universal Dictionary of the English Language 310 (1848) (defining election as "the act of choosing"); Joseph E. Worcester, A Dictionary of the English Language 469 (1860) (defining election as "[t]he act of electing or choosing"); James Stormonth, Etymology and Pronouncing Dictionary of the English Language 173 (6th rev. ed. 1881) (defining election as "the choice or selection" or "power of choosing"); 2 Funk & Wagnalls New Standard Dictionary of the English Language 798 (Isaac K. Funk ed., 1900) (defining election as "[t]he act or proceeding of selecting"); 3 William Dwight Whitney, The Century Dictionary and Cyclopedia 1866 (1900) (defining election as "[t]he act or process of choosing"); Webster's Third New International Dictionary 730 (2002) (defining election as "the act or process of electing" and "the act or process of choosing").

[21] Black's Law Dictionary 412 (1st ed. 1891) (defining election as "[t]he act of choosing or selecting"); Black's Law Dictionary 415 (2d ed. 1910) (same); Black's Law Dictionary 646 (3d ed. 1944) (same); Black's Law Dictionary 608 (4th ed. 1951) (defining election as "[t]he act of choosing or selecting" and noting that "the term in ordinary usage" means "the expression by vote of the will of the people"); Black's Law Dictionary 464-65 (5th ed. 1979) (same); Black's Law Dictionary 517-18 (6th ed. 1990) (defining election as "[t]he act of choosing or selecting" or "[a]n expression of choice by the voters of a public body politic, or as a means by which a choice is made by the electors"); Black's Law Dictionary 536 (7th ed. 1999) (defining election as "[t]he process of selecting"); Black's Law Dictionary 557 (8th ed. 2004) (same); Black's Law Dictionary 595 (9th ed. 2009) (same); Black's Law Dictionary 631 (10th ed. 2014) (same); Black's Law Dictionary 654 (11th ed. 2019) (same).

[22] *See also* Arthur Male, A Treatise on the Law and Practice of Elections 100 (1818) ("'Election' is 'a choice by the major part of those who have a right to choose' . . . ."); 1 Benjamin Vaughan Abbott, Dictionary of Terms and Phrases Used in American or English Jurisprudence 418 (1879) (defining election as "choosing; selecting" and recognizing that, in both "England to a considerable extent" and "more frequently in the United States," "[t]hese words have been long and extensively in use to signify the right to choose, or act of choosing"); 1 Stewart Rapalje & Robert L. Lawrence, A Dictionary of American and English Law 436 (1883) (defining election as the "operation of choosing"); William C. Anderson, A Dictionary of Law 394 (1889) (defining election as "[a] choosing, or selecting"); 10 American and English Encyclopedia of Law 562 (2d ed. 1899) ("In its Broadest Sense the term 'election' signifies any choice . . . .").

This lexical sense of the noun "election" must be distinguished from the noun phrase "election day." The near universal definition of "election day" is a "single day established by law for voters to cast ballots by presenting themselves in person at a voting precinct." Black's Law Dictionary 654 (12th ed. 2024). Giving both terms their intended meanings, Black's Law Dictionary correctly observes, "[i]n jurisdictions that allow early in-person voting, election day is normally the *last day* on which voters may cast a ballot in a given *election*." *Id.* (emphases added); *see also id.* at 1895 (defining "absentee voting" as "participation in an election by a qualified voter").

The semantic differences between these terms have a rich provenance. Beginning in colonial days, it was common in Virginia and other colonies for elections to last for days as election officials (usually sheriffs) canvassed the countryside to collect votes during elections. *See* 1 Charles Seymour & Donald Paige Frary, How the World Votes 208 (1918).

> In the royal colonies alone was the English system of taking the poll adopted . . . . that called for an oral vote or a show of hands to decide the result. If any candidate or voter demanded it, a poll must be taken, which might last for days. So great was the solicitude for the voter's convenience, that in Virginia the sheriff appeared at the planter's gate and wrote down his vote, without calling him from his plow or his tobacco shed.

*Id.*[23] Following the English tradition, voting in an early American election "continued until all the electors had been heard from, or until the closing of the polls had been thrice proclaimed from the court house door." *Id.* at 209. In jurisdictions following this tradition,

---

[23] *See also* Cortlandt F. Bishop, History of Elections in the American Colonies 159-60 (1893) ("In regard to adjourning or closing the poll, . . . . the returning officer must proceed from day to day, and from time to time, until all the freeholders present were polled. . . . On the western side of the Atlantic we find that it was customary in early times for the sheriffs of Virginia to go from one plantation to another and collect the votes of the inhabitants."); Joseph P. Harris, Election Administration in the United States 13, 15 (1934) ("[T]here were elections which lasted for several days, contrary to the fixed custom which has since arisen for the election

> [t]he poll could not be concluded until all present had voted, or until after proclamation had been made three times from the court house door, and no more freeholders appeared. . . . In case more freeholders appeared on the first day of an election than could be polled before sunset, and if the candidates or their agents so requested, the sheriff could adjourn the poll to the following day.

Bishop, *supra* note 23, at 161-62.

In other American colonies, eligible voters sent their votes by proxy to prevent the danger and damage that might result from them leaving their land to vote in the election or to save them "the inconvenience and trouble required by a journey to the capital town." *Id.* at 127, 129; *see also* Harris, *supra* note 23, at 13. These proxy votes, the precursor to today's absentee mail ballots, were in writing and sealed, and deputies selected by the local voters would take them to the court of election. *See* Bishop, *supra* note 23, at 127-39.

In the mid-1800s, it was recognized during congressional debates that the vote in Virginia occurred by voice vote, "and it frequently happened that all the votes were not polled in one day" — including at the most "recent election, at Richmond and at other places." Cong. Globe, 28th Cong., 2d Sess. 15 (1844). This occurred "in a State circumstanced as Virginia was — mountainous and intersected by large streams of water — at times of high water, and of inclement weather," because "voters were frequently prevented from attending the polls in one day." *Id.*

While the events of the mid-1800s led to laws establishing a single day for casting and receiving votes, *see generally Voting Integrity Project, Inc. v. Keisling*, 259 F.3d 1169, 1172-74

---

to be completed within a single day. . . . There was considerable variation in the conduct of elections, however, and it is recorded that in Virginia it was common for the sheriff to take the votes at the homes of the citizens."); Michael J. Dubin, United States Congressional Elections, 1788-1997, at x (1998) ("There were also differences in the length of elections. States allowed anywhere from one to five days for elections, and Virginia held elections on a different date in each county so that even within a single district the election was held on different dates.").

(9th Cir. 2001), modern election protocols eventually cycled back to the historical practice of permitting defined time frames for casting and receiving votes in an election.[24] Despite the varying duration of the election process over time, one constant has persisted: "From time immemorial an election to public office has been in point of substance no more and no less than the expression by qualified electors of their choice of candidates." *United States v. Classic*, 313 U.S. 299, 318 (1941). When the law speaks of an "election," it "plainly refer[s] to the combined actions of voters and officials meant to make a final selection of an officeholder." *Foster v. Love*, 522 U.S. 67, 71 (1997) (relying on the definition of election from Noah Webster's American Dictionary of the English Language); *see also Millsaps v. Thompson*, 259 F.3d 535, 547 (6th Cir. 2001); *Keisling*, 259 F.3d at 1175; *Voting Integrity Project, Inc. v. Bomer*, 199 F.3d 773, 775-76 (5th Cir. 2000).

The "combined actions" that define the term "election," *Foster*, 522 U.S. at 71, include citizens casting votes, from the beginning of the early-voting period until Election Day, and the officers of election receiving these votes and closing the polls on "Election Day" — which "[i]n jurisdictions permitting early in-person voting," the American Law Institute correctly explains, "is the last day on which voters may cast a ballot in that particular election," Principles of the Law of Election Administration § 101, at 2-3 (A.L.I. 2019). The definition is short and clear: "History confirms that 'election' includes both ballot casting and ballot receipt." *Republican*

[24] *See, e.g.*, 52 U.S.C. §§ 20301-20311 (requiring states to permit absent uniformed services voters and overseas voters to vote in federal elections by absentee ballot); Code §§ 24.2-701.1(A) (providing for in-person voting to be available on the 45th day before Election Day until the Saturday prior to Election Day), -612 (providing for the availability of absentee ballots, which can be mailed or dropped off, no later than 45 days before Election Day).

*Nat'l Comm. v. Wetzel*, 120 F.4th 200, 209 (5th Cir. 2024), *cert. granted sub nom.*, *Watson v. Republican Nat'l Comm.*, 146 S. Ct. 355 (2025).[25]

With this definition in mind, the Commonwealth implicitly concedes that early voting is one of the combined actions of the election when it recognizes that early voting "is *casting a ballot* to be counted on Election Day." Reply Br. (Commonwealth) at 4 (emphasis added). When governing law authorizes citizens to cast ballots over a period of time (as Virginia does in its "early voting" process, Code §§ 24.2-701.1(A), -612), the durational term "election" and the determinate term "Election Day" fit together perfectly. The metes and bounds of an election begin with the point of casting votes and end with the point of receiving votes and closing the polls on the last day of the election. Election Day is the boundary marker for the last act constituting an election.

The "combined actions" definition of "election," *Foster*, 522 U.S. at 71, undermines the Commonwealth's argument that Article IV, Section 3's designation of a date certain on which the House of Delegates winners "shall be elected" should be interpolated into Article XII, Section 1's definition of the noun phrase "general election." The Commonwealth states that in Article IV, Section 3, "[t]he Constitution defines that election as occurring on 'the Tuesday succeeding the first Monday in November.'" Reply Br. (Commonwealth) at 3.[26] Article IV, Section 3, however, never uses the word "election" and makes no attempt to define that unmentioned term.

---

[25] *See also Commonwealth v. Kirk*, 43 Ky. (4 B. Mon.) 1, 2 (1843) (recognizing that "[a]n election is the voting and the taking of the votes of the citizens"); *State v. Tucker*, 54 Ala. 205, 210 (1875) ("[W]hen the legislature employ[s] the word election, they mean the act of casting and receiving the ballots, the day and time of voting."); Anderson, *supra* note 22, at 394 (defining election as "[v]oting and taking the votes of citizens").

[26] *See also* Appellants' Br. (Commonwealth) at 16; Emergency Mot. to Stay at 8, 19.

The date certain in Article IV, Section 3, when considered in the context of the provision and the verb phrase "shall be elected," describes the time of the final act in an election. In legal argot as well as common speech, a wedding can last for hours, but the bride and groom are not lawfully wed until the officiant declares them so at the end of it. Equally so here. A general election can take place over many days, but it culminates and ends on Election Day. The successful candidate "shall be" lawfully deemed "elected" no earlier than Election Day, the last day of voting in the election.

The Commonwealth's contest with this reasoning begins well but ends poorly. As the Commonwealth correctly observes, courts often employ linguistic presumptions. One presumes that the "same term" used in "separate statutes" has the "same meaning" unless context "indicates to the contrary." *Jenkins v. Mehra*, 281 Va. 37, 48 (2011) (citation omitted).[27] When applicable, this principle raises a rebuttable, not a conclusive, presumption. As Chief Justice Marshall explained: "It has been also said, that the same words have not *necessarily* the same meaning attached to them when found in different parts of the same instrument: their meaning is controlled by the context." *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 19 (1831) (emphasis added).

What the Commonwealth overlooks is that an opposite presumption applies when there is a "material variation in terms." Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 170 (2012). "[A] material variation in terms suggests a variation in

[27] *See also Tvardek v. Powhatan Vill. Homeowners Ass'n*, 291 Va. 269, 278 (2016) (applying presumption to "exactly the same word" found in different provisions of the "same" statute); *Commonwealth v. Jackson*, 276 Va. 184, 194 (2008) (applying the "same meaning" presumption to the "same term" if context does not suggest otherwise).

meaning." *Id.* Similar but not identical words, in similar but not identical contexts, should be presumed to refer to similar but not identical ideas.[28]

The noun phrase "general election" in Article XII, Section 1 is not the same as the verb phrase "shall be elected" in Article IV, Section 3. The former textually denotes the cumulative actions of voters casting votes and election officials receiving those votes. *Supra* at 19. The latter textually denotes a single day, Election Day, at the conclusion of which all votes cast legally declare the ultimate winner. This "material variation" connotes a "variation in meaning." Scalia & Garner, *supra*, at 170. And that variation in meaning is fully explained by the centuries-old definition of "election," which includes the act of casting votes, *supra* at 15-19, and by the contextual purpose of Article XII, Section 1, which gives Virginia voters an opportunity to choose legislators who will support or defeat the proposed amendment, *supra* at 10-12 and notes 15-17.

For these reasons, we hold that the definition of "general election" in Article XII, Section 1 describes the combined actions of voters casting ballots and officers of election receiving those votes and closing the polls on the last day of the election. The plain and ordinary meaning of the expression matches the historical definition embraced by the courts and legal scholars. Article XII, Section 1 requires an intervening "general election" after the first legislative vote in favor of a proposed amendment and prior to the second legislative vote before the General Assembly has the constitutional authority to submit the proposal to the voters. In

---

[28] *See Zinone v. Lee's Crossing Homeowners Ass'n*, 282 Va. 330, 337 (2011) (recognizing that when an enactment uses "specific language in one instance, but omits that language or uses different language when addressing a similar subject elsewhere . . . , we must presume that the difference in the choice of language was intentional"); *Tvardek*, 291 Va. at 277 & n.6 (relying upon *Zinone* and applying the material-variation presumption).

this case, the General Assembly passed the proposed constitutional amendment for the first time well after voters had begun casting ballots during the 2025 general election.

D.

Our colleagues in dissent raise various objections to our reasoning. Some we have already addressed, but a few deserve more specific responses. Several of the dissent's objections were scarcely mentioned by the parties, either in briefs filed in the circuit court or on appeal, and one was not mentioned at all. In our view, none of these objections undermine our interpretation of Article XII, Section 1.

1.

The dissent's lead argument relies on Article II, Section 4, which empowers the General Assembly to "regulate the time, place, manner, conduct, and administration" of elections and "to make any other law regulating elections not inconsistent with this Constitution." The dissent then points to various statutory provisions sprinkled throughout Title 24.2 that they argue take precedence over our interpretation of Article XII, Section 1.

The dissent, for example, calls our attention to Code § 24.2-101's definition of "[g]eneral election." A single sentence in the Legislators' Opening Brief on page 32 also mentions this definition. Neither the dissent nor the Legislators' Opening Brief, however, acknowledge the statute's preamble. It expressly states that the definitions in Code § 24.2-101 do not apply when "context requires a different meaning." For his part, the Attorney General of Virginia — the "chief executive officer of the Department of Law," Code § 2.2-500 — does not once mention Code § 24.2-101 in any of his briefs on appeal. Nor did his earlier "official advisory Opinion," issued on behalf of the Commonwealth, cite the statute or assert its relevance to the issue before us. *See* 2026 Op. Atty. Gen. 26-003, 2026 Va. AG LEXIS 4 (Jan. 17, 2026).

At any rate, we place little or no interpretative weight on these statutory definitions given their expressly stated inapplicability when "context requires a different meaning," Code § 24.2-101. A self-limiting statutory definition cannot supersede the literal text, drafting history, historical context, and unambiguous purpose of a constitutional provision. Article II, Section 4 reinforces this truism by stating that its authorization to the General Assembly does not contemplate statutory provisions "regulating elections" in a manner that is "inconsistent with this Constitution."[29]

The same conclusion applies to the argument that the statute authorizing early voting during the 45-day period "prior to any election," Code § 24.2-701.1(A), displaces our understanding of the constitutional meaning of "general election" in Article XII, Section 1. The term "general election" in this provision first appeared in the Constitution of Virginia in 1870. The General Assembly enacted Code § 24.2-701.1(A) in 2019 — 149 years later. The inferential meaning attributed by the dissent to this modern statute is a weak reed on which to challenge the settled, historic meaning of "election" first used a century and a half earlier. *See supra* at 15-19.

The dissent seeks to bolster its position by relying on *Moore v. Pullem*, 150 Va. 174, 192 (1928). We do too but for different reasons. First, *Moore* held nearly a century ago that the then-existing law for absentee voting should be "liberally construed in favor of the absent voter," *id.* at 183, particularly in light of the "enlightened and aroused public opinion, which seeks to encourage and secure the participation of a larger number of voters in the exercise of the

---

[29] There is an additional irony in the dissent's approach. If it were true that the word "election" in every constitutional context solely meant Election Day, then Article II, Section 4's grant of "time, place, manner, conduct, and administration" authority to the General Assembly to "regulate" elections would arguably apply only to that one day and not to the numerous election activities regulated under Title 24.2 during the 45 days of early and absentee voting prior to Election Day. Our interpretation, in contrast, casts no doubt on the General Assembly's regulatory power over elections.

suffrage," *id.* at 184. If *Moore* were written today, we are confident it would say that precluding 1.3 million early voters in the 2025 general election from having a say in an ongoing debate over a proposed constitutional amendment would require a truly illiberal construction of Virginia law.

Second, *Moore* recognized that the Constitution of Virginia can "expressly or by necessary implication" defeat any contrary interpretation of a statute governing the "right to vote." *Id.* at 192. We certainly agree, and none of the Code provisions relied upon by the dissent can overcome the historic meaning of "general election" in Article XII, Section 1, whether that meaning is deemed to be express or necessarily implied. The meaning of "election" is fixed as the combined actions of voters casting ballots and officers of election receiving those votes and closing the polls on the last day of the election. The General Assembly can exercise its authority within these conceptual boundaries. But the General Assembly cannot change by ipse dixit the definition of "general election" in Article XII, Section 1 — or any other provision of the Constitution of Virginia — simply by passing a statute declaring it to be so.

2.

The dissent next claims that our interpretation of Article XII, Section 1 would cause "our courts to sit relatively idle for more than 25% of each year." *Post* at 36. The Commonwealth has never made this rather extreme argument in any of its 20-plus briefs and motions filed during the course of this litigation by any of the 16 attorneys (including the Attorney General of Virginia) representing the Commonwealth. Because our colleagues in dissent sua sponte make it an issue, however, it is prudent for us to address it.

Article II, Section 9 of the Constitution of Virginia provides, in part, that "[n]o voter, during the time of holding any election at which he is entitled to vote, shall be compelled to perform military service, except in time of war or public danger, nor to attend any court as suitor,

juror, or witness." This provision deals with compulsion that would cause a voter to lose the opportunity to vote. Some might argue that this provision only precludes compulsion that would interfere with a voter's one-day access to the polls during the lawful period of election. Under this view, the voter could vote during the election period, and Article II, Section 9 would not be implicated. Others might argue (as the dissent speculates, *see post* at 36 note 5) that the compulsion is prohibited only on "Election Day" in accord with the legal holidays established by Code § 2.2-3300.

To us, this clever argument is a story of the tail wagging the dog that has no tail. The textual and contextual meaning of Article II, Section 9 was never addressed by the circuit court, never mentioned in any legal brief filed in this case, and not discussed during oral argument. Of the two arguable interpretations of the anti-compulsion policy embraced by Article II, Section 9, neither one contradicts our belief that "[h]istory confirms that 'election' includes both ballot casting and ballot receipt." *Supra* at 19-20 (quoting *Wetzel*, 120 F.4th at 209).

3.

The dissent goes on to suggest that our interpretation also "injects unnecessary confusion into the qualifications for state senators and delegates." *Post* at 37. Article IV, Section 4 of the Constitution of Virginia requires candidates for these offices to be "at the time of the election" at least 21 years old, a resident in the district, and a qualified voter for members of the General Assembly. We do not find it confusing. Article IV, Section 4 provides that "[a]ny person may be elected" to the Senate or the House of Delegates "who, at the time of the election, is twenty-one years of age." The phrase "at the time of the election" must be viewed in the context of what precedes it in the sentence. The phrase "may be elected" has a similar connotation to the phrase "shall be elected" in Article IV, Section 3, and likewise, "may be elected" refers only to the final

act of the election when a Senator or Delegate is deemed to be elected by the majority of the voters. It thus follows that "at the time of the election" means the time when a Senator or Delegate is deemed elected as the successful candidate. We see no "unnecessary confusion," *post* at 37, when the provision is viewed through this contextual lens.[30]

4.

We finally address the dissent's claim that "[b]y extending elections in the Commonwealth of Virginia beyond a single day, the majority's formulation would directly conflict with the federal mandate that elections for federal offices be held on a single day." *Post* at 39. We disagree. The United States Supreme Court has held "that if an *election* does take place, it may not be *consummated* prior to federal election day" in order to comply with federal election-day statutes. *Foster*, 522 U.S. at 72 n.4 (emphases added). Federal appellate courts reviewing challenges to laws providing for early and absentee voting have applied this holding to uphold those laws. As the Sixth Circuit has explained:

> *Foster*'s narrow holding suggests that, so long as a State *does not conclude an election prior to federal election day*, the State's law will not "actually conflict" with federal law. . . . An "election" under the federal statutes requires more than just voting, and the Early Voting Statutes do not create a regime of combined action

[30] We are similarly unconvinced that the context of Article VII, Section 4 supports the dissent's view that our interpretation of "election" in Article XII, Section 1 must mean a single day. The dissent posits that Article VII, Section 4 "does not state that county and city officers shall be *elected* on a specific day, as in Article IV, Sections 2 and 3; rather, it specifies that the *election* shall be held on a single day." *Post* at 35-36. The context of the constitutional provision, however, suggests otherwise. Article VII, Section 4 provides for the day when county and city officers shall be deemed elected as the successful candidates in an election. The first paragraph of Article VII, Section 4 begins with "[t]here *shall be elected* by the qualified voters of each county and city [various officers]." The second paragraph then refers back to the first paragraph when it begins with "[r]egular elections for *such officers* shall be held on Tuesday after the first Monday in November." The context of this provision suggests a similar purpose and meaning as Article IV, Section 3, *see supra* at 20-22, which does not undermine our interpretation of the meaning of election in Article XII, Section 1.

> meant to make a final selection on any day other than federal election day.

*Millsaps*, 259 F.3d at 546-47 (emphasis added). The Ninth Circuit similarly holds:

> The Supreme Court has provided the device for reconciling the federal election day statute and the federal absentee voting statute: *a definition of "election" that treats election day as the "consummation" of the process rather than any day during which voting takes place*. . . . Although voting takes place, perhaps most voting, prior to election day, the election is not "consummated" before election day because voting still takes place on that day.

*Keisling*, 259 F.3d at 1176 (emphasis added). The Fifth Circuit has come to the same conclusion. *See Bomer*, 199 F.3d at 776 (relying on the *Foster* definition of "election" and concluding "that the Court would not alter its definition of 'election' to require that states begin their federal election on federal election day" and that "some acts associated with the election may be conducted before the federal election day without violating the federal election statutes"). No persuasive, much less binding, federal law supports the dissent's implied claim that our interpretation of Article XII, Section 1 violates the Supremacy Clause of the United States Constitution.

5.

We fully acknowledge Ralph Waldo Emerson's warning that "[a] foolish consistency is the hobgoblin of little minds." R.W. Emerson, *Self-Reliance*, *in* Essays 43, 58 (1841). As our dissenting colleagues suggest, it truly would be foolish for us to assign by diktat a specific, inflexible meaning to the words "elected" or "election" used in the many diverse ways they are used in common speech as well as statutes and constitutions. We are not attempting to do so. The antidote to Emerson's warning is Justice Scalia's reminder that "[i]n textual interpretation, context is everything, and the context of the Constitution tells us not to expect nit-picking detail." Antonin Scalia, A Matter of Interpretation 37 (1997); *see also* Scalia & Garner, *supra*, at

167 ("Context is a primary determinant of meaning."). "Context also includes common sense," Justice Barrett adds, "which is another thing that 'goes without saying.'" *Biden v. Nebraska*, 600 U.S. 477, 512 (2023) (Barrett, J., concurring).

To us, it is common sense that the phrase "general election," as used in the context of Article XII, Section 1, includes the combined actions of citizens casting votes and election officials receiving these votes and closing the polls on the last day of the election. The purpose of Article XII, Section 1 is to give voters the opportunity to participate in the process of amending their Constitution. It truly would be a foolish consistency if we insisted (and we do not) that the historical definition of "election" applies in exactly the same way to the plethora of different legal texts ensconced in different policy contexts. The dissent does just that with its inflexible, one-size-fits-all definition of "election" as a single 24-hour period, Election Day — the last day of voting. And that inflexibility, deployed by the Commonwealth in this case, ended up denying over 1.3 million Virginians their constitutional right to have a voice in the debate over whether their Constitution should be amended — thereby eroding one of the core rights that Article XII, Section 1 was intended to safeguard.

III.

While the Commonwealth is free by its lights to do the right thing for the right reason, the Rule of Law requires that it be done the right way. Under the Constitution of Virginia, the right way "necessitate[s] compliance with the requirements of a deliberately lengthy, precise, and balanced procedure," *Coleman*, 219 Va. at 153, governing the lawful adoption of constitutional amendments. "[S]trict compliance with these mandatory provisions is required in order that all proposed constitutional amendments shall receive the deliberate consideration and careful scrutiny that they deserve." *Id.* at 154.

In this case, the Commonwealth submitted a proposed constitutional amendment to Virginia voters in an unprecedented manner that violated the intervening-election requirement in Article XII, Section 1 of the Constitution of Virginia.[31] This violation irreparably undermines the integrity of the resulting referendum vote and renders it null and void. For this reason, the congressional district maps issued by this Court in 2021 pursuant to Article II, Section 6-A of the Constitution of Virginia remain the governing maps for the upcoming 2026 congressional elections.

*Affirmed*.

CHIEF JUSTICE POWELL, with whom JUSTICE MANN and JUSTICE FULTON join, dissenting.

This Court has long recognized that our "'Constitution is certain and fixed.'" *Staples v. Gilmer*, 183 Va 338, 350 (1944) (quoting *Vanhorne's Lessee v. Dorrance*, 2 U.S. (2 Dall.) 304, 308 (Pa. 1795)). "'[I]t contains the *permanent* will of the people,'" and, therefore, its meaning can only be altered by the people. *Id.* (quoting *Vanhorne's Lessee*, 2 U.S. (2 Dall.) at 308) (emphasis added). Notwithstanding this bedrock principle, today the majority has broadened the meaning of the word "election," as used in the Virginia Constitution, to include the early voting period. This is in direct conflict with how both Virginia and federal law define an election. Under the facts of this case, I believe the circuit court erred and I respectfully disagree with the

[31] Given our holding in this case, we need not address any of the remaining questions, including (i) the potential remedy for a failure of state and local officials to comply with former Code § 30-13, which was in effect in October 2025, and (ii) whether the General Assembly's later repeal of Code § 30-13 could be made retroactive.

majority's conclusion that the General Assembly did not strictly comply with Virginia's constitutional requirements. For this reason, I must respectfully dissent.

According to the majority, the General Assembly violated the intervening-election requirement in Article XII, Section 1 of the Virginia Constitution by passing a proposed constitutional amendment for the first time after early voters had begun casting their ballots during the 2025 general election. Although Article IV, Section 3 mandates that delegates shall be elected on the Tuesday succeeding the first Monday in November, the majority takes the position that there is a material variation between "shall be elected" and the "general election" described in Article XII Section 1. It reasons that, unlike the single day on which a delegate is elected, a general election is not a fixed day. Instead, they conclude that an election is a cumulative process, encompassing the combined actions of voters casting ballots and officers receiving those votes, that begins on the first day of early voting and ends on Election Day. By focusing on the legislative history, dictionary definitions, and how legal scholars might interpret the term "election," the majority fails to apply the most basic tenet of interpretation of constitutional provisions: looking to the language of the constitution itself.

> [T]he general rule is that unless the Constitution, either expressly or by necessary implication, inhibits the General Assembly from providing how a voter shall exercise his right to vote, its power is absolute. If there be no restraint, the General Assembly unquestionably has the power to determine the manner of conducting and making returns of elections. The framers of the Virginia Constitution, however, were not content to leave this question to be controlled by this general rule, but have specifically . . . expressly recognized and emphasized this power, and directed the General Assembly to exercise it.

*Moore v. Pullem*, 150 Va. 174, 192 (1928).

The express recognition of the General Assembly's power to determine the time and manner of conducting elections is found in Article II, Section 4 of the Virginia Constitution.

> The General Assembly shall provide for the nomination of candidates, shall regulate the time, place, manner, conduct, and administration of primary, general, and special elections, and shall have power to make any other law regulating elections not inconsistent with this Constitution.

*Id.*

The General Assembly, in turn, has exercised this power through Title 24.2 of the Code of Virginia. Under Code § 24.2-101, the General Assembly has specifically defined a "[g]eneral election" as "an election held in the Commonwealth *on* the Tuesday after the first Monday in November." (Emphasis added.) The use of the simple preposition "on" to form the prepositional phrase "on the Tuesday after the first Monday in November" definitively establishes that the General Assembly intended to exercise its Constitutional power and limit general elections to a single day. Had the General Assembly intended for general elections to cover multiple days, it would have used a complex preposition – such as "ending on" – to indicate that an election started at some earlier point in time rather than occurring solely on the Tuesday after the first Monday in November. However, "we regularly reject invitations to 'read into [a] statute language that is not there,' because of the long-established rule that '[c]ourts cannot add language to [a] statute the General Assembly has not seen fit to include.'" *Va. Elec. & Power Co. v. State Corp. Comm'n*, 300 Va. 153, 163 (2021) (quoting *Wakole v. Barber*, 283 Va. 488, 495-96 (2012)). The General Assembly did not define a general election as an election *ending on* a specific day, it said that a general election is an election *held on* a specific day. *See Conyers v. Martial Arts World of Richmond, Inc.*, 273 Va. 96, 104 (2007) ("When the language of a statute is unambiguous, we are bound by the plain meaning of that language.").

Moreover, it is highly informative that the General Assembly adopted a statutory definition of "general election" in 1970, while it was debating the 1971 amendments to the Virginia Constitution. *See* 1970 Acts ch. 462. Tellingly, the relevant portion of that definition is

identical to the present day definition of general election: "any election held in the Commonwealth on the Tuesday after the first Monday in November." *Id.* As this Court has long recognized, the "[l]egislative construction of a constitutional provision is entitled to consideration, and if the construction be contemporaneous with adoption of the constitutional provision, it is entitled to great weight. *Dean v. Paolicelli*, 194 Va. 219, 227 (1952). Taken as a whole, Code § 24.2-101 clearly establishes that the General Assembly, in the exercise of its constitutional power to determine the time and manner of conducting elections, chose to limit elections to a single day.

The majority dismisses this statutory definition on the basis that it is "[a] self-limiting statutory definition" that "cannot supersede the literal text, drafting history, historical context, and unambiguous purpose of a constitutional provision."[1] In reaching this conclusion, however, the majority misapprehends my argument. I am not stating that the General Assembly's definitions "take precedence over [the majority's] interpretation of Article XII, Section 1;" rather, I am simply stating that the General Assembly's definition informs the Court as to the intended construction of a relevant term in Article XII, Section 1.

Similarly, Code § 24.2-701.1(A) makes it clear that early in-person voting is not part of an election. Under the plain language of the statute, early voting begins "on the forty-fifth day *prior to any election* and shall continue until 5:00 p.m. on the Saturday immediately *preceding the election*." Code § 24.2-701.1(A) (emphasis added). Given that "prior" means "[p]receding in time or order," Black's Law Dictionary 1445 (12th ed. 2024), the most logical conclusion is

[1] The majority also notes the statute's preamble but offers no explanation for why "context requires a different meaning" of general election. Indeed, nothing about the context in which the term is used in Article XII, Section 1 would indicate that a different meaning is necessary.

that the General Assembly meant for early voting to begin and end *before* the actual election took place.

By contrast, applying the majority's definition of election to Code § 24.2-701.1(A), creates a causality paradox: an election is a process that begins with early voting, but early voting must precede an election by forty-five days. The majority's definition creates an infinite voting loop that appears to have no established beginning, only a definitive end: Election Day. Further, the majority also makes no mention of the two-day gap that begins at "5:00 p.m. on the Saturday immediately preceding the election," *id.*, or its effect on the "election" process. During this time, the "combined actions" that the majority claims define the term "election," cannot take place, as citizens are unable to cast votes during this time. Therefore, it is unclear how this period of time would be classified. Is the election held in abeyance? Does the election end and then restart? By limiting the term "election" to refer to a single day, as the framers of our Constitution and the General Assembly clearly intended, the infinite voting loop is avoided entirely, the two-day gap is of no consequence, and there is both a definitive beginning and end of an election: Election Day.

My analysis is further guided by this Court's admonishment that "all actions of the General Assembly are presumed to be constitutional," *Hess v. Snyder Hunt Corp.*, 240 Va. 49, 52 (1990), and, therefore, "a statute will be construed in such a manner as to avoid a constitutional question wherever this is possible." *Eaton v. Davis*, 176 Va. 330, 339 (1940). In my opinion, a narrow construction of Code § 24.2-101 is both reasonable and in perfect harmony with the entire Virginia Constitution. *See Va. Soc'y for Human Life v. Caldwell*, 256 Va. 151, 157 (1998) ("[W]e will narrowly construe a statute where such a construction is reasonable and avoids a constitutional infirmity."). The majority, however, not only disregards the General

Assembly's exercise of its express power to make laws that "regulate the time, place, manner, conduct, and administration" of elections under Article II, Section 4 of the Virginia Constitution, but it adopts a definition that is discordant with several other Constitutional provisions.

The cornerstone of constitutional interpretation is the presumption "that the same meaning attaches to a given word or phrase which is repeated in a Constitution." *Carlisle v. Hassan*, 199 Va. 771, 776 (1958). "The constitution must be viewed and construed as a whole, and every section, phrase and word given effect and harmonized if possible." *Id.* Thus, "[t]he presumption is that the same meaning attaches to a given word or phrase which is repeated in a Constitution, unless the contrary is made to appear, and hence the whole instrument should be examined to ascertain what that meaning is." *Pine v. Commonwealth*, 121 Va. 812, 825 (1917).

> Frequently the meaning of one provision of the Constitution, standing by itself, may be obscured or uncertain, but is readily apparent when resort is had to other provisions of the same instrument. It is, therefore, an established canon of constitutional construction that no one provision of the Constitution is to be separated from all the others and to be considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and . . . interpreted as to effectuate the great purpose of the instrument.

*Pierce v. Dennis*, 205 Va. 478, 482 (1964) (internal quotation marks omitted).

When considering the majority's broad definition of election in light of other provisions of our Constitution, it is even more apparent that the term can only refer to an event occurring on a single day. For example, Article VII, Section 4 specifically provides that "[r]egular *elections* for [county and city] officers shall *be held on* Tuesday after the first Monday in November." (Emphasis added.) Notably, this provision does not state that county and city officers shall be *elected* on a specific day, as in Article IV, Sections 2 and 3; rather, it specifies that the *election*

shall be held on a single day.[2] It is unclear how a provision specifically limiting an election to a single day can be harmonized with the majority's multi-day election scheme without fundamentally changing the plain language of Article VII, Section 4.

The disharmony does not stop there, as the majority's definition of election will result in at least 90 days[3] every year during which courts will be significantly hampered in their ability to hold trials. Article II, Section 9 states:

> No voter, *during the time of holding any election at which he is entitled to vote*, shall be compelled to perform military service, except in time of war or public danger, nor to attend any court as suitor, juror, or witness; nor shall any such voter be subject to arrest under any civil process during his attendance at election or in going to or returning therefrom.

(Emphasis added.)

Applying the majority's definition means that, for the duration of every election, courts could not mandate that voters[4] attend trials in virtually any capacity, other than as a criminal defendant. Indeed, every aspect of our district and circuit courts will be impacted, leading to numerous unforeseen consequences. It is patently obvious that the framers of our Constitution did not intend for our courts to sit relatively idle for more than 25% of each year. Again, the more harmonious construction is to simply limit elections to a single day, which avoids such wide-spread disruption.[5]

---

[2] As I explained above as part of my statutory analysis, the use of the simple preposition "on" definitively establishes the framers' intent to limit such elections to a single day.

[3] The 90-day total is based on the presumption that each general election is prefaced by a primary election, both of which allow for 45-days of early voting. *See* Code § 24.2-701.1(A) (providing for in-person absentee voting beginning 45-days before "any election"). I feel it necessary to point out that this total could be expanded further in the event of a special election.

[4] The irony that juror lists are derived from the voter rolls is not lost upon me.

[5] Indeed, under the more commonly understood meaning of the term election, any disruption has been mitigated for the most part. Notably, election day is a state holiday, therefore

Another problem with the majority's approach is that it injects unnecessary confusion into the qualifications for state senators and delegates. Article IV, Section 4 provides:

> Any person may be elected to the Senate who, *at the time of the election*, is twenty-one years of age, is a resident of the senatorial district which he is seeking to represent, and is qualified to vote for members of the General Assembly. Any person may be elected to the House of Delegates who, *at the time of the election*, is twenty-one years of age, is a resident of the house district which he is seeking to represent, and is qualified to vote for members of the General Assembly.

(Emphasis added.)

By extending the meaning of election to encompass a 45-day period, it raises the question: when must a candidate be twenty-one years of age under Article IV, Section 4? Obviously if a candidate turns twenty-one on or before the day early voting begins, they qualify. But what if the candidate turns twenty-one on Election Day or sometime between the start of early voting and Election Day? Must the candidate be twenty-one for a majority of the election period? The answer is unclear. In contrast, if the term "election" is given what I believe to be the most commonly understood definition, the meaning of Article IV, Section 4 is easily harmonized with the remainder of our Constitution: a candidate must be twenty-one years old on Election Day, which is when the election is held.

It is also worth noting that the majority's definition of "election" is derived, in part, from a line of cases explicitly holding that an election is limited to a single day. In *Foster v. Love*, the United States Supreme Court recognized, as the majority points out, that an "election" refers to the "combined actions of voters and officials meant to make a final selection of an officeholder."

---

courts will be closed. *See* Code § 2.2-3300 (designating "Election Day" as a legal holiday). That leaves only a single day each year, the date of a primary election, with the possibility of a second in the event of a special election, in which voters could not be compelled to attend trials.

522 U.S. 67, 71 (1997).[6] Every federal circuit court that has applied the combined action approach has concluded that early voting is not considered part of the election. This is due to the fact that, during early voting, there is no combined action to make the final selection of an office holder. Indeed, only the voters are taking any action; it is only on election day that election officials are able to act. Thus, there can be no combined action until election day. *See Millsaps v. Thompson*, 259 F.3d 535, 547 (6th Cir. 2001), ("An 'election' under the federal statutes requires more than just voting, and the Early Voting Statutes do not create a regime of combined action meant to make a final selection on any day other than federal election day.")[7]; *Voting Integrity Project, Inc. v. Keisling*, 259 F.3d 1169, 1175 (9th Cir. 2001) ("The *Foster* definition of 'election' implies that there is only a single election day . . . when the election is 'consummated,' even though there are prior voting days."); *Voting Integrity Project, Inc. v. Bomer*, 199 F.3d 773, 776 (5th Cir. 2000) ("Allowing some voters to cast votes before election day does not contravene the federal election statutes because the final selection is not made before the federal election day.").

[6] The majority omits the very next sentence stating that "[b]y establishing a particular day as 'the day' on which these actions must take place, the statutes simply regulate the time of the election, a matter on which *the Constitution explicitly gives Congress the final say*." Foster, 522 U.S. at 71-72 (emphasis added). Just as the United States Constitution gives Congress the final say on when the combined actions of voters and officials take place in federal elections, so too does the Virginia Constitution give the General Assembly the final say on when the combined actions of voters and officials take place in state elections. *See* Article II, Section 4 of the Virginia Constitution. Furthermore, as previously noted, the General Assembly has exercised its authority and declared that that general elections will take place on a single day. *See* Code § 24.2-101.

[7] "The Early Voting Statutes" at issue in *Millsaps* were similar to Virginia's in that they allowed voters to cast their votes "not more than twenty (20) days nor less than five (5) days before the day of the election." 259 F.3d 535, 537 (6th Cir. 2001) (quoting Tenn. Code Ann. § 2-6-102(a)(1)) (emphasis omitted).

By including early voting into its definition of election, the majority goes beyond the combined action theory of *Foster*. In doing so, it appears that the majority's definition of election would run afoul of federal election law.[8]

> The Elections Clause of the Constitution, Art. I, § 4, cl. 1, provides that "the Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations." The Clause is a default provision; it invests the States with responsibility for the mechanics of congressional elections, but only so far as Congress declines to pre-empt state legislative choices. Thus it is well settled that the Elections Clause grants Congress the power to override state regulations by establishing uniform rules for federal elections, binding on the States. The regulations made by Congress are paramount to those made by the State legislature; and if they conflict therewith, the latter, so far as the conflict extends, ceases to be operative.

*Foster*, 522 U.S. at 69 (internal citations and quotation marks omitted).

The United States Supreme Court explicitly recognized that 2 U.S.C. §§ 1, 7 and 3 U.S.C. § 1 "mandate[] holding all elections for Congress and the Presidency *on a single day throughout the Union*." *Id.* at 70 (emphasis added). Although states "are given . . . a wide discretion in the formulation of a system for the choice by the people of representatives in Congress," *United States v. Classic*, 313 U.S. 299, 311 (1941), that discretion ends when it conflicts with federal election laws. *See Bomer*, 199 F.3d at 775. By extending elections in the Commonwealth of Virginia beyond a single day, the majority's formulation would directly conflict with the federal mandate that elections for federal offices be held on a single day.

[8] I recognize that the specific election at issue in this case was the general election of members of the House of Delegates. However, the decision we hand down today will apply equally to elections for federal offices.

It is further telling that no other state has adopted a multi-day election scheme that the majority claims Virginia has apparently been operating under for decades. Nor has any participant in this case pointed to statutes or case law conclusively stating that any state has adopted a similar approach where elections begin with early voting and end on election day. Instead, Appellees rely on cases like *Pierce v. North Carolina State Board of Elections*, 97 F.4th 194 (4th Cir. 2024), and *New Georgia Project v. Raffensperger*, 976 F.3d 1278 (11th Cir. 2020), as supporting their assertion that elections begin when early voting begins. In my opinion, any reliance on *Pierce*, *Raffensperger*, or their ilk is misplaced.

In *Pierce*, a majority of the Fourth Circuit observed:

> The 2024 North Carolina Senate election is well underway. The statewide primary election is scheduled for March 5, 2024. Candidate filing ended on December 15, 2023. Absentee ballots were distributed on January 19, 2024. In-person early voting began on February 15, 2024. The election is not merely "close[]," or even "imminen[t]"—it is happening right now.

*Id.* at 226-27 (quoting *Purcell v. Gonzalez*, 549 U.S. 1, 5 (2006)).[9]

In footnote 11 of *Pierce*, the Fourth Circuit specifically observed that, by the time its opinion was publicly released, "the March 5 primary is over and done" and "[t]he boards of elections have certified final results." 97 F.4th at 226, n.11. This observation clearly established that the election was objectively *not* actually happening "now;" rather, it had already occurred.

Moreover, the Fourth Circuit explained that its analysis was governed by "'the *Purcell* principle.'" *Id.* at 225 (quoting *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J. concurring)). Under the *Purcell* principle, "federal courts ordinarily should not enjoin a state's

[9] This quote from *Pierce* leaves open a significant question: When did the election actually begin? Was it after candidate filing ended, when the absentee ballots were distributed, or when the early voting began?

election laws in the period close to an election." *Merrill*, 142 S. Ct. at 880 (Kavanaugh, J. concurring) (citing *Purcell*, 549 US at 1). When the "happening right now" statement is viewed in conjunction with the *Purcell* principle, it is readily apparent that the statement was not meant to be taken literally. It was, at most, a rhetorical flourish meant to drive home the point that the plaintiff's challenge to the electoral maps was simply too late.[10]

The Eleventh Circuit's observation in *Raffensperger* is similarly misleading. In *Raffensperger*, the district court enjoined a Georgia law requiring that absentee ballots be received by 7:00 a.m. on election day. *Id.* at 1280. The Eleventh Circuit reversed, observing "we are not on the eve of the election—we are in the middle of it, with absentee ballots already printed and mailed." *Id.* at 1283. Yet, as with *Pierce*, nothing in *Raffensperger* demonstrates that an election was actually ongoing at that time; rather this statement was made as part of the Eleventh Circuit's application of *Purcell*.[11] In other words, it was simply hyperbole meant to demonstrate the impropriety of the district court's injunction at such a late juncture.

For these reasons, I cannot join the majority's decision to affirm the circuit court's determination that the November 4, 2025 election was not "the next general election of members of the House of Delegates." Instead, I would hold that an election occurs on a single day – election day – and reverse the decision of the circuit court. Further, as I believe that the circuit

---

[10] It is further worth noting that, as *Pierce* was a redistricting case, the dispositive issues are markedly different from the present case. The validity of electoral maps must be established prospectively, as the operative maps must be in place well before candidate filing deadlines and then they cannot be changed until after the general election. In contrast, as the present case demonstrates, a determination of whether voting takes place on a single day or over a span of many days can be performed retroactively.

[11] Indeed, the Eleventh Circuit's rationale seems to further extend the definition of "election" to include the mere distribution of absentee ballots.

court's decision regarding the next general election was erroneous, it is necessary that I briefly address the remaining bases of the circuit court's decision.

With regard to the circuit court's conclusion that HJR 6007 was void ab initio because it violated HJR 428 and HJR 6001, I would similarly reverse the decision of the circuit court. As this Court has repeatedly recognized, Virginia has a "steadfast and explicit commitment to the concept of the separation of powers." *Appian Corp. v. Pegasystems, Inc.*, 305 Va. ___, 924 S.E.2d 621, 639 (2026). The principle is fully ensconced not once, but twice in the current version of the Virginia Constitution. *See* Article I, Section 5 ("the legislative, executive, and judicial departments of the Commonwealth should be separate and distinct") and Article III, Section 1 ("[t]he legislative, executive, and judicial departments shall be separate and distinct, so that none exercise the powers properly belonging to the others, nor any person exercise the power of more than one of them at the same time"). Indeed, every previous version of our Constitution has enshrined this foundational concept. *See* Va. Decl. of Rights § 5 (1776); Va. Const. art. I, § 5 & art. II (1830); Va. Const. art. I, § 5 & art. II (1851); Va. Const. art. I, § 5 & art. II (1864); Va. Const. art. I, § 7 & art. II (1870); Va. Const. art. I, § 5 & art. III, § 39 (1902). Moreover, Article IV, § 7 of the Virginia Constitution explicitly gives the Senate and the House each the authority to "settle its rules of procedure." It is in consideration of these principles that this Court has explicitly held that, "[w]hile the courts can pass upon the constitutionality of legislative enactments, they cannot overthrow legislative determination of the existence of conditions with respect to its own procedure, or the existence of conditions satisfying it of the propriety of its action." *Albermarle Oil & Gas Co. v. Morris*, 138 Va. 1, 11 (1924).

Here, the circuit court's ruling was based squarely on its determination that the General Assembly violated its own procedural resolutions. As compliance with internal legislative

procedures is a matter committed squarely to the General Assembly, it was not subject to judicial review. Thus, the circuit court clearly intruded upon the realm of legislative procedure, in direct violation of the principle of separation of powers.

Moreover, even assuming that the constitutional implications of HJR 6007 provided an exception to the principle of separation of powers, the result would be the same. The record clearly establishes that the circuit court reached its conclusion due to an apparent misinterpretation of HJR 6001. In April 2023, the General Assembly, through HJR 428, requested that then-Governor Youngkin call a special session. In addition to requesting the special session, HJR 428 specifically provided that:

> after the Special Session is convened for the first time, it may stand in recess from time to time until reconvened by the joint call of the Speaker of the House of Delegates and Chair of the Senate Committee on Rules to consider *such matters as are provided for in the procedural resolution adopted to govern the conduct of business coming before such Special Session*[.]

(Emphasis added.)

Upon convening the special session, the General Assembly passed the required procedural resolution, HJR 6001, which stated, in relevant part:

> except with unanimous consent of the house in which the legislation is offered, no bill, joint resolution, or resolution shall be offered or considered in either house during the Special Session other than (i) Budget Bill(s) and revenue bills; (ii) single-house commending and memorial resolutions; (iii) *bills, joint resolutions, or resolutions affecting the rules of procedure or schedule of business of the General Assembly, either of its houses, or any of its committees*; (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[.]

(Emphasis added.)

By its plain language, HJR 6001 expressly exempted "bills, joint resolutions, or resolutions affecting the rules of procedure or schedule of business of the General Assembly,

either of its houses, or any of its committees" from the unanimity requirement.[12] Thus, any subsequent procedural resolutions, such as HJR 6004 or HJR 6006, would not, as the circuit court found, require unanimous consent. As the circuit court's ruling was based entirely on a requirement of unanimity that explicitly did not apply to procedural resolutions, it was plainly wrong. Accordingly, I would reverse the circuit court's determination that HJR 6007 was void ab initio.[13]

I would further reverse the circuit court's decision that the failure to comply with Code § 30-13 invalidates the initial passage of the proposed amendment. Code § 30-13 states, in relevant part:

> The Clerk of the House of Delegates shall have published all proposed amendments to the Constitution for distribution from his office and to the clerk of the circuit court of each county and city two copies of the proposed amendments, one of which shall be posted at the front door of the courthouse and the other shall be made available for public inspection. Every clerk of the circuit court shall complete the posting required not later than three months prior to the next ensuing general election of members of

---

[12] In discussing HJR 6001, the circuit court appears to have omitted much of subsection (iii). As a result, the language indicating that procedural resolutions were exempt from the unanimity requirement was absent from the circuit court's ruling.

[13] Although Appellees attempt to challenge the validity of HJR 6007 by claiming that the 2024 Special Session could not be reconvened after the 2025 General Session began, it is unnecessary to address that issue at this time. Notably, the circuit court ruled against Appellees on that issue, concluding that the 2024 Special Session "was valid up to and including the October 31, 2025 meeting of said Special Session." Appellees never challenged the circuit court's ruling by assigning cross-error. *See* Rule 5:18(c)(1) (requiring an assignment of cross-error before the issue will be noticed by the Court). Although the Court has recognized that "[n]o cross-appeal is necessary when an appellee seeks to support a judgment on alternative legal grounds, including those expressly rejected by the trial court and those raised for the first time on appeal," that exception does not apply when "an appellee seeks to modify or otherwise change a favorable judgment 'with a view either to enlarging his own rights thereunder or of lessening the rights of his adversary.'" *Alexandria Redevelopment & Hous. Auth. v. Walker*, 290 Va. 150, 156 (2015) (quoting *Jennings v. Stephens*, 574 U.S. 271, 276 (2015)). Here, a ruling in favor of Appellees has the potential to expand the rights of the minority party of the General Assembly and lessen the rights of the majority party. Accordingly, the exception to Rule 5:18(c)(1) does not apply and this issue is not properly before the Court at this time.

> the House of Delegates and shall certify such posting to the Clerk of the House of Delegates.

The circuit court explained that the "sole purpose for the posting" requirement found in Code § 30-13 "is to provide the voters with notice and information PRIOR to the election of the House of Delegates members who would be elected to vote on the proposed Constitutional Amendment for the second vote." According to the circuit court, the posting requirement is a part of the General Assembly's "duty" under Article XII, Section 1 of the Virginia Constitution to submit proposed amendments to the voters by prescribing "how the vote can take place, and what steps must be taken prior to such vote." This was error.

First, the only duty imposed by Article XII, Section 1 arises *after* the second passage of the proposed amendment in the General Assembly, not before. Once "a majority of all the members elected to each house" agrees to the proposed constitutional amendment a second time, "*then* it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the voters qualified to vote in elections by the people, in such manner as it shall prescribe." *Id.* (emphasis added). By interpreting Code § 30-13 in a manner that prematurely imposed that duty upon the General Assembly, the circuit court placed the cart before the horse.[14]

Second, even if it could be considered part of the manner prescribed by the General Assembly for submitting a proposed amendment to the voters, posting the proposed amendment

---

[14] Prior to 1971, the Constitution featured a publication requirement like the one in Code § 30-13. *See* Va. Const. art. XV, § 196 (1902) (providing that a proposed amendment "shall be published for three months previous to" the intervening House of Delegates election). The General Assembly removed the publication requirement while drafting what became the 1971 Constitution. *See* Proceedings and Debates of the House of Delegates Pertaining to Amendment of the Constitution 496 (1969); 2 A.E. Dick Howard, Commentaries on the Constitution of Virginia 1171, 1175 (1974). This history bolsters the conclusion that publication of a proposed constitutional amendment is not a necessary condition for an amendment to be valid.

ninety days prior to the intervening election is not essential to the subsequent ratification of that amendment. As this Court has recognized, the actions of a third-party that do not directly impact the ratification of an amendment are not essential to the process; rather, "[i]t is the ascertained majority of the vote of the electors which gives effect to [an] amendment." *Harrison v. Day*, 201 Va. 386, 394 (1959). At its core, the statutory requirements of Code § 30-13 involve third-party bystanders to the constitutional amendment process – circuit court clerks – performing a peripheral act – posting the text of the amendment – that relates to, but does not directly impact, the ratification of a constitutional amendment. Simply put, Code § 30-13 is of no Constitutional dimension. Accordingly, the failure to follow the posting requirements of Code § 30-13 is insufficient to invalidate the ratification of an amendment that otherwise meets the requirements of Article XII, Section 1.

For the foregoing reasons, I would reverse the decision of the circuit court and enter final judgment in favor of the appellants.

**VIRGINIA: IN THE CIRCUIT COURT OF TAZEWELL COUNTY**

| | |
|---|---|
| RYAN T. MCDOUGLE, Virginia State Senator and Legislative Commissioner for the Virginia Redistricting Commission, et al.,<br><br>Plaintiffs,<br>v.<br><br>G. PAUL NARDO, in his official capacity as Clerk of the Virginia House of Delegates, et al.,<br>Defendants,<br>and<br><br>DON SCOTT, in his official capacity as Speaker of the Virginia House of Delegates,<br><br>Intervenor-Defendant. | CASE NO.: CL25-1582-00<br><br>**ORDER** |

Upon an Amended Complaint, all responses thereto; upon all briefs, Memoranda Exhibits, Amicus Briefs, and arguments at the hearing of January 21, 2026, the Court makes the following findings and rulings.

While the Court allowed counsel up to ten (10) days to submit additional authority on the limited issue of ripeness regarding the applicability of Va. Code §30-13, the actions of the Interpleader Defendant makes clear that it is ripe; however, since the Court retains jurisdiction for twenty-one (21) days, it can re-address this issue if additional authority filed by January 31, 2026 so necessitates.

The first issue raised by the Plaintiffs is that the 2024 Special Session could not legally remain active as of October 31, 2025, the date of passage of the proposed Constitutional Amendment. Plaintiffs argue that the Special Session ended upon the convening of the Regular 2025 Session. Secondly, they argue in the alternative that the Special Session ended upon the passage of the Budget, which was the purpose for which the Governor called the Special Session.

However, Plaintiffs were unable to show Constitutional or Statutory prohibition of continuing the Special Session and conceded that when the Plaintiffs were in the majority in 2018 and 2022, they continued Special Sessions in the same manner. Therefore, the Court FINDS that the continued reconvening of the Special Session was valid up to and including the October 31, 2025 meeting of said Special Session.

The second challenge to the actions of the 2024 Special Session's passage of the proposed Constitutional Amendment is the failure of the General Assembly to follow its own Resolutions in adding the proposed Constitutional Amendment to the scope of business that may come before the 2024 Special Session.

While it is not contested that the Governor called for a Special Session to address the issue of the Budget Bill, it is likewise conceded that on a February 3, 2024 vote of both houses of the General Assembly, an application for a Special Session was also invoked pursuant to Article III, Section 6 of the Virginia Constitution.

House Joint Resolution 428 passed in the House of Delegates by a vote of 98-0, and in the Senate by a vote of 40-0. Said Resolution stated that the Special Session would "consider such matters are provided for in **the procedural resolution** [emphasis added] adopted to govern the conduct of business coming before such Special Session;"

The Procedural Resolution" was House Joint Resolution 6001, which also passed by a super majority in both houses: 99-0 in the House and 39-1 in the Senate. The specified purpose of the Resolution, which is found in italics under the Bills Number is:

> *"Limiting legislation to be considered by the 2024 Special Session I of the General Assembly and establishing a schedule of the conduct of business coming before such Special Session."*

The first paragraph directly states that ". . . **except with unanimous consent** [emphasis added] of the house in which legislation is offered, **no** [emphasis added] bill, joint bills, joint resolutions, or resolutions affecting the rules of procedure or schedule of business of the General Assembly, either of its houses during the Special Session other than (i) Budget Bill(s) and revenue bills; (ii) single-house commending and memorial resolutions; (iii) General Assembly, either of its houses, or any of its committees; (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".

Irrespective of their own rule as set forth in House Joint Resolution 6001, the General Assembly passed a second rule without unanimous consent OR a super majority to add a sixth item of business – "(vi) bill or joint resolution addressing the impacts upon the Commonwealth, its budget, and its services due to layoffs, firings, or reductions in force by the federal government, changes to federal government programs, actions of the Department of Government Efficiency,

and other actions affecting the Commonwealth relating to the federal budget may be offered and considered during the 2024 Special Session I of the General Assembly".

While this suit does not address any such bills, etc. considered in the Special Session pertaining to item (vi), any such action, if taken, might well be in violation of the scope of business allowed in the 2024 Special Session.

The Special Session once again met and attempted to expand the scope of its business through a third procedural resolution, House Joint Resolution 6006, which added a seventh item, "(vii) joint resolution proposing an amendment to the Constitution of Virginia related to reapportionment or redistricting may be offered and considered during the 2024 Special Session I of the General Assembly," which IS the basis of this pending action.

The vote on this procedural resolution was passed strictly along party lines, in the House 50-42 and, 21-17 in the Senate. This vote was not by unanimous vote as required under House Joint Resolution 6001, and it did not pass by a two-thirds super majority that would have been required to demand a new Special Session to consider this business.

Certainly, both houses of the Commonwealth's legislature are required to follow their own rules and resolutions. Likewise, the legislators required to reach the two-thirds super majority in order to demand a Special Session under Article IV, Section 6, have the right to depend on the accompanying rule which limit the subject matter of the items they agree can be considered in the Special Session. Without this limitation, the majority can seek a Special Session agreeing to consider limited items in order to gain the votes necessary to invoke a Special Session, and thereafter by simple majority vote take up ANY ITEM without acquiescence of the two-thirds concurrence necessary to request the same. This blatant abuse of power by a majority IGNORES their own rules and resolutions thereby trampling ANY and ALL procedural rights of the minority.

Surely, the minority members of the Virginia House of Delegates and the Senate of Virginia are afforded the same civil rights of any citizen of the Commonwealth who enters into an agreement upon valid consideration, as here where they voted for a Special Session which contained a procedural rule limiting the business to come before it to five (5) specific items, unless the same was presented by unanimous vote of the house offering the proposed legislation.

Therefore, the Court FINDS that adding the House Joint Resolution 6007 (joint resolution proposing an amendment to the Constitution of Virginia related to the reapportionment or redistricting) violated House Joint Resolution 428 and House Joint Resolution 6001, and any

action taken thereon is an invalid expansion of the General Assembly's own call to the Governor for the 2024 Special Session, and the Court ORDERS that any such action is void, ab initio.

The third challenge to the proposed Constitutional Amendment, is that it is being submitted to the voters of the Commonwealth of Virginia, pursuant to Article XII, Section I of the Virginia Constitution, which states:

> "Any amendment or amendments to this Constitution may be proposed in the Senate or House of Delegates, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, the name of each member and how he voted to be recorded, and referred to the General Assembly and its first regular session held after the next general election of members of the House of Delegates."

The Plaintiffs contend that the vote on House Joint Resolution 6007 which occurred on October 31, 2025, some forty-three days after voting began in the 2025 General Election for the House of Delegates, wherein more than one million votes (approximately 40% of the 2025 Vote Totals) had already been cast. Plaintiffs content that the definition of "election" is the process of selecting a person to occupy an office." *Election, Black's Law Dictionary.*

The Attorney General opined that on January 17, 2026 that the Constitution defines the date of the General Election for the House of Delegates on "the Tuesday succeeding the first Monday in November."

While all concede that the enumerated date in Article IV, Section 3 of the Constitution is "Election Day," Defendants concede that voting began pursuant to Virginia law on September 19, 2025. Approximately one million Virginians had voted by the time the General Assembly passed House Joint Resolution 6007 regarding the proposed redistricting Constitutional Amendment. For this Court to find that the election was only on November 4, 2025, those one million Virginia voters would be completely disenfranchised. The Constitution REQUIRES an intervening election FOLLOWING the first passage of a proposed Constitutional Amendment. It is legal, acceptable and even encouraged for voters to take advantage of the earlier voting statute. There is no rational conclusion except that the ELECTION began on the first day of voting (September 19, 2025) and ended on November 4, 2025. Therefore, the Court FINDS that following the October 31, 2025 vote and passage of House Joint Resolution 6007 there HAS NOT BEEN an ensuing general election of the House of Delegates, and such ensuing general election CANNOT occur until 2027. Thus, the action of the General Assembly during its Regular Session 2026 CANNOT meet the

second passage required of Article XII, Section 1 of the Virginia Constitution, which second passage must occur before the same can be submitted to the voters of Virginia for adoption.

The fourth and final challenge by the Plaintiffs is that VA Code Section 30-13 was not satisfied since the Defendants concede that the proposed Constitutional Amendment was neither published by the Clerk of the House of Delegates, nor was it posted at the front door of every Courthouse, "not later than three months prior to the next ensuing general election of members of the House of Delegates."

Defendants woefully argued that the posting could occur three (3) months prior to the 2027 election and still comply with the statute even if the proposed Constitutional Amendment was voted on in the Spring of 2026. The sole purpose for the posting the proposed amendment at the front door of the Courthouse and having a copy in the Clerk's Office available for inspection is to provide the voters with notice and information PRIOR to the election of the House of Delegates members who would be elected to vote on the proposed Constitutional Amendment for the second vote as required under the Constitution. Since Article XII, Section I of the Virginia Constitution states that after the proposed amendment has been passed the second time, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the voters qualified to vote in elections by the people, **in such manner as it shall prescribe** [emphasis added] and not sooner than ninety days after final passage by the General Assembly.

VA Code Section 30-13 does exactly THAT. It prescribes how the vote can take place, and what steps must be taken prior to such vote. This statute has been amended four times SINCE the adoption of the 1971 overhaul of the Virginia Constitution. Therefore, the Court FINDS that the provisions of Section 30-13 of the Code of Virginia have not been complied with, and therefore all votes on the proposed Constitutional Amendment taken during the 2026 Regular Session of the General Assembly are ineffective as being a "SECOND" VOTE OF THE General Assembly under Article XII, Section I of the Constitution.

The Court having made the FINDINGS set forth above hereby RULES that the 2024 Special Session was a valid session up to and including all meetings until January 13, 2026. The Court further having FOUND that the General Assembly failed to follow its own Rules and Resolutions, DECLARES that any and all matters, motions, actions and votes regarding House Joint Resolution 6007 was in violation of the same as are ORDERED to be VOID AB INITIO.

Likewise, even if said passage HAD been valid, that no "NEXT ENSUING GENERAL ELECTION OF THE MEMBERS OF THE HOUSE OF DELEGATES" has occurred whereby the Court ORDERS that any 2026 Regular Session vote on a proposed Constitutional Amendment SHALL BE and IS construed as a FIRST vote under Article XII, Section I of the Virginia Constitution.

Lastly, even if the General Assembly is NOT required to follow its own Rules and Resolutions, and even if "election" is narrowly defined as "Election Day", the Court FINDS the General Assembly FAILED to comply with Section 30-13 of the Code of Virginia, which therefore PROHIBITS the proposed amendment from being submitted to the voters for their consideration. The Court hereby GRANTS a TEMPORARY and PERMANENT INJUNCTION, requiring the Clerk of the Circuit Court of Tazewell County to post the proposed Constitutional Amendment at least ninety (90) days BEFORE the next ensuing election of the members of the House of Delegates election.

The General Assembly has attempted or is attempting to repeal Section 30-13, which is fully within their power to do. However, under Article IV, Section 13 of the Constitution of Virginia, "All laws enacted at a regular session. . . shall take effect on the first day of July following the adjournment of the session of the General Assembly at which it has been enacted; . . . unless in the case of an emergency (which emergency shall be expressed in the body of the bill) the General Assembly shall specify an earlier date by a vote of four-fifths of the members voting in each house. . . ." Therefore, any attempt to repeal Section 30-13 which does not comply with this Constitutional mandate, is NULL and VOID. In the same way, the attempt within the House Joint Resolution to have this pending case transferred to the Circuit Court of the City of Richmond is in direct violation of Article IV, Section 14(2) of the Constitution of Virginia which states that: "The General Assembly shall not enact any local special, or private law in the following cases: (2) Providing for a change of venue in civil or criminal cases.

A copy of House Joint Resolutions and Virginia Codes and Constitutional provisions referred to herein are attached hereto.

The Clerk is directed to send attested copies to all attorneys of record.

Enter this 27th day of January, 2026.

Jack S. Hurley, Jr., Judge
Tazewell County Circuit Court

**IN THE SUPREME COURT OF VIRGINIA**

| | | |
|---|---|---|
| DON SCOTT, in his official capacity as Speaker of the Virgnia House of Delegates, et al.<br><br>Appellants,<br><br>v.<br><br>RYAN T. MCDOUGLE, Virginia State Sentator and Legislative Commissioner for the Virginia Redistricting Commission, et al.<br><br>Appellees. | ) | Record No.: 260127 |

**Joint Motion to Delay Issuing Mandate**

The Commonwealth of Virginia and Appellants Don Scott, Scott Surovell, and L. Louise Lucas, by counsel, move this Honorable Court pursuant to Rule 5:39 to delay issuing its mandate in the above-captioned matter. The Commonwealth has informed counsel for all parties of its intent to file this motion. Rule 5:4(a)(1).

Rule 5:39 provides that this Court may defer the issuance of its mandate if a party intends to file an appeal with the Supreme Court of the United States. On May 8, 2026, this Court issued its decision in this case. Appellants and the Commonwealth intend to file an Emergency

Petition to the Supreme Court of the United States. This motion is timely because it is filed within 15 days of this Court's order. Rule 5:39.

Respectfully submitted,

COMMONWEALTH OF VIRGINIA

By: /s/ *Tillman J. Breckenridge*

Tillman J. Breckenridge (#84657)
*Solicitor General*

DON SCOTT, SCOTT SUROVELL, AND L. LOUISE LUCAS

By: /s/ *Richard F. Hawkins III*

Richard F. Hawkins (#40666)

Jay Jones
*Attorney General*
Travis G. Hill
*Chief Deputy Attorney General*
Jacqueline C. Hedblom
Pebbles L. Burgess (#74817)
*Senior Assistant Attorneys General*
Mikaela A. Phillips (#97164)
Triston C. O'Savio (#100111)
*Assistant Solicitors General*

Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219
(804) 786-2071 – Telephone
(804) 786-1991 – Facsimile
SolicitorGeneral@oag.state.va.us

*Counsel for the Commonwealth*

Richard F. Hawkins, III
The Hawkins Law Firm, PC
2222 Monument Avenue
Richmond, Virginia 23220
Tel: (804) 308-3040
Fax: (804) 308-3132
rhawkins@thehawkinslawfirmpc.com

Matthew A. Seligman*
Grayhawk Law
3015 Main Street, Suite 330
Santa Monica, California 90405
Tel: (310) 571-5993
matthew@grayhawklaw.com
**pro hac vice*

*Counsel for Appellants Don Scott, Scott Surovell, and Louise Lucas*

---

## CERTIFICATE OF TRANSMISSION AND SERVICE

I certify that on May 8, 2026, this document was electronically filed with the Court via VACES. A copy was transmitted by email to:

John E. Lichtenstein (#27048)
Gregory L. Lyons (#24037)
Jacob B. Lichtenstein (#100000)
Lichtenstein Law Group PLC
347 Highland Avenue, SW (24016)
P.O. Box 601
Roanoke, Virginia 24004
Tel: (540) 343-9711
Fax: (540) 343-9713
John.Lichtenstein@lichtensteinlawgroup.com
Greg.Lyons@lichtensteinlawgroup.com
Jake.Lichtenstein@lichtensteinlawgroup.com

*Counsel for Appellants G. Paul Nardo, Susan Clarke Schaar, and Tara Perkinson*

Michael A. Thomas
Gillespie, Hart, Pyott & Thomas, P.C.
179 Main Street
Tazewell, Virginia 24651
Tel: 276-988-5525
Fax: 276-988-6427
mthomas@ghartlaw.com

Thomas R. McCarthy
Conor D. Woodfin
Consovoy McCarthy PLLC
1500 Wilson Blvd., Ste. 700
Arlington, Virginia 22209
Tel.: 703-243-9423
tom@consovoymccarthy.com
conor@consovoymccarthy.com

*Counsel for Appellees*

*/s/ Tillman J. Breckenridge*

Tillman J. Breckenridge (84657)

**IN THE SUPREME COURT OF VIRGINIA**

| | | |
|---|---|---|
| STEVEN KOSKI, in his official capacity as Commisioner of the Virginia Department of Elections, *et al.*<br><br>Appellants,<br><br>v.<br><br>REPUBLICAN NATIONAL COMMITTEE, *et al.*<br><br>Appellees. | ) | Record No.: _____ |

**Motion for Emergency Stay**[1]

Appellants Steven Koski, John O'Bannon, Rosalyn R. Dance, Georgia Alvis-Long, Christopher P. Stolle, and Sally Hudson, in their official capacities, as well as the Virginia Department of Elections and Virginia State Board of Elections (State Election Officials), by counsel, move this Honorable Court to immediately stay the Tazewell Circuit Court's April 22, 2026 order in *Republican National Committee v. Koski*, CL26-266, pending outcome of this appeal. The State Election Officials have informed counsel for all parties of their intent to file this motion.

[1] This motion is substantively identical to the Amended Motion to Stay filed yesterday in the Court of Appeals of Virginia.

Rule 5:4(a)(1). The RNC opposes a motion to stay and intends to file a response. The Local Election Officials agree to the motion to the extent that it "permits [them] (only) to continue their work as part of the routine post-election process." Given the time sensitive nature of this case, the State Elections Officials request that the Court waive the 10-day response period in Rule 5:4(a)(2).

## Introduction

This emergency motion arises from a final judgment that nullifies a statewide constitutional referendum—entered the day after more than three million Virginians cast their ballots—based on theories of Article XII that find no footing in the constitutional text.

When the circuit court first enjoined the referendum in February, this Court stayed that order and allowed the electorate to exercise the role Article XII assigns to it. Virginia voters did exactly that on April 21, and they approved the proposed amendment. Less than 24 hours later, the circuit court swept the entire referendum aside, declaring the amendment "void ab initio," deeming every ballot "ineffective," barring certification of the results, and prohibiting the Commonwealth from taking any step to give the vote legal effect. A vote that cannot be

counted, certified, or implemented is no vote at all. The judgment displaces the electorate at the decisive moment Article XII reserves for it, while the legal questions remain fully subject to appellate review.

Those rulings cannot bear the weight the circuit court placed on each of them. The judgment rests on a definition that treats the statutory start of early voting as a constitutional event, a 90-day timing rule untethered from Article XII's text, an expansive Submission Clause theory that would cast courts as editors of legislative ballot drafting, and the elevation of internal legislative housekeeping and a ministerial publication statute into judicially enforceable constitutional pre-requisites. Each reading adds to Article XII a requirement the Constitution does not contain. The judgment further invalidates HB 1384 on Article IV grounds—a Form of Laws ruling that misreads the Clause as policing legislative craftsmanship, and a special legislation ruling that mistakes a form restriction for a subject-matter withdrawal. At minimum, each of these rulings presents a substantial and debatable legal question, and debatable legal questions do not justify the extraordinary step of voiding a referendum before appellate review has occurred.

The injunction compounds the error. It is not narrow, not remedial, and not tailored to any injury Plaintiffs have alleged. It nullifies votes already cast, bars certification of the results, and reaches forward into the administration of Virginia's upcoming congressional elections—prohibiting the State Election Officials from updating voter registration records, adjusting districts and precincts, generating poll books and ballots, or conducting any primary or general election duties. That kind of sweeping, forward-looking command bears no meaningful relationship to the procedural defects Plaintiffs claim and is independently improper under Virginia law.

The equities sharpen the case for a stay. Both state and federal law require absentee ballots for the August 4 primary to be mailed by June 18, and the State Election Officials have a compressed implementation window that grows narrower with every passing day. Absent a stay, the Commonwealth will face mounting administrative disruption, the risk of voter confusion in the upcoming primary, and the nullification of a statewide vote—all before the appellate courts have had the opportunity to review the merits. Plaintiffs, by contrast, face no comparable harm. Their legal claims remain fully available on appeal, and the Court has

already signaled that any final order in this case would likely return on an expedited basis.

A stay therefore preserves both sides' arguments while preventing irreparable consequences that cannot be undone after the fact.

## Background

Pursuant to Article XII of the Constitution of Virginia, the General Assembly approved a proposed constitutional amendment during one session and, following the next general election of members of the House of Delegates, approved the amendment again in a subsequent session. *See* H.J. Res. 6007 (2024 Spec. Sess. I); 2024 Acts ch. 5 (Spec. Sess. I); H.J. Res. 4 (2026 Sess.). The General Assembly then scheduled the amendment for submission to the voters at a special election held on April 21, 2026. 2026 Acts ch. 6.

On February 18—two weeks before early voting was scheduled to begin—Plaintiffs filed this lawsuit in the Circuit Court of Tazewell County. Their complaint advanced three theories: that the amendment process failed Article XII's intervening-election requirement, that statutory timing provisions required a 90-day interval before early voting

could begin, and that the ballot language prescribed by HB 1384 violated Article XII's Submission Clause.

The circuit court acted quickly, and the very next day entered a temporary injunction barring the State Election Officials from "administering, preparing for, taking any action to further the procedure of the referendum, or otherwise moving forward with causing an election to be held on the proposed constitutional amendment." *Republican Nat'l Comm. v. Koski*, 116 Va. Cir. 351, 353–54 (Tazewell Cir. Ct. Feb. 19, 2026).

This Court ultimately intervened. On March 4, following an emergency petition by the State Election Officials and a further motion for administrative stay, it stayed the circuit court's order and allowed the referendum to proceed as scheduled. *Koski v. Republican Nat'l Comm.*, 926 S.E.2d 289 (Va. 2026). The Court emphasized that, as a prudential matter, Virginia courts should not prematurely enjoin elections, while expressly declining to resolve the merits of Plaintiffs' claims. *Id.* at 291–92. It also directed the circuit court to "promptly bring the case to closure and enter final judgment." *Id.* at 293.

Plaintiffs then sought to compel immediate entry of final judgment in their favor. On March 5, they moved in the circuit court for final judgment and permanent injunctive relief. When the circuit court stayed the case and scheduled a hearing for April 22—the day after the referendum was scheduled to take place—Plaintiffs filed an emergency motion asking the Court to "clarify" that its March 4 order required the circuit court to enter final judgment immediately or, in the alternative, to consolidate this case with *Scott v. McDougle*, No. 260127. The State Election Officials responded that immediate final judgment for Plaintiffs would be procedurally improper because the case had not progressed beyond the preliminary injunction stage, the pleadings had not closed, no answer had been filed, and the merits had not been adjudicated.

The Court denied Plaintiffs' requests but clarified that its prior order did not require immediate disposition of the case prior to the filing of responsive pleadings or the consideration of evidence. *Koski v. Republican Nat'l Comm.*, 926 S.E.2d 801, 802 (Va. 2026). "Promptly," the Court explained, meant "as soon as reasonably possible in light of the procedural posture of the case and the proper sequencing of injunctive remedies consistent with *Scott v. James*, 114 Va. 297 (1912)." *Id.* at 803–

04. The Court made clear that no final injunction could be entered prior to the referendum and indicated that any final judgment entered after the referendum would "no doubt return the case to our Court in due time for a final decision" on an "expedited basis" for appellate review. *Id.* at 804.

The referendum was held as scheduled on April 21. More than three million Virginians cast ballots, and voters approved the proposed constitutional amendment. *See* Koski Decl. ¶ 6.

The circuit court entered final judgment the very next day—less than 24 hours after the polls closed—and granted Plaintiffs' motion in full. It declared the amendment "void ab initio," deemed every vote cast in the referendum "ineffective," and permanently enjoined the State Election Officials from certifying the results. Order 2. The court went further still by permanently enjoining the Commonwealth from taking any step to "give effect" to the amendment, including updating or altering voter registration records, election districts, precincts, or polling places; generating poll books and ballots; and "proceeding with new maps or districts in any congressional primary or general election under the

proposed constitutional amendment." Order 3. The court then denied the State Election Officials' motion to stay pending appeal.

The circuit court's order did not merely resolve a dispute over legal process. It nullified the result of a statewide referendum, barred certification of the vote, prohibited the Commonwealth from taking the administrative steps necessary to implement the amendment, and refused a stay notwithstanding the Court's prior statement that any final order would likely return for expedited appellate review. The State Election Officials now seek a stay of that judgment pending appeal.

## Legal Standard

A stay pending appeal is an exercise of the Court's equitable discretion. *See Primov v. Serco, Inc.*, 296 Va. 59, 67 (2018). In determining whether to grant a stay, Virginia courts consider the totality of the circumstances, including: (1) the movant's likelihood of success on the merits; (2) whether the movant will suffer irreparable harm absent a stay; (3) whether issuance of the stay will substantially injure other parties; and (4) where the public interest lies. *Jeffrey v. Commonwealth*, 77 Va. App. 1, 11–16 (2023) (citing *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

The purpose of a stay is to preserve the status quo and protect the effectiveness of appellate review. A stay is particularly appropriate where denial would render the appeal ineffectual or permit consequences that cannot later be undone. *See Primov*, 296 Va. at 67; *Jeffrey*, 77 Va. App. at 12–14.

## Argument

### I. The State Election Officials are likely to succeed on appeal because the circuit court erred on both the merits and the scope of the injunction.

#### A. The amendment process fully complied with Article XII.

##### 1. The circuit court erred in treating internal legislative resolutions as constitutional limits.

Notably, the first three grounds the circuit court relied on will be resolved in *Scott v. McDougle*, No. 260127. So that is an additional ground for a stay—the Court already is resolving these issues in the case the circuit court relied on for its ruling: it declared the General Assembly's first approval of the proposed amendment "void ab initio," reasoning that by taking up the amendment, the legislature violated its own resolutions defining the scope of the 2024 Special Session.

That conclusion misunderstands what those resolutions are. HJR 428 and HJR 6001 are not constitutional provisions. They are procedural resolutions, internal housekeeping through which each house organizes its own business. Courts do not enforce such resolutions as constitutional commands, and Article XII supplies no authority to do so here.

The Constitution itself commits these matters to the legislature. Article IV, § 7 commits to each house the authority to "settle its rules of procedure." That authority is plenary. Each house adopts its rules, interprets them, amends them, and suspends or waives them when its members see fit. A supermajority or unanimous-consent threshold that exists because the legislature itself wrote it down is not a constitutional fixture; it is an expression of legislative will, revisable by that same will at any time. When the General Assembly adopted HJR 6006 to broaden the scope of business the session would consider, and then approved HJR 6007, it was exercising the very authority Article IV, § 7 secures.

Virginia law has long drawn the line the circuit court crossed. Courts cannot "invade a co-ordinate and independent department" by scrutinizing the procedure by which a legislative body conducted its own business. *Wise v. Bigger*, 79 Va. 269, 281 (1884). Nor may courts

"overthrow" a legislature's determinations concerning its own procedure. *Albemarle Oil & Gas Co. v. Morris*, 138 Va. 1, 11 (1924). The U.S. Supreme Court has applied the same rule to the same effect: once a legislative enactment is duly authenticated, courts do not look behind it to audit the legislature's internal operations. *See Marshall Field & Co. v. Clark*, 143 U.S. 649, 672–73 (1892). These authorities reflect a constitutional allocation of power, not a prudential preference, and that allocation does not yield merely because a plaintiff casts a procedural grievance in the language of constitutional injury.

The circuit court's rule also evinces no limiting principle. If an internal resolution governing the scope of legislative business can be elevated into a constitutional constraint, every dispute over parliamentary procedure becomes a constitutional question, and every enactment becomes vulnerable to judicial invalidation whenever a court, reviewing the record years later, concludes that the legislature might have managed its affairs differently. The Constitution does not make the validity of statutes—or of constitutional amendments—contingent on compliance with rules the legislature adopts for its own convenience and remains free to change.

The result the circuit court reached follows only if HJR 428 and HJR 6001 are themselves constitutional provisions, but they are not. Because the General Assembly acted within its own Article IV, § 7 authority when it considered HJR 6007, and because no provision of the Constitution was violated in that consideration, the State Election Officials are likely to succeed on the merits of this issue.

### 2. The intervening-election requirement was satisfied as a matter of constitutional text.

The circuit court next concluded that no valid intervening general election occurred between the General Assembly's two approvals because early voting for the November 2025 election had begun before the first vote. That ruling collapses the distinction the Constitution itself draws between an election—a fixed constitutional event—and the statutory mechanisms through which ballots may be cast.

Article XII ties the intervening-election requirement to "the next general election of members of the House of Delegates." Va. Const. art. XII, § 1. The Constitution fixes when that election occurs. Members of the House of Delegates are elected "on the Tuesday succeeding the first Monday in November." Va. Const. art. IV, § 3. The November 2025

election took place on that date—*after* the General Assembly's initial approval of HJR 6007 in October 2025 and *before* its second approval of HJR 4 in January 2026. The constitutionally required sequence was followed.

The circuit court's contrary conclusion treats the commencement of early voting as the operative constitutional event. But early voting is a creature of statute. *See* Code § 24.2-701.1. It is a legislative accommodation within Virginia's absentee-voting framework that permits ballots to be cast before Election Day. It is not a separate election, and not a re-configuration of when the general election constitutionally occurs. Treating a statutory voting mechanism as re-defining a constitutional event inverts the constitutional hierarchy. It would also make Article XII's timing turn on whatever adjustments the General Assembly might later make to the early-voting window—shortening the window to expand the amendment timeline, lengthening it to contract the same. A constitutional requirement that varies with ordinary legislation is not a constitutional requirement at all.

Where the constitutional text is clear, Virginia courts apply it according to its terms and do not add requirements by implication. *See*

*May v. R.A. Yancey Lumber Corp.*, 297 Va. 1, 6–8 (2019). Article XII specifies the sequence; Article IV fixes the date; and the November 2025 election intervened between the two legislative approvals. That is all Article XII requires, and that is what occurred.

### 3. The circuit court erred in treating Code § 30-13 as a constitutional prerequisite.

The circuit court also invalidated the General Assembly's 2026 votes based on alleged non-compliance with Code § 30-13, a statute whose constitutional predecessor was deliberately discarded more than 50 years ago. That ruling elevates a publication directive aimed at legislative clerks into a condition on the General Assembly's Article XII authority. Nothing in the Constitution supports that conclusion, and its text and history foreclose it.

Article XII supplies the rule of decision. Its requirements are four: (1) approval by a majority of each house; (2) an intervening general election of members of the House of Delegates; (3) second approval by the newly constituted General Assembly; and (4) submission to the voters not sooner than 90 days after final passage. Va. Const. art. XII, § 1. Those "specified prerequisites" are the only conditions on constitutional

validity, *Coleman v. Pross*, 219 Va. 143, 154 (1978), and clerical publication under Code § 30-13 is not among them.

The history of Article XII makes the omission deliberate and unassailable. The 1902 Constitution required proposed amendments to be published for three months before submission to the voters. The 1971 Constitution removed that requirement and replaced it with a different safeguard: approval by two successive General Assemblies, an intervening election, and a 90-day waiting period before a proposed amendment reaches the ballot. Professor Howard, the chief architect of the 1971 revision, described the consequence in terms the circuit court could not evade: because Article XII no longer contains a publication requirement, "an amendment cannot be challenged on the ground that publication was insufficient." A. E. Dick Howard, 2 Commentaries on the Constitution of Virginia 1175 (1974). A statute enacted to implement a constitutional command that no longer exists cannot be used to re-impose that edict through the back door of judicial enforcement.

The text of Code § 30-13 confirms that it does not purport to govern constitutional validity. It directs the Clerk of the House of Delegates to publish proposed amendments and directs circuit court clerks to post

copies and certify the posting. These are ministerial obligations imposed on public officials, not conditions precedent to the legislature's Article XII authority. The statute does not declare amendments void for non-compliance, does not bar submission to the voters, and supplies no consequence whatsoever for non-performance. This Court has treated documents produced by legislative clerks under § 30-13 accordingly, recognizing that they "are not themselves legislative enactments" and that "any error in the tables does not alter the legislative provision." *Woodard v. Commonwealth*, 214 Va. 495, 498 (1974). That distinction forecloses the circuit court's ruling because a statute governing clerical duties cannot nullify two legislative approvals and a referendum.

#### 4. The referendum was validly submitted to the voters under Article XII.

The circuit court further concluded that the ballot language prescribed by HB 1384 violates the Submission Clause because, in its view, the question presented to voters was "flagrantly misleading" and did not "accurately describe the proposed amendment as it was passed by the General Assembly." Order at 1–2. That ruling would cast courts as editors of legislative ballot drafting, reviewing phrasing for accuracy,

neutrality, and rhetorical balance. Article XII does not authorize that role, and the presumption of constitutionality forecloses it.

The Constitution's direction on submission is spare. It provides that the General Assembly shall "submit" an approved amendment to "the voters qualified to vote in elections by the people, in such manner as it shall prescribe." Va. Const. art. XII, § 1. Article XII does not prescribe ballot language, does not require the ballot to re-produce the amendment verbatim, and does not task courts with policing legislative drafting choices. It commits the manner of submission—including the wording of the ballot question—to the political branches, as a deliberate allocation of authority.

When the General Assembly acts within that commitment, its enactment is entitled to a strong presumption of constitutional validity, with reasonable doubts resolved in favor of the law. *Finn v. Va. Ret. Sys.*, 259 Va. 144, 152 (2000). That presumption carries particular weight here, where setting aside the enactment would also set aside the result of a statewide referendum. The Submission Clause is not a roving license to second guess legislative phrasing; it polices substitution, asking one question while enacting another. Absent ballot language that

fundamentally misrepresents the choice presented to voters in a way that might confuse them as to the meaning of a "yes" vote or a "no" vote, Article XII does not authorize judicial invalidation of the electorate's vote.

The ballot question here does not come close to that standard. It asks voters whether to amend the Constitution to allow the General Assembly to "temporarily adopt new congressional districts," while "ensuring Virginia's standard redistricting process resumes for all future redistricting after the 2030 census." HB 1384, § 14. That question reasonably describes what HJR 4 does: it authorizes temporary mid-decade congressional redistricting, bounded by the 2030 census, in response to comparable actions by other States. Reasonable observers may disagree about whether the accompanying reference to "fairness" reflects persuasive framing, but disagreement over rhetorical choices is not a constitutional violation.

### 5. Article XII imposes no 90-day rule tied to the commencement of early voting.

The circuit court also concluded that HB 1384 violates the Timing Clause because early voting for the April 21, 2026 special election began on March 6, less than 90 days after the General Assembly's final passage

of HJR 4. That ruling rests on the same error as the first by treating statutory early voting as the operative constitutional event, this time by reading Article XII's 90-day requirement as though it governed the start of early voting rather than the election itself.

Article XII says something different. It requires that a proposed amendment be submitted to the voters at an election held "not sooner than 90 days after final passage by the General Assembly." Va. Const. art. XII, § 1. The constitutional reference is the election—the legally operative event at which the amendment is submitted—not the opening of the early-voting window. The General Assembly approved HJR 4 on January 16, 2026. The special election was held on April 21, which was 95 days later. The constitutional interval was satisfied.

Under the circuit court's reading, Article XII's 90-day clock would rise and fall with the General Assembly's choices about absentee voting. Early voting currently begins 45 days before Election Day because the General Assembly, by ordinary legislation, said so. *See* Va. Code § 24.2-701.1. If the constitutional clock now runs from the start of early voting, then every statutory adjustment to that window would dictate how long the General Assembly must wait before submitting proposed

amendments to the voters. Article XII does not yield to statutory variables in that way. Its requirements are "deliberately lengthy, precise, and balanced," *Coleman*, 219 Va. at 154, and strict compliance means following what the Constitution says—no more, no less. Every voter had more than 90 days to get informed and consider his or her decision before voting. That is what the Constitution requires.

### B. The circuit court's Article IV rulings are both independently erroneous.

#### 1. The circuit court erred in holding that HB 1384 violates Article IV, § 12.

The circuit court declared HB 1384 unconstitutional under the Form of Laws Clause on two grounds: that the bill "embraces more than one object" and that its "title does not accurately describe its subject matter." Order at 2. Both conclusions misread the bill and the constitutional standard.

Article IV, § 12 was not drafted to police legislative craftsmanship. It was drafted, as this Court has explained for well over a century, "to prevent the members of the legislature and the people from being misled by the title of a law," a safeguard against log-rolling and deceptive titling. *Commonwealth v. Brown*, 91 Va. 762, 771–72 (1895). The Clause "was never intended to hamper honest legislation, nor to require that the title

should be an index or digest of the various provisions of the act." *Town of Narrows v. Board of Supervisors*, 128 Va. 572, 582 (1920). A title satisfies § 12 when the subjects embraced in the act are "congruous, and have a natural connection with, or be germane to, the subject stated in the title." *Marshall v. N. Va. Transp. Auth.*, 275 Va. 419, 430 (2008). Reasonable doubts are resolved in favor of validity, and courts will not declare an act unconstitutional "unless it is plainly so." *Id.* at 428 (quoting *Narrows*, 128 Va. at 583).

HB 1384 satisfies that standard with room to spare. The bill is three and a half pages long. Its title identifies three subjects: appropriations related to the April 21, 2026 special election; submission of the proposed constitutional amendment to the voters; and repeal of Code § 30-13. 2026 Acts ch. 6, at 1. Each of those subjects is germane to a single unifying object—the submission of the proposed amendment to the electorate. The appropriations fund the special election at which the amendment is submitted. *Id.* at 1–2 (Item 5 ¶ F, Item 6 ¶ H, and Item 78.10). The submission provisions schedule the election and govern its conduct. *Id.* at 2–3. And the § 30-13 repeal removes a statutory publication requirement that the General Assembly concluded was no

longer necessary to the amendment process. *Id.* at 3. Those subjects are not "dissimilar or discordant." *Brown*, 91 Va. at 772. They are "all the means to an end" and "instrumentalities for the accomplishment of the general object of the act." *Id.*

The title is not misleading, and the circuit court did not identify how it was. A reader of HB 1384's title would not be surprised by its contents. No legislator voting on a three-and-a-half-page bill with an itemized title was misled about what it did. And the historical abuses § 12 was meant to prevent, such as log-rolling, hidden provisions, and titles used as cover for vicious legislation, are not remotely present here. *See State Bd. of Health v. Chippenham Hospital, Inc.*, 219 Va. 65, 74 (1978). The circuit court's contrary conclusion, offered without analysis or citation in a ruling Plaintiffs themselves barely developed in their final judgment briefing, cannot support the invalidation of a statute that otherwise carries a "strong presumption of validity." *Heublein, Inc. v. Dep't of Alcoholic Beverage Control*, 237 Va. 192, 195 (1989).

Plaintiffs' more specific theory, that HB 1384 contains a fourth unexpressed object in the form of a venue-transfer provision, fares no better. That provision centralizes litigation concerning the amendment,

the election, and the amendment process in the City of Richmond. 2026 Acts ch. 6, at 4. It is directly tied to the bill's organizing object: ensuring orderly resolution of disputes about the very referendum the rest of the bill submits to the voters. Under *Marshall*, that kind of "legitimate and natural association" with the bill's subject is exactly what Article IV, § 12 permits. 275 Va. at 429–30. The venue provision is not, moreover, even at issue in this case. Plaintiffs filed in Tazewell, and no one has been harmed by it.

Even if one provision were problematic, severance is the remedy. Virginia law is explicit on this point. Under Code § 1-243, "any unconstitutional provisions of an enactment will be severed from its remaining valid provisions, unless the enactment specifically states" otherwise. *Marshall*, 275 Va. at 428; *see also* 2025 Acts ch. 725, § 4-12.00, at 769–70 (severability clause of relevant appropriations bill). This Court has applied that rule to Article IV, § 12 challenges directly, severing a single offending provision and leaving the rest of the statute intact. *See Chippenham Hospital*, 219 Va. at 75 (severing staff privileges provision from Medical Care Facilities Certificate of Public Need Law). HB 1384 contains no anti-severability clause, and no principle of Virginia law

supports the circuit court's decision to invalidate the entire enactment—and with it, the submission of a constitutional amendment the people of Virginia have already approved—based on speculation about a venue provision that no litigant has invoked.

The circuit court's § 12 ruling cannot be sustained. HB 1384's title fairly describes its contents, its provisions are germane to a single unifying object, and any narrower defect, if one existed, would be cured by severance, not by voiding the statute.

### 2. The circuit court erred in holding that HB 1384 violates Article IV, § 14.

Lastly, the circuit court declared HB 1384's satellite-office requirement unconstitutional because the designation of places of voting is, in the court's view, "withdrawn from the powers of the General Assembly." Order at 2. Article IV, § 14 says nothing of the sort. It prohibits the General Assembly from enacting "any local, special, or private law" on enumerated subjects, including the "designating [of] the places of voting." Va. Const. art. IV, § 14. A general law on that subject is not what § 14 forbids, and HB 1384 is a general law.

This Court has explained that "[c]onstitutional prohibitions against special legislation do not prohibit classification," and that a law is special

"when by force of an inherent limitation it arbitrarily separates some persons, places or things from those upon which, but for such separation, it would operate." *Quesinberry v. Hull*, 159 Va. 270, 277 (1932). HB 1384's satellite-office requirement draws no such line. It applies statewide, selects no favored or disfavored locality, and creates no arbitrary classification. A uniform rule applicable to every locality in the Commonwealth is the paradigm of a general law, not a special one.

The circuit court did not apply § 14's governing standard. It identified no classification, explained no way in which the statute is "special" rather than general, and engaged with no § 14 case law. What remains is not a legal theory but an administrability complaint. The local defendants—not the Plaintiffs—raised the issue in a motion to modify the TRO, arguing that localities lacked time to comply and had received conflicting guidance from the Department of Elections. Those are operational concerns, not constitutional ones, and § 14 does not transform them into a special legislation violation.

Two additional features of the ruling confirm its untenability. *First*, the circuit court expressly told the parties at a March 4 hearing that "the satellite issue isn't going to be an issue," then invalidated the

statute on that exact issue six weeks later. *Second*, Plaintiffs' verified complaint raises § 14 only as to the unrelated venue-transfer provision, and their final judgment motion does not mention § 14 at all, the theory the circuit court adopted was not their theory.

A duly enacted statute carries a "strong presumption of validity," and the challenger bears the burden of proof. *Marshall*, 275 Va. at 428. That burden cannot be carried through a theory the Plaintiffs never pressed, a doctrine the court never analyzed, on an issue the court said it would not decide, against a provision that has not yet taken legal effect.

To be clear so this point is not lost: *The circuit court claims the election is invalid because the General Assembly insisted that localities make it easier for people to vote.* This made it easier to vote in less populous counties—larger counties already had satellite offices. The General Assembly made it easier to vote in counties that went against the referendum—counties like Tazewell. But according to the circuit court, it was so unconstitutional to the point of invalidating the vote, that the General Assembly made it easier for the people it presides over to vote "no." This entire ruling is inappropriate usurpation of power and violates basic concepts of divided government. The Court did not consider

lesser appropriate remedies and on this issue, it did not justify its conclusion with a reasoned explanation of how this generally applicable law is a "special" law.

## II. Virginia voters and the Commonwealth's election processes will suffer irreparable harm absent a stay.

The circuit court's injunction is not a prospective order awaiting some future event. It is disrupting the Commonwealth's election operations right now, and every day it remains in force forecloses options the State Election Officials cannot recover later. The harms are not speculative. They are immediate, concrete, and—if the statutory calendar is allowed to run past them—irreparable.

*The injunction blocks the Commonwealth from completing the certification process for the referendum itself.* Virginia law requires ELECT and local election officials to complete a detailed post-election sequence on a fixed statutory timeline: duplicate-vote checks, reconciliation of provisional ballots, local certification, and certification by the State Board of Elections. *See* Koski Decl. ¶ 7. Local officials must certify no later than April 27, and the State Board must certify no later than May 4 and has scheduled a meeting for May 1 to do so. *Id.* ¶ 7. The injunction prevents ELECT from taking the final step those deadlines

require, because only ELECT operates the statewide voter registration system. *Id.* ¶12.

*The injunction places the August 4 primary at risk.* Once certification is complete, ELECT must implement the new congressional districts in VERIS, coordinate with local registrars, and support the cascade of downstream tasks that precede any statewide election—ballot proofing, printing, vendor coordination, absentee and UOCAVA mailings, logic-and-accuracy testing, and programming for voters with disabilities. *Id.* ¶¶ 10–51. That work is tightly sequenced. Federal law requires absentee ballots to go out to military and overseas voters no later than 45 days before Election Day. 52 U.S.C. § 20302(a)(8). Virginia law imposes the same 45-day deadline for domestic absentee ballots and early in-person voting. Code §§ 24.2-612, 24.2-701.1(A). For the August 4 primary, those statutory mailings must begin June 18. Koski Decl. ¶ 27. Working backward from that date, ELECT has planned to complete VERIS implementation by May 28 and to devote every remaining day, including weekends, to the 21-day window between ballot-order certification and the opening of absentee voting. *Id.* ¶¶ 20, 37, 52. That is already compressed; in the comparable 2025 primary cycle, election

officials had 24 days. *Id.* ¶ 38. The injunction consumes that margin day by day.

*Delay beyond a certain point becomes uncorrectable.* Commissioner Koski's declaration identifies May 12 as the point of no return. Once ELECT begins implementing district lines, a court order after that date directing a map will require reversing work already performed, including re-assigning voters, re-issuing notices of district assignment, re-programming systems, and re-issuing ballots. *Id.* ¶¶ 55–59. That is not an administrative inconvenience. It is the kind of mid-cycle disruption that produces the very errors election administration is designed to prevent: voters receiving the wrong ballot, precincts mis-assigned, registrations out of date. *Id.* ¶¶ 29, 59–60. A later judgment vindicating the Commonwealth's position cannot restore a primary already disrupted, or reassure voters already confused by conflicting notices. The harm will have occurred.

It might be tempting to assume that the August 4 primary could simply proceed under the existing districts if implementation of the new map is delayed. But that is neither legally permissible nor practically feasible. Once voters approved the constitutional amendment, the new

districts became the governing law of the Commonwealth unless and until a court enters a final judgment to the contrary; the State Election Officials therefore lack authority to conduct the primary under superseded districts. And in any event, the injunction does not merely halt implementation of the new districts—it prevents ELECT from performing the core administrative tasks required for *any* statewide election. With statutory deadlines rapidly approaching, each day the injunction remains in place eliminates steps that cannot be recovered later. The resulting harm to the August 4 primary is therefore imminent and irreparable.

*The injunction also nullifies the legal effect of a statewide vote.* By declaring every vote "ineffective" and prohibiting certification, the order ensures that the electorate's decision will have no legal consequence. That is not an abstract harm. More than three million Virginians participated in the referendum. Koski Decl. ¶6. Their participation is meaningful only if the votes are counted and given effect. An order that renders a referendum vote legally inert inflicts a concrete and irreparable injury on those voters and an injury that appellate review, however favorable, cannot undo after the relevant deadlines have passed. When

balancing harms, it is hard to imagine a larger harm than the disenfranchisement of the people who went to the polls and voted.

*Plaintiffs face no comparable harm from a stay.* Their asserted injuries are legal rather than operational. Those claims can be fully addressed on appeal, and if Plaintiffs ultimately prevail, courts retain authority to grant appropriate relief at that time. A stay preserves Plaintiffs' ability to challenge the amendment on the merits, while preserving the Commonwealth's ability to administer the elections the Constitution and federal law already require it to hold. Denying a stay, by contrast, is asymmetric because it inflicts concrete disruption on the Commonwealth and on Virginia voters in exchange for preserving only Plaintiffs' preferred timing. The balance tips decisively toward a stay.

## III. The public interest strongly favors giving effect to the referendum and preserving orderly election administration.

The public interest does not lie in abstract legal debate while election deadlines come and go. It lies in completing the referendum Virginians have already voted on, administering the primary federal law requires the Commonwealth to hold, and allowing the orderly processes

of appellate review to operate without pre-emptive disruption of the electoral system. Each of those considerations favors a stay.

The first concern is the integrity and finality of elections. More than three million Virginians cast ballots in the April 21 referendum. Koski Decl. ¶ 6. An order that declares those votes "ineffective" and prohibits certification ensures that their participation will have no legal consequence. Elections function only if the votes cast in them are counted and given effect. When a court nullifies a statewide vote on the basis of a disputed legal theory, the consequence is not neutrality. It is erosion of the most basic premise of self-government.

Beyond that, the public interest favors stable and predictable election administration. Voting in the August 4 primary begins in 56 days away. *See* Koski Decl. ¶¶ 27, 30. Ballots must be printed, proofed, approved, and mailed to military and overseas voters by June 18. *Id*. ¶ 27. Every day the injunction remains in place compresses an already tight implementation window, introducing the exact conditions—hurried coordination, late ballot preparation, mid-cycle adjustments—that produce administrative errors. *Id.* ¶¶ 29, 53–57. Those errors do not fall on the State Election Officials. They fall on voters who receive

the wrong ballots, on candidates whose races are disrupted, and on a public that depends on elections running smoothly, even when legal disputes about those elections are unresolved.

Still more fundamentally, the public interest favors orderly appellate review rather than pre-emptive disruption. If the circuit court's rulings are correct, they can be affirmed on appeal. If they are erroneous, the damage done to a referendum and to the administration of upcoming elections cannot be undone. A stay preserves both possibilities, and it allows the legal issues to be resolved in the ordinary course while the operations of government continue. The Court has already signaled that any final order in this case would likely return there on an expedited basis for appellate review. *Koski*, 926 S.E.2d at 804. A stay gives effect to that framework. Denying one locks in the injunction's consequences before appellate review has occurred.

And finally, Virginia law reflects a deep reluctance to permit judicial interference with elections. More than a century ago, this Court held that courts of equity will not "enjoin the holding of an election," and cautioned more broadly against interference with the legislative and electoral processes while they are underway. *Scott*, 114 Va. at 304–05.

The circuit court's order does precisely what *Scott* cautions against. It halts the effect of a referendum and imposes forward-looking constraints on the administration of upcoming elections. The public interest weighs heavily against leaving that interference in place.

In short, the public interest is not served by allowing a circuit court order—entered the day after a statewide vote and before any appellate review—to nullify the participation of three million Virginians and disrupt the administration of a primary federal law requires to proceed. It is served by permitting the referendum process to complete, preserving orderly election administration, and allowing the appellate courts to resolve the legal questions presented without the extraordinary disruption the circuit court's order imposes.

## Conclusion

For the foregoing reasons, the State Election Officials respectfully request that this Court stay the circuit court's April 22, 2026 final judgment, including the declaratory and injunctive relief contained therein, pending resolution of this appeal, and grant such further relief as the Court deems appropriate.

Respectfully submitted,

STEVEN KOSKI, in his official capacity as the Commissioner of the Virginia Department of Elections, et al.

By: /s/ Tillman J. Breckenridge
TILLMAN J. BRECKENRIDGE (#84657)
*Solicitor General*


JAY JONES
*Attorney General*

TRAVIS G. HILL
*Chief Deputy Attorney General*

GRETCHEN NYGAARD
*Deputy Attorney General*

PEBBLES L. BURGESS (#74817)
*Senior Assistant Attorney General*

Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219
(804) 371-6018 – Telephone
(804) 786-1991 – Facsimile
SolicitorGeneral@oag.state.va.us

TILLMAN J. BRECKENRIDGE (#84657)
*Solicitor General*

MIKAELA A. PHILLIPS (#97164)
TRISTON C. O'SAVIO (#100111)
*Assistant Solicitors General*

*Counsel for Steven Koski, in his official capacity as Commissioner of the Virginia Department of Elections, et al.*

## CERTIFICATE OF SERVICE

On April 24, 2026, this document was electronically filed with the Court via VACES and transmitted by email to:

Michael A. Thomas
Gillespie, Hart, Pyott & Thomas, P.C.
179 Main Street
Tazewell, Virginia 24651
Tel: 276-988-5525
Fax: 276-988-6427
mthomas@ghartlaw.com

Thomas R. McCarthy
Conor D. Woodfin
Consovoy McCarthy PLC
1500 Wilson Blvd., Ste. 700
Arlington, Virginia 22209
Tel.: 703-243-9423
tom@consovoymccarthy.com
conor@consovoymccarthy.com

*Counsel for Appellees*

Aaron M. Gillespie
Tazewell County Attorney's Office
197 Main Street
Tazewell, Virginia 24651
Tel: (276) 385-1208
Fax: (276) 988-4246
aaron.gillespie@tazewellcounty.org

*Counsel for Irma Mitchell, Jane Sorenson, and James McDonald*

By: /s/ Tillman J. Breckenridge
TILLMAN J. BRECKENRIDGE (#84657)
*Solicitor General*

# ATTACHMENT 1

**VIRGINIA:**

**IN THE CIRCUIT COURT OF TAZEWELL COUNTY**

| | | |
|---|---|---|
| REPUBLICAN NATIONAL COMMITTEE, *et al.*, | ) | |
| Plaintiffs, | ) | |
| v. | ) | Civil Action No.: CL26-266 |
| STEVEN KOSKI, in his official capacity as Commissioner of the Virginia Department of Elections, *et al.*, | ) | |
| Defendants. | ) | |

**FINAL JUDGMENT**

Having considered Plaintiffs' Motion for Final Judgment and the record in this case, the Court:

- **GRANTS** final judgment in Plaintiffs' favor on all counts of their Verified Complaint;
- **DECLARES** that HJR 6007 is void ab initio because it violated House Joint Resolution 428 and House Joint Resolution 6001, and any action taken thereon is an invalid expansion of the General Assembly's call to the Governor for the 2024 Special Session;
- **DECLARES** that HJR 6007 is void ab initio because it violated Va. Const. art. XII, §1, as there has not been an ensuing general election of the House of Delegates, and such ensuing general election cannot occur until 2027;
- **DECLARES** that because Va. Code §30-13 has not been complied with, the votes on the proposed Constitutional Amendment taken during the 2026 Regular Session of the General Assembly are ineffective as being a second vote of the General Assembly under Va. Const. art. XII, §1;
- **DECLARES** that HB 1384 violates the Submission Clause of Va. Const. art. XII, §1 because the ballot language proposed in HB 1384 submits to the voters a flagrantly

misleading question to the voters, and because the ballot language did not accurately describe the proposed amendment as it was passed by the General Assembly;

- **DECLARES** that HB 1384 violates the Timing Clause of Va. Const. art. XII, §1 because it submitted the proposed amendment to the voters for early voting on March 6, 2026, which is sooner than the required ninety days after passage of HJ4 by the General Assembly;
- **DECLARES** that HB 1384 violates the Form of Laws Clause of Va. Const. art. IV, §12 both because it embraces more than one object and because its title does not accurately describe its subject matter;
- **DECLARES** that HB 1384 violates Va. Const. art. IV, §14 because it requires mandatory satellite offices in a precise way and that requirement is withdrawn from the powers of the General Assembly in that the legislative body is prohibited to enact local, special, or private laws for the designation of places of voting.
- **DECLARES** that any and all votes for or against the proposed constitutional amendment in the April 21, 2026 special election are ineffective;
- **FINDS** that all Plaintiffs have standing to obtain the declaratory and permanent injunctive relief sought in the Verified Complaint;
- **FINDS** that the equities weigh in favor of permanent injunctive relief, that Plaintiffs have no adequate remedy at all, and that Plaintiffs will be irreparably harmed absent permanent injunctive relief because of the numerous violations of the constitutional amendment process and because Congressmen Cline and Griffith would be irreparably harmed by their districts changing at this juncture;

- Having found that Plaintiffs are entitled to permanent injunctive relief, the Court permanently **ENJOINS** Defendants and their successors from certifying the results of the April 21, 2026 special election;
- The Court also permanently **ENJOINS** Defendants and their successors from taking any actions to give effect to the proposed constitutional amendment that is the subject of the April 21, 2026 special election, including, but not limited to:
    - updating or altering voter registration records in accordance with new congressional districts under the proposed constitutional amendment;
    - updating or altering election districts, precincts, or polling places in accordance with new congressional districts under the proposed constitutional amendment;
    - updating or generating pollbooks and ballots in accordance with new congressional districts under the proposed constitutional amendment; and
    - proceeding with new maps or districts in any congressional primary or general election under the proposed constitutional amendment;
- **DENIES** the Commonwealth Defendants' Motion to Dismiss Plaintiffs' Verified Complaint;
- **OVERRULES** the Commonwealth Defendants' Plea of Immunity and Demurrer to Plaintiffs' Verified Complaint;
- **FINDS** that Plaintiffs have complied with the County Defendants' Motion Craving Oyer, and thus **DISMISSES** the Motion Craving Oyer and **ORDERS** that the documents provided in response to the motion are made a part of the Plaintiffs' Verified Complaint;
- **DENIES** the County Defendants' requests for relief against the Commonwealth without prejudice;

- **DENIES** any other outstanding motions;
- **OVERRULES** any other outstanding pleas;
- **SUSPENDS** any bond requirement for any party petitioning or appealing from this final judgment; and
- **DENIES** the Commonwealth Defendants' motion to stay pending appeal.

**ENTERED** this 22nd day of April, 2026

Hon. Jack Hurley
Judge, Tazewell County Circuit Court

AGREED FOR THE REASONS AS SET FORTH ON THE RECORD:

Thomas R. McCarthy
*Counsel for Plaintiffs*

SEEN and OBJECTED TO by the Commonwealth Defendants for the following reasons:

1. The arguments *ore tenus* during the February 19, 2026 and the objections to the Order associated therewith;
2. The arguments set forth in Commonwealth Defendants' response to Local Defendants' First and Second Motions and arguments *ore tenus* on March 4, 2026;
3. The Commonwealth Defendants' Motion to Dismiss, Demurrer, and Plea of Sovereign Immunity;
4. The arguments set forth in Commonwealth Defendants' response to Plaintiffs' Motion for Final Judgment and Plaintiffs Supplemental Brief; and
5. The Arguments *ore tenus* during the April 22, 2026 hearing resulting in this Final Order.
6. The Commonwealth Defendants object to any relief granted by this Order that is outside the scope of the Plaintiffs' Complaint.

Pebbles L. Burgess* (VSB No. 74817)
Senior Assistant Attorney General
Office of the Virginia Attorney General
204 Abingdon Place
Abingdon, VA 24211
Telephone: (276) 628-1786
Facsimile: (276)-628-4375
Email: pburgess@oag.state.va.us
*Counsel of Record for Defendant

AGREED IN PART AND OBJECTED IN PART FOR THE REASONS AS SET FORTH ON THE RECORD:

Aaron M. Gillespie, Esq.
Tazewell County Attorney
*Counsel for Local Defendants*

# ATTACHMENT 2

**IN THE COURT OF APPEALS OF VIRGINIA**

| | | |
|---|---|---|
| STEVEN KOSKI, in his official capacity as Commissioner of the Virginia Department of Elections, et al.<br><br>Appellants,<br><br>v.<br><br>REPUBLICAN NATIONAL COMMITTEE, et al.<br><br>Appellees | ) | Record No.: _____ |

**DECLARATION OF COMMISSIONER STEVEN KOSKI**

1. My name is Steven Koski and I am over eighteen years old and have personal knowledge of the matters addressed below.

2. I currently serve as the Commissioner of Elections for the Commonwealth of Virginia. I have served in this role since January 17, 2026.

3. In my capacity as Commissioner, I head the Department of Elections ("ELECT") and act as its principal administrative officer.

4. I previously served as the Election Services Manager at ELECT from July 30, 2025, until my appointment as Commissioner. I joined ELECT on June 10, 2022, as a Policy Analyst and also served as the Legal and Compliance Advisor.

5. In my current role, I oversee all aspects of ELECT's work, including its efforts to implement redistricting plans and conduct primary and general elections. As a result, I am familiar with ELECT's policies, practices, and systems related to redistricting and conducting elections.

**April 21 Referendum on Redistricting**

6. Between March 6, 2026 and April 21, 2026, voters across Virginia cast ballots in a referendum on a proposed constitutional amendment permitting the General Assembly to redraw the Commonwealth's congressional district map for elections prior to the next regular decennial redistricting. While mail ballots are still being received and the vote counts are not final, by April 22, over three million voters had participated in the election.

7. Consistent with 2026 Acts of Assembly Chapter 6, local election officials must certify the results within their locality no later than six days after the election, April 27. The State Board of Elections (the "State Board") must then certify the overall statewide result no later than 14 days after the election, May 5. The State Board had scheduled a meeting at 1:00 p.m. on May 1, to certify the results of the referendum.

8. The injunction issued on April 22, prevents ELECT and the State Board from certifying the election.

**Implementing Redistricting Plans**

9. In February, the Virginia General Assembly and the Governor of the Commonwealth approved a congressional district map in House Bill 29 (2026) which directed ELECT to implement the map if the public approves the proposed redistricting amendment to the constitution.

10. While initial results suggest Virginia voters approved the proposed amendment, ELECT cannot begin the work of implementing the new congressional districts enacted by the legislature until the State Board certifies the results. ELECT and the State Board planned to certify results by May 1, but the injunction, if not lifted, could cause a delay in these plans.

11. To implement the map, ELECT must update the Virginia Election and Registration Information System ("VERIS") to ensure that voters are correctly assigned to the appropriate district.

12. VERIS is the Commonwealth's statewide system that includes the voter registration information for every voter in the state, including their congressional district based on their residential address.

13. VERIS also serves as the system in which elections are managed, including the creation and management of candidate, election, and office entries. This information is used by localities to generate ballots and properly prepare for the election.

14. State and local election officials utilize VERIS to, among other things, ensure that voters receive the appropriate ballot based on their residence address. Consequently, errors in VERIS could cause voters to receive the wrong ballot—ballots that do not include the appropriate races based on their residence.

15. Updating VERIS during redistricting requires ensuring that district lines are accurately reflected in the system. This is a heavily manual process and involves significant time and resources.

16. VERIS is not a GIS-based system but rather utilizes tabular street files, therefore all changes to district lines require careful validation and translation to ensure accurate implementation.

17. In the current system, staff at ELECT and at local registrar's offices must manually review, adjust, and validate the assignment of voters within new district lines to ensure they are appropriately assigned.

18. When proposed district lines split localities or precincts, it adds complexity to this process and increases the administrative burden of implementation (including coordination with local election officials).

19. Changes during this process are made directly into VERIS while the system is active. This allows Virginia officials to continue registering new voters as they receive applications, consistent with Virginia law, while the work of implementing the new district lines is ongoing.

20. To ensure that ELECT can begin adequately preparing for the statewide primary scheduled for August 4, ELECT's leadership and IT staff have developed a plan to implement a new congressional map by May 28.

21. ELECT leadership and staff anticipate that the work required to implement redistricting will be substantial, and so ELECT plans to utilize every available day during the constrained four-week timeframe to complete the work. ELECT anticipates that key staff members will be working each day to implement the new district lines, and staff not working directly on this effort will need to cover tasks in the normal course of business for redistricting staff, in addition to communicating to localities on redistricting progress updates.

22. During previous redistricting cycles, the entire implementation process took several months to complete. ELECT has undertaken significant effort to refine its plan for implementing this redistricting, including exploring opportunities for process improvements and efficiencies. Indeed, ELECT has made progress with automation of low-complexity adjustments. However, even with those improvements, ELECT anticipates it will need to process large amounts of underlying data, manually complete more complex adjustments, review for accuracy, and ensure validation in coordination with localities. In order to complete these tasks within a tight four-week timeframe, there is little margin for delays.

**Preparing for the August Primary**

23. Conducting statewide elections is challenging and involves many steps. State and local election officials and third-party vendors have a variety of tasks they must complete prior to opening the polls. These include requesting and approving temporary/emergency polling place changes, finalizing and proofing ballot designs (including audio recordings for voters with disabilities), printing, shipping, assembling, and sending absentee ballots, planning for and setting up early voting polling locations, testing voting systems (including electronic pollbooks) for early voting polling locations, and setting up online methods for military and overseas voters and those with disabilities to receive and mark ballots (these ballots must be printed and mailed back). Many of these steps involve third parties who ELECT does not directly control, such as general registrar offices, and private vendors.

24. In addition, election officials operating a primary election that includes races for federal offices are subject to an array of deadlines set by federal and state law.

25. For instance, the Uniformed and Overseas Citizen Absentee Voting Act ("UOCAVA") requires election officials offer absentee voting to eligible military and overseas voters "no later than 45 days" prior to Election Day. 52 U.S.C. § 20302(a)(8).

26. Similarly, Virginia law requires registrars to both begin sending absentee ballots and begin offering early in-person voting 45 days prior to Election Day. Va. Code Ann. § 24.2-612; 24.2-701.1(A).

27. For the August 4, 2026 primary, initial absentee ballots must be sent prior to June 20. Since June 20 is a Saturday and June 19 is a holiday, in-person voting must be available beginning on June 18 (unless an office is open on June 19 or 20).

28. In order to complete the steps necessary to meet these deadlines, ELECT developed meticulous processes that both ensure each task is completed but also provide the necessary quality control to proactively identify and address errors.

29. Errors in election administration are detrimental to the integrity of an election. Failing to send ballots or open polling locations, misprinting ballots, and assigning voters to incorrect districts are difficult to correct retroactively. These errors carry the risk of disenfranchising voters and undermining public confidence in the election.

30. ELECT cannot begin the bulk of the work involved in preparing for the August primary until after it has completed its updates in VERIS ensuring that voters are correctly assigned to the appropriate district. ELECT has planned to complete that work by May 28.

31. The steps involved in preparing for the primary begin with the finalization of candidates and ballot order for the election. The deadline for candidates running for U.S. House of Representatives to file their petitions and paperwork to participate in their party's primary was moved in House Bill 29 to May 25. Va. Gen. Assem. House B. 29, Item 4-14#1s at enactment 2, § 7 (this deadline is shifted to May 26 since May 25 is a holiday).

32. The deadline for party chairs to verify those petitions and provide ELECT with the names of candidates who will participate in their primary is May 27. *Id*. at enactment 2, § 8.

33. As a result, the earliest date for the State Board of Elections to finalize the ballot order for the primary—that is the order candidates in each race will appear on the ballot—is May 28. Va Code Ann. § 24.2-529.

34. In general, ballot order for primaries is determined by the order in which candidates file. Va Code Ann. § 24.2-529. For candidates who file at the same time ("simultaneous filers), the State Board of Elections conducts a drawing to determine ballot order. *Id.*

35. The State Board has a meeting scheduled for 1:00 p.m. on May 28 to complete this task.

36. Only after ELECT accurately inputs all the candidate information into VERIS, and finalizes the ballot order for each race, can ELECT and general registrars begin the next key steps of preparing for the upcoming primary election. ELECT plans to conduct this work and perform the necessary checks for accuracy from May 29 through May 31, so localities can begin their preparations on Monday, June 1.

37. Under ELECT's plan, ELECT and general registrars will have only 21 days, between May 28, and the first day of absentee voting, June 18, to complete their preparations for the August 4 primary.

38. This is already a shorter amount of time than ELECT and general registrars typically have to complete their pre-election preparations. For instance, the ballot order for the primary held on June 21, 2025, was finalized on April 8, 2025, and the first day of absentee voting for that election was Friday, May 2, 2025. In total, election officials had 24 days, without any federal holidays, during that election to complete their preparations.

39. Once the ballot order is set, general registrars can begin the ballot proofing process by generating the ballot styles for their locality. A ballot style refers to the unique set of races and ballot questions a particular voter is eligible to participate in, as determined by their residence and, in the case of primaries, expressed party preference. Each locality can have multiple ballot styles for a given election, depending on which races are being contested in that election. For federal elections, localities must have a federal-only style for certain qualified voters.

40. General registrars obtain ballot style reports from VERIS which detail the different ballot styles they will need for the election, and which precincts get which style.

41. Most registrars then work with private vendors they have identified to design and proof ballots. This involves creating samples of each ballot that will be used in the election (ballot proofs"), reviewing those proofs to ensure that candidate names and ballot information are correct, and reviewing precinct assignments to ensure those are also correct.

42. Registrars, usually in coordination with vendors, must also must prepare audio recordings of the ballots to be used for voters with disabilities.

43. Once registrars complete these tasks, they must submit the ballot proofs and audio recordings to ELECT for review and approval.

44. Timing for this step largely depends on how quickly registrars submit their ballot proofs to ELECT, how many ballot styles each locality submits for review, and if ELECT identifies any errors.

45. For the June 2025 primary, it took about two weeks from the date the State Board of Elections finalized the ballot order for the primary to complete the ballot proofing process. ELECT began receiving ballot proofs from registrars on Tuesday, April 15, 2025, and continued receiving submissions through April 23, 2025. ELECT approved most ballot proofs by April 24, 2025.

46. Once ELECT approves the ballot proofs, general registrars work with private vendors to mass print ballots. The amount of time involved in printing varies by locality, depending on the number of ballots needed. ELECT has recommended that registrars budget at least a week to send the ballot styles to their vendors and receive the printed ballots back.

47. Once they receive the printed ballots, registrars must then prepare to mail ballots to those who have submitted requests, including military and overseas voters and voters on the permanent

absentee list. While some registrars work with a vendor to pack envelopes, many do this work themselves.

48. Registrars must also conduct "Logic and Accuracy" testing prior to beginning early voting. This step involves testing the different ballot styles that will be used for an election on any voting systems used during early voting to identify any errors before voting begins. Timing for this step depends on vendors making voting systems available for testing and assisting in conducting the testing.

49. In addition to these steps, ELECT must also set up the system for allowing electronic receipt and marking of ballots by qualifying voters with disabilities and military and overseas voters. Va. Code Ann. § 24.2-103.2. Once candidate and precinct information is updated in Enhanced Ballot, the platform ELECT uses for this purpose, general registrars must review that information to ensure it is correct and upload a list of all qualified voters who rely on electronic ballots.

50. ELECT then reviews the information independently to ensure it is correct. Once ELECT approves, voters can be emailed a link to an online portal to complete their ballot (which is then printed). For some localities, this emailing must be done manually, rather than through an automatic bulk email due to local IT security constraints.

51. Given the limited amount of time between the date ELECT and the State Board have planned to finalize the ballot order—May 28—and the first day of absentee voting—June 18—ELECT has planned to streamline its processes as much as it can. However, there are limits to what it can do, both because much of the work preparing for the primary depends on the actions of third parties outside of ELECT's control, and because many of these steps are necessary to identify and address errors that could undermine the integrity of the election.

52. ELECT anticipated needing all its Election Services division staff (even those not normally involved in this process) devoted to preparing for the August 4 primary during this timeframe and working every day including weekends to complete essential processes and meet important deadlines.

**Concerns About Delays**

53. In light of the timing constraints described above, delays resulting from injunctions, such as the one currently applied to ELECT and the State Board, raise the risks of disrupting ELECT's operations and causing errors in election administration.

54. Under ELECT's plan for implementing the proposed congressional districts and administering the August 2026 primary, there is little margin for delay.

55. Every day of delay increases the risk that ELECT will be unable to complete its implementation work by May 28, the date it planned to begin preparations for the August 4 primary.

56. Further, after it has begun implementing a map on May 1, any court-ordered changes requiring ELECT to implement a different map would also increase the risk of potential errors being injected into the implementation process.

57. Before beginning preparations for the primary, ELECT will need to ensure that voters are correctly assigned to the appropriate congressional district in VERIS, and that all new voter registrations received while implementing congressional lines have been reviewed and properly incorporated into VERIS.

58. As a result, once ELECT begins implementing new district lines, any court-order directing it to change course made after May 12 will significantly increase the risk of ELECT

being unable to meet the May 28 target date for beginning preparations for the August 4 primary since all work done to that point will need to be reversed.

59. Further, voters who received legally required notices of assignment to a new congressional district would need to receive an additional notice informing them of the change, leading to a significant risk of voter confusion.

60. And as noted above, delays in preparations for the August 4 primary have the potential to seriously harm the integrity of the election, both actual and perceived.

I declare under penalty of perjury under the law of the Commonwealth of Virginia that, based on my reasonable investigation and knowledge, the foregoing is true and correct.

Executed on April 23rd, 2026

Steven L. Koski
Commissioner
Virginia Department of Elections

IN THE

SUPREME COURT OF VIRGINIA

RECORD NO. 260127

DON SCOTT, in his official capacity as Speaker of the House of Delegates, *et al.*,

Appellants,

v.

RYAN T. McDOUGLE, Virginia State Senator and Legislative Commissioner for the Virginia Redistricting Commission, *et al.*,

Appellees.

# OPENING BRIEF OF APPELLANTS DON SCOTT, SCOTT SUROVELL, AND L. LOUISE LUCAS


Richard F. Hawkins, III
VSB No. 40666
THE HAWKINS LAW FIRM, PC
2222 Monument Avenue
Richmond, Virginia 23220
Tel: (804) 308-3040
Fax: (804) 308-3132
rhawkins@thehawkinslawfirmpc.com

*Counsel for Appellants*

Matthew A. Seligman*
GRAYHAWK LAW
3015 Main Street, Suite 330
Santa Monica, California 90405
Tel: (310) 571-5993
matthew@grayhawklaw.com
**pro hac vice*

*Counsel for Appellants*


March 23, 2026

## TABLE OF CONTENTS

**Page**

## TABLE OF AUTHORITIES

**Page(s)**

**Cases:**

**Statutes & Other Authorities:**

## INTRODUCTION

This case concerns the process by which the people of Virginia amend the Commonwealth's Constitution. The circuit court halted that process by blocking a proposed amendment that has twice passed the General Assembly and has been submitted to the voters for ratification. That decision was flawed at every step.

The Virginia Constitution prescribes a straightforward rule. Article XII first requires that the General Assembly approve a proposed amendment; and then it requires that it approve the amendment again after a general election of members of the House of Delegates; and finally it requires that the voters of the Commonwealth give their approval. The General Assembly complied with those steps. The General Assembly approved the proposal in October 2025, a general election intervened in November 2025, and a newly constituted General Assembly approved the proposal again in January 2026. The proposed amendment now rests with the people of the Commonwealth. That is all the Virginia Constitution requires.

The circuit court nevertheless invalidated the amendment by imposing requirements the Constitution does not contain. It enforced

internal legislative rules as though they were constitutional limits, it incorrectly treated the beginning of early voting as the constitutional "election," and it elevated a repealed statutory publication provision into a prerequisite for constitutional validity. Each ruling rests on the same error: each assumes a judicial power the Virginia Constitution does not confer.

The Virginia Constitution assigns the amendment process to the political branches and, ultimately, to the people. Courts may enforce the Virginia Constitution's requirements, but they may not revise them or add new ones. Because the General Assembly complied with Article XII, the proposed amendment was validly advanced, and the judgment below should be reversed.

## STATEMENT OF THE CASE

### A. Constitutional Framework.

Article XII, Section 1 of the Virginia Constitution establishes the procedural framework for proposing and adopting an amendment. Va. Const., art. XII, § 1. That framework proceeds in four steps.

1. *First approval by the General Assembly.* Section 1 provides that "[a]ny amendment or amendments to this Constitution may be proposed in the Senate or House of Delegates" and must "be agreed to by a majority of the members elected to each of the two houses." *Id.*

2. *Intervening General Election.* If the proposed amendment passes both houses, then "such proposed amendment or amendments shall be . . . referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates." *Id.*

3. *Second approval by the General Assembly.* After the next general election, "at such regular session or any subsequent special session of that General Assembly the proposed amendment or amendments [must] be agreed to by a majority of all the members elected to each house." *Id.*

4. *Submission to the voters.* If the proposed amendment passes both houses a second time, then the General Assembly must "submit such proposed amendment or amendments to the voters . . . in such manner as it shall prescribe and not sooner than ninety days after final passage by the General Assembly." *Id.*

**B. Legislative Proceedings.**

On April 17, 2024, the General Assembly unanimously passed House Joint Resolution 428, which requested that the Governor convene the legislature into special session pursuant to Article IV, section 6 of the Virginia Constitution. H.J.R. 428 (2024 Sess.). The special session began on May 13, 2024, and the General Assembly unanimously adopted House Joint Resolution 6001 to set an initial agenda for the special session. H.J.R. 6001 (2024 Spec. Sess. I). That initial agenda included various budgetary and nonbudgetary matters and provided that the agenda would expand upon unanimous consent. *Id.*

The General Assembly met again in the special session beginning in February of 2025. On February 22, 2025, the House of Delegates passed House Joint Resolution 6004 by a majority vote to expand the scope of the special session's agenda "notwithstanding the limitations established by [H.J.R.] 6001" to include legislation to address layoffs by the federal government. H.J.R. 6004 (2024 Spec. Sess. I). On April 2, 2025, the Senate passed H.J.R. 6004 unanimously. *Id.*

On October 23, 2025, the General Assembly again expanded the agenda for the special session by adopting House Joint Resolution 6006. H.J.R. 6006 provided that "notwithstanding the limitations established by [H.J.R.] 6001," a "joint resolution proposing an amendment to the Constitution of Virginia related to reapportionment or redistricting may be offered and considered during the 2024 Special Session 1 of the General Assembly." H.J.R. 6006 (2024 Spec. Sess. I). Both the House of Delegates and the Senate passed H.J.R. 6006 by majority vote. *Id.*

On October 31, 2025, the General Assembly passed House Joint Resolution 6007, which proposed a constitutional amendment to authorize the General Assembly to modify Virginia's congressional districts in response to mid-decade redistricting in other states. H.J.R.

6007 (2024 Spec. Sess. I). On November 4, 2025, the House of Delegates was "elected biennially by the voters of the several house districts on the Tuesday succeeding the first Monday in November." Va. Const., art. IV, § 3.

The General Assembly convened for its next regular session on January 14, 2026. The General Assembly approved the proposed constitutional amendment a second time on January 16, 2026. H.J.R. 4 (2026 Sess.). Consistent with its obligations under Article XII, the General Assembly then scheduled a referendum for April 21, 2026. H.B. 1384 (2026 Sess.).

**C. Proceedings Below.**

On October 28, 2025, before the General Assembly had considered or passed any constitutional amendment, three state legislators and a commissioner of the Virginia Redistricting Commission—State Senator Ryan McDougle, State Senator William Stanley, Delegate Terry Kilgore, and Citizen Commissioner Virginia Trost-Thornton—sued in the Circuit Court of Tazewell County to challenge the amendment process. The suit named as defendants G. Paul Nardo, the Clerk of the Virginia House of Delegates; Susan Clarke Schaar, the Clerk of the Virginia Senate; Tara

Perkinson, Chief Deputy Clerk of the Virginia Senate; and Charity D. Hurst, the Clerk of Court of the Tazewell Circuit Court. R1. The plaintiffs sought to temporarily restrain and preliminarily enjoin the Clerk of the Virginia Senate and the Clerk of the Virginia House of Delegates "from taking any action to advance any resolution or proposed constitutional amendment initiated under HJR 6006." R17. At a hearing the next day, the circuit court denied the plaintiffs' request to interfere with the ongoing legislative process. R41-42. Don Scott, the Speaker of the Virginia House of Delegates, intervened. R30-34.

On December 16, 2025, the plaintiffs amended their complaint and moved to preliminarily enjoin the Clerk of the House and the Clerk of the Senate from "transmitting" or "posting" the proposed amendment before the start of the General Assembly's 2026 regular session on January 14, 2026. Am. Compl., R125-157, Mot. Prelim. Inj., R278-296. The plaintiffs filed an emergency motion for a temporary restraining order on January 6, 2026, seeking to prevent the clerks "from taking any action to publish, introduce, or further legislation pertaining to the proposed redistricting amendment until the Court resolves the preliminary injunction motion." R353-360. The circuit court denied on January 13, 2026, rejecting the

plaintiffs' "request [to] the Court to invade the province of the Legislature prior to the final actions of the Legislature." R481-482.

On January 27, 2026, the circuit court issued the order at issue in this appeal. R596-601. The order addressed four challenges to the General Assembly's passage of the proposed constitutional amendment. First, the circuit court correctly rejected the plaintiffs' argument that the 2024 special session of the General Assembly terminated prior to the passage of H.J.R. 6007 on October 31, 2025. R596.

Second, the circuit court addressed whether "the 2024 Special Session's passage of the proposed Constitutional Amendment" involved a "failure of the General Assembly to follow its own Resolutions in adding the proposed Constitutional Amendment to the scope of business that may come before the 2024 Special Session." R597. The court acknowledged that the General Assembly had already once before expanded the agenda of the Special Session "[i]rrespective of their own rule as set forth in House Joint Resolution 6001." *Id.* Nonetheless, according to the circuit court, "both houses of the Commonwealth's legislature are required to follow their own rules and resolutions." R598. In its view, "the legislators required to reach the two-thirds super

majority in order to demand a Special Session under Article IV, Section 6, have the right to depend on the accompanying rule which limit [sic] the subject matter of the items they agree can be considered in the Special Session." *Id.* The court further reasoned that "the minority members of the Virginia House of Delegates and the Senate of Virginia are afforded the same civil rights of any citizen of the Commonwealth who enters into an agreement upon valid consideration." *Id.* The court thus transformed internal legislative procedures into enforceable private rights, treating legislative rules as if they created contractual entitlements among legislators. The circuit court then enforced its view of that purported legislative bargain, holding that H.J.R. 6007 "violated House Joint Resolution 428 and House Joint Resolution 6001, and any action taken thereon is an invalid expansion of the General Assembly's own call to the Governor for the 2024 Special Session, and the Court ORDER[ED] that any such action is void, ab initio." R598-599.

Third, the circuit court addressed whether "the proposed Constitutional Amendment . . . is being submitted to the voters of the Commonwealth of Virginia" in violation of Article XII, Section 1 of the Virginia Constitution. R599. That section requires that after its first

passage, the proposed amendment be "referred to the General Assembly and its first regular session held after the next general election of the members of the General Assembly." Va. Const., art. XII, § 1. The circuit court acknowledged that the Attorney General opined "that the Constitution defines the date of the General Election of the House of Delegates [as] 'the Tuesday succeeding the first Monday in November.'" *Id.* (quoting Va. Const., art. IV, § 3). Nonetheless, the circuit court noted that "[early] voting began pursuant to Virginia law on September 19, 2025." *Id.* In the court's view, because some voters had already cast their ballots before the General Assembly passed H.J.R. 6007, the only "rational conclusion" was that "the ELECTION began on the first day of voting (September 19, 2025) and ended on November 4, 2025." *Id.* Accordingly, despite the Constitution's text and based on that policy rationale, the circuit court concluded that "following the October 31, 2025 vote and passage of House Joint Resolution 6007 there HAS NOT BEEN an ensuing general election of the House of Delegates, and such ensuing general election CANNOT occur until 2027." *Id.*

Finally, the circuit court considered whether Virginia Code Section 30-13 "was not satisfied since . . . the proposed Constitutional

Amendment was neither published by the Clerk of the House of Delegates, nor was it posted at the front door of every Courthouse, 'not later than three months prior to the next ensuing general election of the members of the House of Delegates.'" R600 (quoting Va. Code § 30-13). The court noted that Article XII of the Constitution provides that "after the proposed amendment has been passed for the second time, then it shall be the duty of the General Assembly to submit such proposed amendment . . . to the voters . . . **in such manner as it shall prescribe** and not sooner than ninety days after the final passage by the General Assembly" *Id.* (quoting Va. Const., art. XII, § 1, emphasis in original). Even though Article XII indicates that the General Assembly shall prescribe the manner in which the amendment is submitted to the people after the General Assembly passes the amendment for a second time, the circuit court nonetheless concluded that Section 30-13—which purports to impose a duty on the clerk prior to the second passage by the General Assembly, not after—"prescribes how the vote can take place." *Id.* Based on that reasoning, the circuit court concluded that "the provisions of Section 30-13 of the Code of Virginia have not been complied with, and therefore all votes on the proposed Constitutional Amendment taken

during the 2026 Regular Session of the General Assembly are ineffective as being a 'SECOND' VOTE OF THE General Assembly under Article XII, Section 1 of the Constitution." *Id.*

Speaker Scott appealed. R622-623.[1] The Court of Appeals moved this Court to certify the case to this Court pursuant to Virginia Code Section 17.1-409(B)(1). R965-968. This Court stayed the circuit court's order and granted the Court of Appeals' motion. R1673-1676.

## ASSIGNMENTS OF ERROR

1. The circuit court erred in holding that H.J.R. 6007 was "void, ab initio" on the ground that the General Assembly allegedly failed to comply with its own internal rules of procedure. Preserved at R557-566; R940-945; R1908-1935; and R1994-2002.

2. The circuit court erred in holding that the general election held on November 4, 2025, was not the "next general election" after the General Assembly passed H.J.R. 6007 on October 31, 2025, within the meaning of Article XII. Preserved at R557-566; R940-945; R1908-1935; and R1994-2002.

3. The circuit court erred in holding that the General Assembly's passage of the proposed constitutional amendment on January 16, 2026, was "ineffective . . . under Article XII, section I of the Constitution" because Virginia Code § 30-13 imposed a mandatory prerequisite to constitutional amendment not required by Article XII. Preserved at R557-566; R940-945; R1908-1935; and R1994-2002.

[1] This Court granted the motion to intervene by Virginia Senate Majority Leader Scott Surovell and Virginia Senate President Pro Tempore L. Louise Lucas. *See* Order of March 17, 2026.

## SUMMARY OF ARGUMENT

The circuit court's order invalidating a proposed constitutional amendment rests on three fundamental errors of law. Each of those errors rests on the same flawed premise: it assumes a judicial power the Virginia Constitution does not confer.

*First*, the court exceeded its constitutional authority by invalidating legislative action based on alleged noncompliance with internal legislative rules. The Virginia Constitution commits to each house of the General Assembly the exclusive authority to determine its own rules of proceedings. Under settled separation-of-powers principles, courts do not enforce internal legislative procedures or adjudicate disputes over parliamentary compliance. By treating legislative rules as judicially enforceable constraints and voiding duly enacted legislation on that basis, the circuit court improperly intruded into the legislative sphere.

In any event, the General Assembly complied with its rules. The Virginia Constitution does not authorize the General Assembly to entrench procedural limitations or impose supermajority requirements on future legislative action. Legislative rules remain subject to amendment at any time by the body that adopted them. Here, the

General Assembly twice exercised that authority to expand the agenda of the special session, and it validly considered and passed H.J.R. 6007.

*Second*, the circuit court erred in redefining the constitutional term "general election" to include the period of early voting. The Constitution's text, structure, and history establish that a "general election" is the legally operative event that occurs on a single day in November—not the period preceding it during which ballots may be cast. Virginia statutes and federal law confirm that understanding, consistently distinguishing between an "election" and antecedent procedures such as early absentee voting. The circuit court's contrary interpretation not only conflicts with these authorities but would impermissibly allow the General Assembly to alter constitutional meaning through ordinary legislation.

*Third*, the court erred in relying on Virginia Code § 30-13 to invalidate the amendment process. That statute implemented a publication requirement contained in the Constitution of 1902 that was deliberately eliminated in the 1971 Constitution. The statute was therefore inoperative as a constraint on the amendment process. Even when in force, Section 30-13 imposed only directory duties on public officials and did not condition the validity of a constitutional amendment

on compliance. Any contrary interpretation would be unconstitutional: the General Assembly cannot impose additional requirements on the constitutional amendment process by statute. Article XII provides an exclusive framework, and courts may not supplement it with extra-textual, extra-constitutional conditions.

## STANDARD OF REVIEW

Questions of constitutional and statutory interpretation present pure questions of law that this Court reviews *de novo*. *Gallagher v. Commonwealth*, 284 Va. 444, 449 (2012). A circuit court's decision to grant injunctive relief is reviewed for abuse of discretion, and a court abuses its discretion when it makes an error of law or misapplies governing legal principles. *May v. R.A. Yancey Lumber Corp.*, 297 Va. 1, 18 (2019).

The circuit court's order was based on its legal interpretation of the Virginia Constitution, the General Assembly's rules and resolutions, and Virginia statutes. This Court reviews those interpretations *de novo* and without deference. To the extent the circuit court's ruling rests on separation-of-powers principles or justiciability, those determinations likewise present questions of law reviewed *de novo*.

## ARGUMENT

### I. The General Assembly Properly Considered and Passed the Proposed Constitutional Amendment in the 2024 Special Session.

The circuit court's holding that H.J.R. 6007 was "void, ab initio" on the ground that the General Assembly allegedly failed to follow its own rules is incorrect for two reasons. First, courts lack the power to enforce legislative procedure. Second, even if the courts had that power, the General Assembly complied with its own rules of procedure because it lawfully expanded the agenda of the special session to include consideration of H.J.R. 6007.

#### A. Courts Lack the Power to Enforce Internal Legislative Rules of Procedure.

The Virginia Constitution commits to each house of the General Assembly the exclusive authority to determine its rules of proceedings. A court therefore has no authority to invalidate legislative action based on alleged noncompliance with those internal rules. The circuit court thus exceeded its authority in invalidating H.J.R. 6007 based on an alleged failure of the General Assembly to comply with its own internal rules.

The Virginia Constitution grants to each house of the General Assembly the sole authority to determine its own rules of procedure. Va.

Const., art. IV, § 7 ("Each house shall determine the rules of its own proceedings."). That authority is exclusive. Article I, Section 5 provides that "the legislative, executive, and judicial departments of the Commonwealth should be separate and distinct." Va. Const., art. I, § 5. For that reason, "no one branch may exercise the functions or powers of another except as specifically authorized by the Constitution." *Taylor v. Worrell Enters., Inc.*, 242 Va. 219, 221 (1991). A court therefore cannot invalidate legislative action based on alleged noncompliance with those rules without exercising a power the Virginia Constitution does not confer. To hold otherwise would permit the judiciary to supervise the internal deliberations of a coequal branch—a role the Virginia Constitution does not assign to the courts.

Consistent with those principles, this Court has long recognized that the judiciary may not second-guess the legislature's compliance with its own procedures. "While the courts can pass upon the constitutionality of legislative enactments, they cannot overthrow legislative determination of the existence of conditions with respect to its own procedure." *Albemarle Oil & Gas Co. v. Morris*, 138 Va. 1, 11 (1924). For that reason, "[w]hen an act has been duly published by authority of the

state as a valid law, there is at least a prima facie presumption that all requirements as to the validity of its enactment, constitutional or otherwise, have been complied with." *Town of Narrows v. Bd. of Sup'rs of Giles Cnty.*, 128 Va. 572, 586 (1920).

That rule reflects a broader and deeply rooted principle of American law: courts do not enforce internal legislative rules. The Supreme Court has repeatedly reaffirmed that principle. In *United States v. Ballin*, the Court explained that the Constitution "empowers each house to determine its rules of proceedings," and within constitutional limits that authority is "absolute and beyond the challenge of any other body or tribunal." 144 U.S. 1, 5 (1892). Accordingly, courts do not review a legislative body's internal rules. The Supreme Court then elaborated that because "the respect due to coequal and independent departments" forbids judicial intrusion into legislative procedure, courts must treat authentication by the legislature's presiding officers and approval by the executive as "complete and unimpeachable" evidence of valid enactment. *Field v. Clark*, 143 U.S. 649, 672 (1892). And in *Leser v. Garnett*, the Court applied that principle in the context of a constitutional amendment by refusing to invalidate the ratification of the Nineteenth Amendment

on the alleged ground that it was "adopted in violation of the rules of legislative procedure prevailing in the respective states" because proclamation by Secretary of State was "conclusive upon the courts." 258 U.S. 130, 137 (1922).

In accord with these principles, state court "decisions are nearly unanimous in holding that an act cannot be declared invalid for failure of the house to observe its own rules." *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 365 (1983) (quoting 1 SUTHERLAND, STATUTORY CONSTRUCTION (4th ed.) sec. 7.04, p. 264). *See also, e.g.*, *Puente v. Arizona State Legislature*, 254 Ariz. 265, 269 (2022) ("[T]he judiciary cannot compel the legislature to follow its own procedural rules.") (citing *Pirtle v. Legis. Council Comm. of N.M. Legislature*, 492 P.3d 586, 596–97 (N.M. 2021)); *Baines v. New Hampshire Senate President*, 152 N.H. 124, 130 (2005) ("[B]ecause the State Constitution grants the legislature the authority to establish such procedures, the question of whether the legislature violated these statutes is nonjusticiable."); *Bd. of Trs. of Jud. Form Ret. Sys. v. Att'y Gen. of Com.*, 132 S.W.3d 770, 777 (Ky. 2003) ("[T]he legislature has complete control and discretion whether it shall observe, enforce, waive, suspend, or disregard its own rules of procedure,

and violations of such rules are not grounds for the voiding of legislation.") (quoting *Des Moines Register & Tribune Co. v. Dwyer*, 542 N.W.2d 491, 496 (Iowa 1996)); *State v. Gray*, 221 La. 868, 874 (1952) ("[I]t is well settled that an act of the Legislature will not be declared void or invalid for failure of the legislative body to observe its own rules of procedure."); *Schweizer v. Territory*, 47 P. 1094, 1094 (Okla. 1897) ("The courts cannot declare an act of the legislature void on account of noncompliance with rules of procedure made by itself to govern its deliberations.") (citations omitted).

These authorities establish a clear and controlling rule: compliance with internal legislative procedures is a matter committed to the legislature itself and is not subject to judicial review. Accordingly, alleged violations of internal legislative rules are not justiciable and cannot serve as a basis to invalidate legislative action. Judicial enforcement of internal legislative rules would fundamentally alter the constitutional structure. If courts could invalidate legislation based on alleged violations of internal legislative rules, every enactment would be subject to collateral attack based on disputes over parliamentary procedure. It would authorize courts to supervise legislative deliberations, adjudicate

disputes among legislators, and invalidate enacted measures based on legislators' disagreements about internal procedure. The Virginia Constitution assigns none of those functions to the judiciary.

The circuit court's sole ground for holding that the General Assembly could not properly consider H.J.R. 6007 during the 2024 Special Session was that it failed "to follow [its] own Rules and Resolutions." R600. The Virginia Constitution assigns no role to the judiciary in policing the legislature's internal procedures. Because its holding exceeded the circuit court's powers, this Court should reverse.

### B. The General Assembly Lawfully Expanded the Agenda of the Special Session to Include Consideration of H.J.R. 6007.

Even if the circuit court had the power to police the General Assembly's compliance with its own internal procedural rules, the court erred in concluding that the General Assembly failed to comply with those rules by considering the proposed constitutional amendment. The Virginia Constitution does not authorize the General Assembly to limit its own future legislative authority or to alter the procedures by which future legislation may be enacted. Accordingly, it can adjust its rules—including the agenda for the special session—at any time.

The Virginia Constitution vests broad legislative power to the General Assembly, providing that "[t]he authority of the General Assembly shall extend to all subjects of legislation not herein forbidden or restricted" by the Constitution. Va. Const., art. IV, § 14. Article XII, in turn, authorizes the General Assembly to consider proposed constitutional amendments. Va. Const., art. XII, § 1. The Constitution thus expressly authorized the General Assembly to consider H.J.R. 6007.

Nothing in the constitutional provisions governing special legislative sessions changes that foundational fact. The Virginia Constitution empowers the General Assembly to initiate a special session by a two-thirds majority vote: "The Governor may convene a special session of the General Assembly when, in his opinion, the interest of the Commonwealth may require and shall convene a special session upon the application of two-thirds of the members elected to each house." Va. Const., art. IV, § 6. As the text of the Constitution makes clear, the power to "convene" does not include the power to set or limit the agenda at the special session. Section 6 also provides that the "General Assembly shall reconvene" to consider bills the Governor vetoes and expressly limits the agenda at that session: "[n]o other business shall be considered at the

reconvened session." *Id.* The drafters of the Constitution thus knew how to limit the matters the General Assembly could consider in a legislative session, and they declined to impose such a limitation on special sessions. *See, e.g.*, *Jordan v. Commonwealth*, 295 Va. 70, 75 (2018) ("When the General Assembly employs a specific word in one section of a statute, and chooses a different term in another section of the statute, we must presume the difference in language was intentional.").[2] The omission is

[2] In the proceedings below, Appellees cited several states which, at the time of the ratification of the Virginia Constitution in 1971, recognized a gubernatorial power to limit the agenda of a special session. R289. Every one of those states' constitutions expressly granted the governor that power, in contrast with the absence of such a textual provision in the Virginia Constitution. *See Arrow Club v. Neb. Liquor Control Comm'n,* 131 N.W.2d 134, 137 (Neb. 1964) ("The Governor may, on extraordinary occasions, convene the legislature by proclamation, stating therein the purpose for which they are convened, and the legislature shall enter upon no business except that for which they were called together." (quoting Neb. Const. art. IV, § 8)); *State ex rel. Conway v. Versluis*, 120 P.2d 410, 413 (Ariz. 1941) ("In calling such special session, the governor shall specify the subjects to be considered at such session, and at such session no laws shall be enacted except such as relate to the subjects mentioned in such call." (quoting Ariz. Const. art. 4, pt. 2, § 3)); *Com. ex rel. Schnader v. Liveright*, 161 A. 697, 703 (Pa. 1932) ("[T]here shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such [special] session." (quoting Pa. Const. art. 3, § 25)); *State v. Woollen*, 161 S.W. 1006, 1009 (Tenn. 1913) ("The Governor may, on extraordinary occasions, convene the General Assembly by proclamation, and shall state to them when assembled the purposes for which they shall have been convened, but they shall enter on no legislative business, except that for which they were especially called

dispositive: the Virginia Constitution does not authorize any limitation on the subject matter of a special session. Accordingly, neither the governor's discretionary authority nor the General Assembly's authority to compel the governor to call a special session includes the additional power to limit the agenda of that special session.

An opinion of the Attorney General confirms that conclusion. In 1982, Attorney General J. Marshall Coleman explained:

> The Virginia Constitution does not grant authority to the Governor to limit or restrict the powers of the legislature at a special session. Neither does it limit the General Assembly to

---

together." (quoting Tenn. Const. art. III, § 9)); *In re Ops. of Justs.*, 166 So. 710, 712 (Ala. 1936) (referencing Ala. Const. art. IV, § 76 (providing that, during a special session, "there shall be no legislation upon subjects other than those designated in the proclamation of the governor calling such session, except by a vote of two-thirds of each house."))); *Jones v. State*, 107 S.E. 765, 766 (Ga. 1921) ("[N]o law shall be enacted at a called session of the General Assembly except such as shall relate to the object stated in [the Governor's] proclamation convening them." (quoting Ga. Const. art. 5, § 1, ¶ 13)); *State ex rel. Bond v. Beightler*, 21 N.E. 123, 123–24 (Ohio 1939) (citing Ohio Const. art. III, § 8 (providing that the Governor "shall state in the proclamation [for a special session] the purpose for which such special session is called, and no other business shall be transacted at such special session except that named in the proclamation, or in a subsequent public proclamation or message to the general assembly issued by the governor during said special session.")); *People v. Larkin*, 517 P.2d 389, 390 (Colo. 1973) (stating that at "sessions convening in even numbered years, the general assembly shall not enact any bills except those raising revenue, those making appropriations, and those pertaining to subjects designated in writing by the governor during the first 10 days of the session" (quoting Colo. Const. art. V, § 7)).

> the subject matter specified in the Governor's proclamation which convenes the special session. The Virginia Constitution is not a grant of powers to the General Assembly, but a statement of limitations on its otherwise plenary powers. In the absence of such restrictive provisions, the legislative power of the General Assembly, when convened in special session, is as broad as its powers in its regular sessions.

1981-82 Va. Op. Att'y Gen. 188 (1982) (citations omitted). *See also Cosner v. Robb*, 541 F. Supp. 613, 618 (E.D. Va. 1982) (following Coleman opinion).

The Virginia Constitution gives the Governor the power to "convene" a special session, either on his own initiative or on the application of the General Assembly, and nothing else. By the text of Article IV, Section 6, the Attorney General's conclusion that the Governor lacks the power to constrain the agenda of the special session means that the General Assembly's power is similarly limited. H.J.R. 6001's purported limitations on the special session's agenda, and the purported supermajority requirement for altering that agenda, are therefore not exercises of the General Assembly's convening power under Article IV, Section 6.

The purported limitations in H.J.R. 6001 are instead legislative rules governing the General Assembly's internal procedures. Article IV,

Section 7 provides that "[e]ach house shall select its officers and settle its rules of procedure." Va. Const., art. IV, § 7. The General Assembly's power to set its rules of procedure is plenary, subject only to constitutional constraints. *See United States v. Smith*, 286 U.S. 6, 33 (1932). Within those limits, "all matters of method are open to the determination" of the legislature. *Smith*, 286 U.S. at 33 (quoting *Ballin*, 144 U.S. at 5).

The General Assembly retains the authority to alter its rules at any time. A fundamental principle of legislative power is that one legislature may not bind itself or its successors by imposing supermajority requirements or subject-matter limitations not found in the Constitution. Legislative rules, like statutes, are always subject to revision by the body that adopted them. Consistent with that principle, each house's rules establish procedures for amending or suspending its rules. *See* Rules of the House of Delegates, Rule 81 (2024); Rules of the Senate of Virginia, Rules 49, 56 (2024). As the Supreme Court explained, "[t]he power to make rules is not one which once exercised is exhausted. It is a continuous power, always subject to be exercised by the house." *Ballin*, 144 U.S. at 5. For that reason, "[i]t is no objection to the validity of a rule

that a different one has been prescribed and in force for a length of time." *Id. See also Reichelderfer v. Quinn*, 287 U.S. 315, 318 (1932) ("[T]he will of a particular Congress . . . does not impose itself upon those to follow."); 1 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 90 (1765) ("Acts of parliament derogatory from the power of subsequent parliaments bind not . . . . Because the legislature, being in truth the sovereign power, is always of equal, always of absolute authority: it acknowledges no superior upon earth, which the prior legislature must have been, if [its] ordinances could bind the present parliament.").

The General Assembly exercised its authority to set the initial agenda of the special session in H.J.R. 6001 pursuant to its power under Article IV, Section 7 to set the rules of its proceedings. The General Assembly then twice exercised its continuing authority to adjust that agenda in light of new developments. In H.J.R. 6004, it expanded the agenda to include legislation to address federal layoffs. In H.J.R. 6006, it again expanded the agenda to include the proposed constitutional amendment. Because neither the initial agenda nor the supermajority requirement in H.J.R. 6001 can constrain the General Assembly's continuing exercise of its legislative powers, both H.J.R. 6004 and H.J.R.

6006 validly amended the legislature's rules of procedure. Accordingly, the General Assembly's consideration and passage of H.J.R. 6007 complied with both the Virginia Constitution and the legislature's own procedures. The circuit court's contrary conclusion rests on a fundamental misunderstanding of legislative power and the separation of powers established by the Virginia Constitution.

## II. The General Assembly Complied With Article XII's Requirement to Refer the Proposed Amendment to the Session After the "Next General Election."

Article XII of the Virginia Constitution requires that after first passing a proposed constitutional amendment, the General Assembly "refer[]" the proposed amendment to "its first regular session held after the next general election of members of the House of Delegates." Va. Const., art. XII, § 1. The General Assembly considered and passed H.J.R. 6007, the proposed redistricting amendment, on October 31, 2025, during its 2024 special session. H.J.R. 6007 (2024 Spec. Sess. I). Pursuant to Article IV, Section 3, Virginia held a general election on "the Tuesday succeeding the first Monday in November," which fell on November 4, 2025. The General Assembly then considered and passed the proposed redistricting amendment a second time on January 16, 2026, during its

2026 general session. H.J.R. 4 (2026 Sess.). In accord with its obligations under Article XII, the General Assembly then submitted the proposed amendment to Virginia's voters for their approval. The General Assembly thus satisfied every requirement imposed by Article XII.

The circuit court reached a contrary conclusion based on a policy-driven redefinition of the constitutional term "general election" to include the period of early voting beginning on September 19, 2025. That conclusion is contrary to the text of the Virginia Constitution, conflicts with longstanding Virginia statutes implementing early absentee voting and voter registration, cannot be reconciled with federal law, and would impermissibly empower the General Assembly to amend the Virginia Constitution by statute.

The text of the Virginia Constitution establishes that a "general election" is the legally operative event on a particular day on which a result is determined—not the entire period during which ballots may be cast. The Constitution uses the phrase "general election" across multiple provisions. Article II, Section 6—the provision that governs apportionment of congressional districts and which the proposed redistricting amendment seeks to amend—provides that "[t]he districts

delineated in the decennial reapportionment law shall be implemented for the November general election." Va. Const., art. II, § 6. This provision unmistakably indicates that, as a matter of ordinary English usage, the "general election" takes place in "November." This usage is ubiquitous: a "Monday meeting" is a meeting held on Monday. The same logic applies here.

Similarly, two additional sections of Article IV provide that the members of the General Assembly "shall be elected . . . on the Tuesday succeeding the first Monday in November." Va. Const., art. IV, §§ 2, 3. *See also id.* at art. VII, § 4 ("Regular elections for such officers shall be held on Tuesday after the first Monday in November."). In ordinary usage, an event is said to occur "on" a particular day when it falls within that day. As a leading grammatical authority explains, in a sentence such as "I arrived on Monday," the day denotes a temporal interval within which the event occurs. RODNEY HUDDLESTON & GEOFFREY K. PULLUM, THE CAMBRIDGE GRAMMAR OF THE ENGLISH LANGUAGE 700 (2002). *Cf. United States v. Locke*, 471 U.S. 84, 93, 96 (1985) (holding that statutory filing requirement "prior to December 31" means filing by December 30, not December 31, because Congress knew how to say "on or before" when

it meant to include the deadline date). "[I]t is a general rule that the words of a Constitution are to be understood in the sense in which they are popularly employed, unless the context or the very nature of the subject indicates otherwise." *Howell v. McAuliffe*, 292 Va. 320 (2016). Thus, an event occurring "on" a given date is one that takes place within that date—not one encompassing activity occurring beforehand. Accordingly, the election of the members of the General Assembly takes place on a single date in November.

The Virginia Constitution's use of "November general election" and "elected on" a particular date in November refute the circuit court's expansive interpretation of "general election." This Court interprets the Virginia Constitution as a coherent whole, and identical terms are presumed to carry the same meaning throughout. *See, e.g.*, *Carlisle v. Hassan*, 199 Va. 771, 777 (1958) ("[T]he constitution must be viewed and construed as a whole, and every section, phrase and word given effect and harmonized if possible.") (citations omitted); *Pine v. Commonwealth*, 121 Va. 812, 825 (1917) ("The presumption is that the same meaning attaches to a given word or phrase which is repeated in a Constitution, unless the contrary is made to appear, and hence the whole instrument should be

examined to ascertain what that meaning is.") (citation omitted). Thus, the "general election" referenced in Article XII must be the same event that appears elsewhere in Article II and Article IV. These constitutional provisions together make clear that the "general election" referenced in Article XII occurs on the Tuesday succeeding the first Monday in November and excludes any earlier period of time.

The Virginia Constitution has defined "election" to refer to a single day for more than 150 years, long before the General Assembly established early absentee voting. *See* Va. Const., art. IV, §§ 41-42 (1902) (members of the General Assembly "shall be elected . . . on the Tuesday succeeding the first Monday in November"); Va. Const., art. V, §§ 2-3 (1870) (members of the General Assembly "shall be elected . . . on the Tuesday succeeding the first Monday in November"). And the Virginia Constitution has long required that the General Assembly refer amendments to the next session after a "general election." *See* Va. Const., art. XV, § 1 (1902) ("such proposed amendment shall be . . . referred to the General Assembly at its first regular session held after the next general election"); Va. Const., art. XII, § 1 (1870) ("such proposed amendment shall be . . . referred to the general assembly to be chosen at

the next general election"). The Virginia Constitution's meaning has remained constant. "[T]he word [election] now has the same general significance as it did when the Constitution came into existence—final choice of an officer by the duly qualified electors." *Newberry v. United States*, 256 U.S. 232, 250 (1921). *See also* NOAH WEBSTER, AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (1830) (defining "election" as "[t]he day of a public choice of officers"). "When a constitutional provision has remained unchanged throughout Virginia constitutional history, we apply the original meaning of the provision when first adopted." *Vlaming v. W. Point Sch. Bd.*, 302 Va. 504, 532 (2023) (citing *Howell v. McAuliffe*, 292 Va. 320, 345-47 (2016)). That original meaning establishes that the "general election" in Article XII refers to the single date on which the election is conducted.

Virginia's statutes governing elections confirm this interpretation. The Code defines "general election" to mean "an election held in the Commonwealth on the Tuesday after the first Monday in November or on the first Tuesday in May." Code § 24.2-101. *See also id.* § 24.2-603 (setting polling place hours "on the day of the election"). The Code further provides that voter "registration records shall be closed during the 10

days before a primary or general election." Code § 24.2-416. No court has ever held that the deadline to register to vote is set by the first date of early voting rather than by the date of the election. Finally, the Code provides that "[a]bsentee voting in person shall be available on the forty-fifth day *prior to any election*." Code § 24.2-701.1(A) (emphasis added). Virginia law thus defines early absentee voting as taking place prior to an election, not composing part of the election. Absentee ballots cast before Election Day are then counted "on the day of the election." Code § 24.2-712(D). These statutory provisions uniformly distinguish between the "election" that occurs on a date in November and preceding steps like early absentee voting and registration. *See Moore v. Pullem*, 150 Va. 174, 189–90 (1928) (upholding Virginia's absentee voting statute by distinguishing "the period of residence before the election which is required of the voter" and "[t]he method of voting upon the day of election").

Federal law and Virginia law are in accord. The Elections Clause of the United States Constitution provides that Congress may regulate "[t]he Times, Places and Manner of holding Elections for Senators and Representatives." U.S. Const., art. I, § 4, cl. 1. Federal law in turn

establishes "[t]he Tuesday next after the 1st Monday in November, in every even numbered year . . . as the day for the election." 2 U.S.C. § 7. *See also* Act Feb. 2, 1872, ch. 11, § 3, 17 Stat. 28 ("[T]he tuesday next after the first Monday in November . . . is hereby fixed and established as the day for the election."). If an "election" included any time at which a ballot may be cast, then every state—including Virginia—that permits early absentee voting would violate the federal "mandate[] [to] hold[] all elections for Congress and the Presidency on a single day throughout the Union." *Foster v. Love*, 522 U.S. 67, 70 (1997). Every court to consider the question has rejected that radical conclusion. *See, e.g.*, *Voting Integrity Proj., Inc. v. Keisling*, 259 F.3d 1169, 1175 (9th Cir. 2001); *Millsaps v. Thompson*, 259 F.3d 535, 546 (6th Cir. 2001); *Voting Integrity Proj., Inc. v. Bomer*, 199 F.3d 773, 774 (5th Cir. 2000). Accordingly, under both Virginia and federal law, the "election" refers to an event that takes place on a single day.

The circuit court's contrary rule would empower the General Assembly to amend the Constitution by statute. Its inverted approach would mean the General Assembly had redefined the constitutional term "election" by establishing early absentee voting. It would also mean that

the General Assembly had redefined the constitutional eligibility requirements for members of the Senate and the House of Delegates. *See* Va. Const., art. IV, § 4 (setting age of eligibility for members as "person . . . who, at the time of the election, is twenty-one years of age"). And it would amend by statute the Virginia Constitution's procedures for constitutional amendment by changing the time by which the General Assembly must pass a proposed amendment. The General Assembly lacks that power. *See, e.g.*, *Staples v. Gilmer*, 183 Va. 613, 631–32 (1945) (Holt, J., concurring) ("The Legislature, of course, cannot change the Constitution; the people can."); *Pine*, 121 Va. at 824 ("When the Constitution has fully dealt with a subject and covered the entire ground, the Legislature would be powerless to make any change in it, unless specially authorized to do so.").

The circuit court's holding is predicated upon a policy rationale: that voters who cast their ballots before Election Day should have more notice of proposed constitutional amendments than the Virginia Constitution provides. But the Virginia Constitution already answers that question by fixing the date on which delegates are "elected." The circuit court's approach thus substitutes judicial policy preferences for

the constitutional text. Courts do not have the power to replace the constitutional rule with a policy-driven redefinition of when an "election" begins.

## III. Virginia Code Section 30-13 Did Not Invalidate the Proposed Constitutional Amendment.

The circuit court's final ground for invalidating the proposed constitutional amendment was alleged non-compliance with Section 30-13 of the Virginia Code. That holding is incorrect for three reasons. First, the now-repealed Section 30-13 implemented a provision in the 1902 Virginia Constitution that was itself repealed in 1971, and so the statute no longer had legal effect. Second, even when Section 30-13 was in force, it was a directory rather than a mandatory statute, the non-compliance with which could not invalidate a constitutional amendment. Third, Section 30-13 could not constitutionally impose a mandatory requirement on the process for amending the Virginia Constitution because the procedures in Article XII are exhaustive. This Court should therefore reject the circuit court's reliance on Section 30-13 to interfere with the democratic process. It should instead permit the people of Virginia to have the final word on the amendment.

### A. Section 30-13 Implemented a Repealed Constitutional Requirement and Is Now Repealed and Inoperative.

Section 30-13 was a vestige of an earlier constitutional regime. The Constitution of 1902 required that, after initial approval by the General Assembly, a proposed amendment "shall be published for three months previous to the time of such election." Va. Const. § 196 (1902). The predecessor to Section 30-13 was enacted to implement that requirement by directing the Clerk of the House of Delegates and local officials to publish and post a proposed amendment prior to the intervening election.

The adoption of the 1971 Constitution eliminated the constitutional basis for Section 30-13. During the revision process, the General Assembly deliberately removed the prior publication requirement and replaced it with a different procedural safeguard: a mandatory ninety-day interval between final approval by the General Assembly and submission of the amendment to the voters. *See* Va. Const. art. XII, § 1. The purpose of the prior publication requirement in the 1902 Virginia Constitution had been to ensure public awareness, and that purpose would now be served in the new Virginia Constitution by requiring at least ninety days' time between the final action of the General Assembly

and the submission of the proposed amendment to the people. *See* Del. D. French Slaughter, Jr., *Proceedings and Debates of the House of Delegates Pertaining to Amendment of the Constitution* 496 (1969). *See also* 1 A.E. DICK HOWARD, COMMENTARIES ON THE CONSTITUTION OF VIRGINIA 1175 (1974) (Article XII "does not require publication of amendments, only a delay of ninety days," and therefore "an amendment cannot be challenged on the ground that publication was insufficient"). That conclusion follows directly from the constitutional revision: when the Virginia Constitution removes a requirement, a statute implementing that requirement cannot survive. Once the Virginia Constitution eliminated the publication requirement, the statute enacted to implement that requirement could not impose an independent constraint on the amendment process defined by Article XII. A statute cannot outlive the constitutional provision it was enacted to implement. Section 30-13 was thus rendered inoperative as a condition governing constitutional amendments.

The circuit court's ruling rests on the opposite premise: that a statute enacted to implement a repealed constitutional requirement could itself supply a continuing condition on the constitutional process for amendment. That premise is incompatible with the structure of

Article XII. Because Article XII no longer requires pre-passage publication, a proposed amendment cannot be invalidated on the ground that publication was insufficient.

Underscoring that conclusion, the General Assembly has now passed and the Governor has signed legislation repealing Section 30-13. 2026 Va. Laws ch. 6 (H.B. 1384). Non-compliance with a repealed statute cannot support Appellees' claims. *See, e.g.*, *Kremens v. Bartley*, 431 U.S. 119, 128-29 (1977) ("There must be a live case or controversy before this Court, and we apply the law as it is now, not as it stood below. Thus the enactment of the new statute clearly moots the claims.") (citations omitted); *Diffenderfer v. Central Baptist Church*, 404 U.S. 412, 414 (1972) (due to repeal of challenged statute, "[t]he case has therefore lost its character as a present, live controversy of the kind that must exist if we are to avoid advisory opinions on abstract propositions of law"). And even if the case were not moot on that ground, such a purely procedural statute may retroactively repeal its requirements. *See Sargent Elec. Co. v. Woodall*, 228 Va. 419, 424 (1984) ("A legislative enactment, if purely procedural in nature, may be given retroactive effect.") (citation omitted).

The Court should therefore reject the circuit court's invalidation of the proposed constitutional amendment grounded in alleged non-compliance with a now-repealed and long-defunct procedural statute.

### B. Section 30-13 was Directory, Not Mandatory.

Even if Section 30-13 continued to have legal force, it could not support the invalidation of the proposed constitutional amendment. Virginia law draws a settled distinction between mandatory provisions that affect the validity of legal acts and directory provisions that govern the conduct of public officials without impacting the validity of their acts. *See, e.g.*, *Bland-Henderson v. Commonwealth*, 303 Va. 211, 220 (2024) ("'[S]hall' commands addressed to public officers are typically deemed to be directory instead of mandatory, unless otherwise provided by the statute.") (citation omitted). That distinction grounds a difference in legal consequences. Absent a clear statement that noncompliance entails invalidation, courts do not treat directory statutes as limiting governmental authority or voiding official acts. *See, e.g.*, *Huffman v. Kite*, 198 Va. 196, 199 (1956); *Nelms v. Vaughan*, 84 Va. 696, 699 (1888) (absent explicit text to the contrary, a statute that "direct[s] the mode of proceeding by public officers is to be deemed directory, and a precise

compliance is not to be deemed essential to the validity of the proceedings"); *Redd v. Supervisors of Henry County*, 72 Va. (31 Gratt.) 695, 700 (1879) ("distinguish[ing] between provisions that are mandatory and such as are directory merely; by which latter is meant those provisions that are to be considered as giving directions which ought to be followed, but not as so limiting the power in respect to which the directions are given that it cannot effectually be exercised without observing them") (citation omitted).

Section 30-13 squarely qualified as a directory statute. The statute directed the Clerk of the House of Delegates to publish proposed amendments and directed circuit court clerks to post copies and certify that posting. Those were ministerial duties assigned to public officials—the classic subject of directory legislation. Nothing in the statute provided that a failure to comply with those posting requirements invalidated legislative action, nullified a proposed amendment, or prevented submission to the voters. That silence is dispositive under Virginia law. *Bland-Henderson*, 303 Va. at 220. Section 30-13 therefore did not—and could not—be transformed into a condition of constitutional validity.

Virginia cases on election law reinforce that point. This Court has repeatedly refused to treat statutory timing or procedural requirements as grounds for invalidating an election or disenfranchising voters absent a clear legislative command. *See, e.g.*, *Huffman*, 198 Va. at 203-204; *Gregory v. Hubard*, 123 Va. 510, 512-13 (1918) ("The statute requiring the commissioners of election to canvass the returns on the second day after the election is only directory as to the time of canvass, and if they let the time elapse without making the canvass, the mayor was not thereby deprived of the benefit of the election."). Section 30-13 contained no mandatory command, nor did it explicitly state that a proposed amendment would be invalid if public officials failed to comply with its publication requirements. On the contrary, Section 30-13 regulated the conduct of officials "preliminary to, and in aid of, the election," and did not impact the validity of the election or the underlying proposed amendment. *Scott v. James*, 114 Va. 297, 305–06 (1912).

The circuit court's contrary approach cannot be reconciled with these longstanding principles. By treating alleged noncompliance with Section 30-13 as grounds to invalidate the amendment process, the court transformed a repealed statute governing a public official's publication

duties into a condition of constitutional validity. Virginia law does not permit that transformation, which would convert ministerial non-compliance into invalidation of a democratically ratified constitutional amendment.

### C. Section 30-13 Could Not Constitutionally Be Construed to Impose Additional Requirements on the Constitutional Amendment Process.

The circuit court's order transgresses an even more fundamental constitutional principle. Article XII sets forth the exclusive requirements for amending the Constitution of Virginia. It specifies the sequence by which an amendment is proposed, approved by successive General Assemblies, and submitted to the people. *See* Va. Const. art. XII, § 1; *Coleman v. Pross*, 219 Va. 143, 154 (1978) (requiring "strict compliance" with Article XII's procedures). Nothing in Article XII requires publication of a proposed amendment, and nothing in its text incorporates or depends upon statutory publication requirements. The Virginia Constitution's framework is exclusive.

Because Article XII provides an exclusive framework for constitutional amendment, the General Assembly cannot add to or alter those requirements by statute. *See, e.g.*, *City of Richmond v. Lynch &*

*Duke*, 106 Va. 324, 325–26 (1907) (rejecting General Assembly's attempt to "superadd" statutory requirement for office beyond Virginia Constitution); *Black v. Trower*, 79 Va. 123, 125 (1884). *See also Powell v. McCormack*, 395 U.S. 486, 543 (1969) ("Congress, by the Federal Constitution . . . must be governed by the rules prescribed by the Federal Constitution, and by them only.") (quoting 17 Annals of Cong. 872 (1807)). A statute that purports to condition the validity of a constitutional amendment on compliance with requirements not found in Article XII would invert the constitutional hierarchy, making the amendment process depend on ordinary legislation rather than on the Virginia Constitution itself.

The circuit court's ruling rests on precisely that impermissible premise. By treating compliance with Section 30-13 as a prerequisite to the validity of the amendment process, the court effectively inserted an additional step into Article XII—one that the Virginia Constitution does not contain. That is not a permissible construction of the statute. The General Assembly could not, for example, require a supermajority vote by the people on a proposed constitutional amendment or require multiple referenda beyond those specified in Article XII. Section 30-13, if

treated as mandatory, would have operated in the same way: as an extra-constitutional condition on the validity of an amendment. This Court construes statutes to avoid such grave constitutional conflicts. *See Virginia Soc. for Hum. Life, Inc. v. Caldwell*, 256 Va. 151, 157 (1998) (this Court "narrowly construe[s] a statute where such a construction is reasonable and avoids a constitutional infirmity"). If Section 30-13 were interpreted to impose a mandatory condition on the amendment process, it would have conflicted with Article XII and would therefore have been invalid. The Court should instead adopt the only permissible construction: that Section 30-13 imposed a directory duty on public officials that did not affect the constitutional validity of a proposed amendment.

The circuit court's contrary ruling would allow a repealed, non-mandatory, and long-defunct statute to override the constitutional amendment process. That result is incompatible with Article XII and the basic hierarchy of Virginia law. It would be particularly contrary to the constitutional design of the Virginia Constitution's amendment process to rely on such a statute to block a constitutional amendment twice passed by the General Assembly and ratified by the people.

## CONCLUSION

For the foregoing reasons, the judgment of the circuit court should be reversed.

Respectfully submitted,

Appellants Don Scott, Scott Surovell, and L. Louise Lucas

By: /s/ *Richard F. Hawkins, III*
Richard F. Hawkins, III, VSB No. 40666
THE HAWKINS LAW FIRM, PC
2222 Monument Avenue
Richmond, Virginia 23220
Tel: (804) 308-3040
Fax: (804) 308-3132
rhawkins@thehawkinslawfirmpc.com

Matthew A. Seligman*
GRAYHAWK LAW
3015 Main Street, Suite 330
Santa Monica, California 90405
Tel: (310) 571-5993
matthew@grayhawklaw.com
**pro hac vice*

*Counsel for Appellants*

## CERTIFICATE OF TRANSMISSION AND SERVICE

I certify that on March 23, 2026, this document was electronically filed with the Court via VACES. This brief complies with Rule 5:26 because it does not exceed 50 pages, excluding the cover page, table of contents, table of authorities, signature blocks, and certificate. A copy was transmitted by email to:

Aria Branch
abranch@elias.law
*Counsel for Appellants*

Thomas R. McCarthy
Conor D. Woodfin
tom@consovoymccarthy.com
conor@consovoymccarthy.com

Michael A. Thomas
mthomas@ghartlaw.com
*Counsel for Appellees*

SolicitorGeneral@oag.state.va.us
*Counsel for the Commonwealth*

By: /s/ *Richard F. Hawkins, III*
Richard F. Hawkins, III, VSB No. 40666

Matthew A. Seligman*
**pro hac vice*

*Counsel for Appellants*

IN THE

SUPREME COURT OF VIRGINIA

RECORD NO. 260127

DON SCOTT, in his official capacity as Speaker of the House of Delegates, *et al.*,

Appellants,

v.

RYAN T. McDOUGLE, Virginia State Senator and Legislative Commissioner for the Virginia Redistricting Commission, *et al.*,

Appellees.

# OPENING BRIEF OF THE COMMONWEALTH


JAY JONES
*Attorney General*

TRAVIS G. HILL
*Chief Deputy Attorney General*

JACQUELINE C. HEDBLOM
PEBBLES L. BURGESS (#74817)
*Senior Assistant Attorneys General*

TILLMAN J. BRECKENRIDGE (#84657)
*Solicitor General*

MIKAELA A. PHILLIPS (#97164)
TRISTON C. O'SAVIO (#100111)
*Assistant Solicitors General*

Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219
(804) 786-2071 – Telephone
(804) 786-1991 – Facsimile
SolicitorGeneral@oag.state.va.us

*Counsel for the Commonwealth*


March 23, 2026

## TABLE OF CONTENTS

Page

## TABLE OF AUTHORITIES

**Page**

**Cases**

**Constitutional Provisions**



**Statutes**

**Session Laws**



**Legislative Materials**



**Treatises**



**Other Authorities**

## INTRODUCTION

This case arises from a political decision to amend the Constitution of Virginia through the process the Constitution itself prescribes. That process reflects a basic principle of constitutional government: when the people choose to exercise their sovereign authority, they may resolve even the most contested policy questions through amendment.

The Constitution does not withhold that authority; it prescribes the framework through which it is exercised. Article XII sets out a clear mechanism by which the General Assembly may propose amendments and the people of the Commonwealth may decide whether to adopt them. That design reflects a deliberate allocation of power that assigns proposal authority to the political branches and reserves final decisionmaking to the electorate. By the time this case is submitted, the People will have made their decision.

Courts play a defined but limited role within that framework. They may enforce the Constitution's requirements, but they may not revise them or impose new conditions the constitutional text does not contain.

The circuit court crossed that boundary. The General Assembly invoked Article XII to propose an amendment addressing congressional

redistricting, a subject of obvious political discord and consequence. Justices' views of the wisdom of that policy choice is not before the Court, nor can the Court's policy preferences be relevant if each part of government is to play its proper role. The question is whether the Constitution's amendment process was followed.

The sequence of events leaves no doubt that it was. The General Assembly approved the proposal, a general election of members of the House of Delegates intervened, and a newly constituted General Assembly approved the amendment a second time. And if this case is submitted to the Court, the People adopted the amendment. Those are the only steps Article XII requires, and each occurred.

The circuit court nevertheless declared that process invalid before it was even finished by imposing requirements the Constitution does not contain. It (1) presumed the Constitution means something other than it says with respect to what constitutes an election by treating statutory early voting procedures as constitutional benchmarks, (2) interpreted internal rules of the General Assembly as constitutional limits that courts should enforce, and (3) elevated a now-repealed statute that was

already a dead letter into a condition of constitutional validity. The circuit court did not enforce Article XII; it rewrote it.

The Constitution assigns the final decision on the *policy* to the people of the Commonwealth, not to the courts. Because the amendment process here complied with Article XII, the judgment below should be reversed.

## STATEMENT OF THE CASE

### A. The Constitutional Amendment Process.

Article XII, § 1 prescribes the process for amending the Constitution of Virginia. In simplified form, that process requires:

1. **First legislative approval.** A proposed amendment must be approved by a majority of the members elected to each house of the General Assembly.

2. **An intervening House of Delegates election.** The proposal must then be referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates.

3. **Second legislative approval.** The newly constituted General Assembly must approve the proposal again by a majority of the members elected to each house.

4. **Submission to the voters.** The proposal must then be submitted to the electorate, not sooner than ninety days after final passage.

See Va. Const. art. XII, § 1. In turn, Article IV, § 3 fixes the relevant election on the Tuesday following the first Monday in November, supplying the constitutional benchmark for the intervening-election requirement.

**B. The Legislative Timeline of the Proposed Amendment.**

On April 17, 2024, the General Assembly requested that the Governor convene a special session. H.J. Res. 428 (2024 Sess.). The special session began on May 13, 2024. H.J. Res. 6001 (2024 Spec. Sess. I). House Joint Resolution 6001 set forth the special session agenda and addressed how additional matters could be taken up with unanimous consent of the house in which the legislation was offered. *Id.*

In late October 2025, each house voted by majority to proceed with consideration of a proposed redistricting amendment during the Special Session. H.J. Res. 6006 (2024 Spec. Sess. I). The proposed amendment was introduced in the House of Delegates on October 28, 2025. H.J. Res. 6007 (2024 Spec. Sess. I). The proposal would amend Article II, § 6 of the Constitution to permit mid-decade redistricting by the General Assembly in response to similar actions taken in other states, with that authority limited to the period between January 1, 2025, and October 31, 2030. *Id.*

The General Assembly then proceeded through the sequence Article XII prescribes. A majority of the House of Delegates and the Senate approved House Joint Resolution 6007 on October 29, 2025, and October 31, 2025. 2024 Acts ch. 5 (Spec. Sess. I).

Days later, the constitutionally defined election intervened. The general election of the members of the House of Delegates occurred on November 4, 2025.

The next regular session of the General Assembly convened on January 14, 2026. The proposed amendment was introduced again. H.J. Res. 4 (2026 Sess.). A majority of the House of Delegates and the Senate approved House Joint Resolution 4 on January 14, 2026, and January 16, 2026. *Id.*

With the second approval secured, the process moved to the electorate. The General Assembly scheduled a referendum for April 21, 2026. H.B. 1384 (2026 Sess.). The Governor signed that legislation into law on February 6, 2026. 2026 Acts ch. 6.

**C. Procedural History.**

The Complainants sued G. Paul Nardo, Clerk of the House of Delegates; Susan Clarke Schaar, Clerk of the Senate; Tara Perkinson,

Chief Deputy Clerk of the Senate; and Charity Hurst, Clerk of the Tazewell Circuit Court, in the Circuit Court of Tazewell County challenging the redistricting amendment. R. 125–27. The amended complaint sought a declaration that House Joint Resolution 6007 was void and did not comply with Article XII, § 1 and Code § 30-13, along with injunctive relief barring publication of the amendment by the General Assembly and requiring courthouse posting. R. 141–55. Speaker of the House of Delegates Don Scott intervened. R. 30–34, 349.

While the litigation was pending, the constitutional process continued. Before the preliminary injunction hearing, the General Assembly approved the amendment for a second time and the amendment was published. R. 581–82. At that point, the only requested injunctive relief that remained was an order directing the circuit court clerk to post the amendment. See R. 581–82.

The circuit court then ordered supplemental briefing by January 31, 2026. Tr. 1823 (Jan. 21, 2026). Before that deadline expired, however, the court entered a final order declaring the proposed amendment void ab initio and entering an injunction instructing the Tazewell Circuit Court Clerk to post the amendment on the courthouse

door at least 90 days before the 2027 election for the House of Delegates. R. 596–601.

The court first concluded that the continued convening of the 2024 Special Session was lawful, including the October 31, 2025 meeting, because there is no constitutional or statutory prohibition on continuing the special session. R. 596. It nonetheless held that the General Assembly's consideration of House Joint Resolution 6007 was void because the legislature had failed to comply with its internal resolutions governing the session's scope. R. 597–99.

The court also concluded that the intervening-election requirement was not satisfied. R. 599–600. Although Article IV, § 3 defines Election Day to mean "the Tuesday succeeding the first Monday in November," the court reasoned that the "election" began when early voting opened on September 19, 2025, and continued through November 4, 2025. R. 599. On that view, because early voting began before October 31, 2025—the date of the first legislative approval—no qualifying intervening election occurred. R. 599.

Last, the court held that the second legislative approval was ineffective due to non-compliance with Code § 30-13. R. 600. That

statute governs the publication and posting of proposed amendments by legislative and circuit court clerks. In substance, the court treated that statutory publication directive as a condition of constitutional validity under Article XII. R. 600.

Speaker Scott appealed.[1] R. 622–23. The Commonwealth of Virginia moved to intervene under Rule 3:14A on the grounds that each of the circuit court's three justifications for its ruling inflict damage on the structure of Virginia's government, regardless of any policy views on the merits of the issue before the court. R. 1029–35. The Court of Appeals moved to certify the cases to this Court pursuant to Code § 17.1-409(B)(1). R. 965–66. This Court granted the motion to certify the cases due to their "imperative public importance" and granted the Commonwealth's intervention motion. Order ¶¶ 1, 4, *Scott v. McDougle,* No. 260127 (Feb. 13, 2026).

## ASSIGNMENTS OF ERROR

1. The circuit court erred in concluding that the proposed constitutional amendment failed to satisfy Article XII's intervening-election

[1] The Legislative Clerks also filed a Notice of Appeal. R. 618–21. The circuit court subsequently granted their plea of immunity and dismissed them with prejudice, so they are no longer parties to this appeal. R. 1663–64.

requirement by re-defining the "general election of members of the House of Delegates" to include the period of early voting and by holding that no valid intervening election occurred.

2. The circuit court erred in holding that the General Assembly's consideration of the proposed amendment during the 2024 Special Session violated internal legislative resolutions and in declaring the amendment void on that basis.

3. The circuit court erred in concluding that alleged non-compliance with Code § 30-13 rendered the proposed constitutional amendment invalid and barred its submission to the voters.

## STANDARD OF REVIEW

Questions of constitutional and statutory interpretation present pure questions of law that this Court reviews de novo. *Gallagher v. Commonwealth*, 284 Va. 444, 449 (2012). A circuit court's decision to grant injunctive relief is reviewed for abuse of discretion, and a court abuses its discretion when it makes an error of law or misapplies governing legal principles. *May v. R.A. Yancey Lumber Corp.*, 297 Va. 1, 18 (2019).

Because the rulings challenged here turn on the circuit court's interpretation of Article XII of the Constitution of Virginia and related legal provisions, those determinations are reviewed without deference.

## SUMMARY OF ARGUMENT

This case concerns straightforward questions of constitutional process. Article XII of the Constitution of Virginia establishes the exclusive method for proposing amendments. It requires that a proposed amendment receive legislative approval, be separated by the constitutionally defined election of members of the House of Delegates, and then be approved again before submission to the voters. Those requirements were satisfied here.

The circuit court nevertheless ruled the amendment invalid by imposing requirements found nowhere in the Constitution. It treated the statutory beginning of early voting as the constitutional "election," relied on a statutory publication provision as though it were itself a constitutional condition, and undermined the General Assembly's authority to act during a lawfully convened special session. Each ruling reflects the same error—replacing the Constitution's text with extra-textual limitations.

*First*, Article XII specifies only that an election of House members occur between two legislative approvals, and the Constitution itself fixes that election on Election Day. Statutes governing absentee voting (which

includes early voting) regulate how ballots are cast, not when the constitutional election occurs. Those votes do not count—and are not tallied or reported—until Election Day. The circuit court's contrary interpretation collapses that distinction and makes the meaning of the Constitution dependent on statutory voting procedures. Under that approach, the timing and validity of constitutional amendments would vary with ordinary legislation, an outcome incompatible with the Constitution's fixed meaning. Because the November 2025 election intervened between the General Assembly's October 2025 and January 2026 approvals, Article XII's intervening election requirement was met.

*Second*, the amendment was validly considered during the 2024 special session. The Constitution imposes no time limit on the duration of a special session and does not restrict the General Assembly's authority based on internal scheduling decisions or evolving legislative priorities. The legislature retained authority to recess and reconvene, and it exercised that authority here. Internal resolutions governing the scope of business cannot be transformed into constitutional limitations, nor may courts enforce such internal rules as though they constrained the Constitution's grant of authority to propose amendments.

*Third*, a statutory notice provision cannot alter Article XII's requirements. The Constitution specifies the steps necessary to propose and adopt an amendment, and those steps do not require compliance with Code § 30-13. A statute governing publication and posting cannot be elevated into a constitutional prerequisite that the Constitution itself omits. Treating such provisions as conditions of validity would allow ordinary legislation to modify the amendment process and displace the Constitution's control over its own revision. Section 30-13, moreover, is a vestige of an earlier constitutional regime that required publication of proposed amendments—a requirement deliberately removed from the 1971 Constitution. At most, the statute imposed administrative duties on public officials *until 1971*; it never determined an amendment's validity, and it certainly cannot do so now. Section 30-13's subsequent repeal confirms that understanding.

The circuit court's decision also reflects a deeper misallocation of authority. Article XII entrusts the people—not the judiciary—with the final decision whether to adopt a proposed amendment. When a court imposes extra-constitutional conditions that prevent a proposal from

proceeding under Article XII, it assumes the role that the Constitution reserves for the electorate.

The Constitution supplies a clear rule and a defined process for amendment. Because the General Assembly followed that process, the proposed amendment was validly advanced and should have been submitted to the voters. The judgment of the circuit court should be reversed.

## ARGUMENT

### I. Article XII requires only that two legislative approvals of a proposed amendment be separated by the constitutionally defined election of members of the House of Delegates.

#### A. The Constitution establishes a straightforward intervening-election requirement.

The amendment process is set out in Article XII, and its specified procedures "must be strictly followed." See Stephen R. McCullough, 1 *Virginia Constitutional Law* § 18.02[6] (2025 ed.). A proposed amendment must first be approved by a majority of the members elected to each house of the General Assembly. The proposal is then referred to the General Assembly at its first regular session held following "the next general election of members of the House of Delegates." Va. Const. art. XII, § 1. If the newly constituted General Assembly again approves the

proposal by majority vote in each house, the amendment is submitted to the voters.

The intervening-election requirement serves a clear purpose. It ensures that the electorate has an *opportunity* to elect the House of Delegates that will participate in the second legislative vote on the proposed amendment. Article XII thus provides a democratic safeguard: constitutional amendments must pass through two successive legislatures with an intervening election of House members. See A. E. Dick Howard, 2 *Commentaries on the Constitution of Virginia* 1171-72 (1974). The electorate had that opportunity here, and individuals who voted early under the absentee voting statute did so with the obvious knowledge that they were foregoing any option of changing their votes based on *any* intervening events between casting a ballot, and the vote counting on November 4.

Complainants' theory, however, rests on the premise that the intervening election must occur only after voters have had notice of the proposed amendment or an opportunity to consider it before sending absentee ballots. See R. 284–85; Tr. 1693–94 (Jan. 21, 2026). But that premise finds no foothold in the constitutional text or when considering

the nature of absentee and early voting. The text demands an intervening election and no additional condition. The Constitution also does not require that the first approval occur a particular number of days before the election, that the amendment be proposed before voting procedures begin, or that voters be aware of the proposal before casting ballots. Nor may courts impose additional constitutional requirements by implication; a prohibition must appear "expressly," not by "slight implication or inconclusive reasoning." *Commonwealth v. Moore*, 66 Va. 951, 953 (1875).

The role of the intervening election follows from that structure. The intervening election does not function as a referendum on the proposed amendment itself; the amendment is not submitted to the voters until *after* the second legislative approval by design. The election instead identifies the House of Delegates that will cast the second vote—ensuring that final legislative approval comes from an Assembly chosen after the proposal's first passage.

That is the full constitutional design. Two legislative approvals, separated by an intervening House election—and nothing more.

### B. Article IV defines the relevant "election" referenced in Article XII, and that requirement was met here.

Article IV identifies the relevant election and fixes its date. Members of the House of Delegates are elected "on the Tuesday succeeding the first Monday in November." Va. Const. art. IV, § 3. Article XII operates against that fixed point. Once Article IV sets the election, Article XII incorporates that same event as the dividing line between legislative approvals.

The ordinary meaning of the relevant terms points in the same direction. An "election" is "[t]he process of selecting a person to occupy an office." *Election*, Black's Law Dictionary (12th ed. 2024). And a "general election" is "[a]n election that occurs at a regular interval of time." *Id.* Voting is "[t]he casting of votes for the purpose of deciding an issue," and "early voting" is "[v]oting *before the day of an election*." *Voting*, Black's Law Dictionary (12th ed. 2024) (emphasis added). These definitions reflect a critical distinction: the election is the legally operative event that determines the officeholder, while voting describes the mechanisms by which ballots are cast. They are buttressed by the definition of "Election Day," which is a "single day established by law for

voters to cast ballots by presenting themselves in person at a voting precinct." *Election Day*, Black's Law Dictionary (12th ed. 2024). The definition goes on to note that "[i]n jurisdictions that allow early in-person voting, election day is normally the last day on which voters may cast a ballot in a given election." *Id.* It is therefore consistent with the ordinary meanings of the operative terms of election and voting for the Court to apply the Constitution's definition of the election as a fixed legal event, rather than re-defining it, as the circuit court did, as an extended voting period based on statutory procedures.

Properly understood, the relevant election here occurred on November 4, 2025—the constitutionally prescribed Election Day. The General Assembly approved the proposed amendment on October 31, 2025, the electorate then selected members of the House of Delegates at the November 2025 general election, and the newly constituted General Assembly approved the amendment again during the 2026 legislative session.

That sequence mirrors the structure required by Article XII: legislative approval, an intervening election of House members, and renewed legislative approval by the newly constituted General Assembly.

Here, that sequence did exactly what the Constitution was designed to do—it ensured that the second vote was cast by a House elected after the proposal's initial passage. The election serves to select the legislature that will decide whether the proposal proceeds to the electorate; it is not itself a referendum on the amendment. Once that sequence occurred, the constitutional requirement was satisfied.

### C. The circuit court erred by treating the beginning of early voting as the constitutional election.

Contrary to the constitutional sequence set out in Articles XII and IV, the circuit court concluded that Article XII's intervening-election requirement had not been satisfied because early voting for the November 2025 election had begun before the General Assembly's first legislative approval of the amendment. While the circuit court acknowledged that Article IV specifies the date of the election of House members, it accepted Complainants' view that an "election" is not a fixed constitutional event but rather an extended period during which votes are cast. From that incorrect premise, the court reasoned that the "election" effectively took place when voters started casting ballots. And because the General Assembly's first approval occurred on October 31,

2025, after early voting had begun, the court concluded that no constitutionally valid intervening election could still occur.

That reasoning collapses the distinction the Constitution itself draws. In effect, the court treated the statutory beginning of early voting as the constitutional date of the election itself. But statutes regulate how voters cast ballots, and the Constitution defines when the election occurs. Voting—including early or absentee voting—is simply a means of participating in an election, not the election itself.

The constitutional hierarchy is straightforward. Article XII refers to "the general election of members of the House of Delegates," and Article IV defines when that election occurs. Once the Constitution supplies that definition, statutory voting procedures cannot displace it. Statutes enacted by the General Assembly may regulate how ballots are cast, but they cannot alter the meaning of constitutional text. See *Harrison v. Day*, 200 Va. 439, 448 (1959) (courts "are limited to the language of the section itself and are not at liberty to search for meaning, intent or purpose beyond the instrument"). Early voting exists solely as a statutory voting procedure—a way of participating in the election on November 4 without having to show up to the polls on November 4. Those

provisions regulate how voters may cast ballots before an election, but they cannot re-define when the constitutional election occurs, nor do they purport to do so. Even when ballots are cast before Election Day, those ballots are cast in the Election Day election, which is the constitutionally designated event that determines the outcome of the contest.

The circuit court's mix of purposivism and consequentialism—eliding sound basis in the text—misunderstands the purposes and consequences of early and absentee voting. As is discussed above, the purpose of early and absentee voting is not to move Election Day, but rather to allow people who cannot or choose not to physically go to the polling place on Election Day to cast a ballot for that day nonetheless. The consequences of early and absentee balloting are known to the voter: the voter commits to the early vote regardless of what happens between casting the ballot and Election Day. That is true for any fresh policy statement, death or withdrawal of a candidate, "October Surprise," or in this case, re-convened session to pass a constitutional amendment. In none of those circumstances does the election become invalid because voters engaged in an early selection and intervening events may have changed their votes. Nor do they get to re-cast a ballot with a different

vote. The voter inherently has baked in the recognition that his or her vote will be counted on Election Day based on the earlier ballot regardless of intervening events.

This Court's decision in *Moore v. Pullem*, 150 Va. 174 (1928), confirms that understanding. Ballots cast before Election Day remain part of the Election Day election, not a separate or earlier election. In *Pullem*, the Court upheld an absentee-voting system that allowed voters to submit ballots before election day, and it treated those ballots as part of the election conducted on the constitutionally designated day. *Id.* at 184. Registrars delivered absentee ballots to election officials, who on election day verified eligibility and deposited those ballots into the regular ballot box to be counted with all the others. *Id.* at 182–83. The Court thus understood absentee voting as a procedural mechanism facilitating participation in the election on Election Day—not as altering when the election date legally occurs. That understanding reflects the broader constitutional allocation of authority. The General Assembly may prescribe the manner of conducting elections, but it cannot alter the constitutional definition of the election. See *id.*; Va. Const. art. II, § 4.

Modern early- and absentee-voting statutes follow the same model as the system upheld in *Pullem*—they provide additional methods for casting ballots in the Election Day election, not alternative election dates. See Code § 24.2-701.1(A) (early voting begins "on the forty-fifth day prior to any election"). Although ballots may be cast in advance, the statutory scheme treats those ballots as part of the Election Day election itself. Officials may not generate vote totals until after the polls close, Code §§ 24.2-709.1(B); 24.2-712(D)–(E), and certain ballots may be counted even if received after Election Day so long as they are postmarked on or before that day, Code § 24.2-709(B). These provisions confirm that early and absentee voting facilitate participation in the election and do not re-define when the election occurs.

The U.S. Supreme Court has articulated the same understanding. In *Foster v. Love*, the Supreme Court explained that the "election" refers to the legally operative act that determines the officeholder, and that a system violates federal law only when the result is "concluded as a matter of law before the federal election day," leaving "no act in law or in fact to be performed" that day. 522 U.S. 67, 72 (1997). Systems that allow ballots to be cast beforehand but do not legally consummate the election

until the designated day therefore remain consistent with the concept of Election Day. *Id.*

For decades, Virginia's amendment process has operated on the understanding that Article XII requires only that two legislative approvals be separated by the constitutionally defined election of members of the House of Delegates. Neither the General Assembly nor the courts have treated the beginning of early voting as the constitutional election. The circuit court's contrary interpretation departs from that settled understanding and introduces uncertainty into the operation of the constitutional amendment process.

Taken seriously, that rule would allow ordinary legislation to reshape the Constitution itself. Extending the early voting period would shrink the window in which amendments could be proposed; shortening it would expand that window. The Constitution's meaning would thus fluctuate with statutory change, which is no constitutional rule at all.

The Constitution provides a fixed answer. The November 2025 election intervened between the two legislative approvals. That is all Article XII requires.

## II. The proposed amendment was validly considered during the 2024 Special Session.

### A. The Special Session remained lawfully in existence when the amendment was introduced.

The Constitution does not impose a time limit on the duration of a special session. Article IV, § 6 prescribes time limits for regular and reconvened sessions but contains no durational limitation on a special session once convened. Nothing in the constitutional text provides that a special session automatically expires upon the convening of a regular session or the completion of any particular legislative objective.

That structure is deliberate. Special sessions are defined by how they are convened, not by any fixed duration. Once convened, the Constitution does not impose an expiration mechanism; instead, the General Assembly retains authority to conduct its business unless and until it chooses to conclude the session. Indeed, Article IV "sets no limit on the subject matter of the special session," and the legislature's authority in such a session "is as broad as its powers in its regular sessions." 1982 Op. Va. Att'y Gen. 188 (citation omitted).[2]

[2] "[A]n Opinion of the Attorney General is 'entitled to due consideration.'" *Beck v. Shelton*, 267 Va. 482, 492 (2004) (quoting *Twietmeyer v. City of Hampton*, 255 Va. 387, 393 (1998)).

The legislative record confirms that understanding. House Joint Resolution 428 expressly authorized the 2024 Special Session, once convened, to "stand in recess from time to time until reconvened" by joint call of the presiding officers. The General Assembly later reconvened the same session in October 2025 and considered additional business, including the proposed constitutional amendment. See, *e.g.*, H.J. Res. 6004, 6006, 6007 (2024 Spec. Sess. I).

The circuit court correctly acknowledged the absence of any such limitation. It found that Complainants "were unable to show [c]onstitutional or [s]tatutory prohibition of continuing the Special Session" and concluded that "the continued reconvening of the Special Session was valid up to and including the October 31, 2025 meeting of said Special Session." R. 596.

Complainants' contrary theories—that the session expired upon the convening of the 2025 regular session or upon completion of budget legislation—find no support in the Constitution. Article IV, § 6 does not tie the duration of a special session to any external event or legislative objective. As the circuit court itself recognized, no constitutional or statutory provision imposes such a limitation.

Because the Special Session remained lawfully in existence, legislative action taken during that session, including approval of the proposed amendment, was constitutionally authorized.

### B. The circuit court erred in treating the legislative agenda resolutions as constitutional limitations.

Having correctly concluded that the Special Session remained lawfully in existence, the circuit court nevertheless declared the amendment invalid on the ground that the General Assembly failed to comply with its own internal procedural resolutions governing the scope of the session's business. R. 597–99. That ruling cannot be reconciled with the Constitution.

The Constitution assigns to each house of the General Assembly the authority to determine its own rules of procedure. Va. Const. art. IV, § 7 ("Each house shall select its officers and settle its rules of procedure."). Those rules govern the legislature's internal operations; they do not create independent constitutional limitations or provide a basis for judicial invalidation of legislative action. Absent a violation of an express constitutional requirement, alleged non-compliance with internal legislative rules presents no justiciable basis for judicial relief.

That limitation is well-settled, as "[c]ourts may not review the propriety or validity of the General Assembly's internal rules and procedures" to determine whether a law has been properly enacted. McCullough, *Virginia Constitutional Law* § 10.07[3]. This Court has long held that it may not "invade a co-ordinate and independent department" by second-guessing legislative procedure, *Wise v. Bigger*, 79 Va. 269, 281 (1884), or "overthrow legislative determination[s]" regarding compliance with procedural conditions, *Albemarle Oil & Gas Co. v. Morris*, 138 Va. 1, 11 (1924). The U.S. Supreme Court has also recognized this rule, explaining in *Marshall Field & Co. v. Clark* that an enrolled bill, authenticated by the legislative and executive branches, is "complete and unimpeachable," and that courts may not look behind it to examine journals, committee reports, or other internal records of the legislative process. 143 U.S. 649, 672 (1892). That understanding reflects the allocation of authority and respect owed among co-equal branches and forecloses judicial second-guessing of internal legislative procedure.

Even when judicial review is available, that review is tightly constrained. Courts may invalidate legislative action *only* upon a clear and unmistakable constitutional violation; an act of the General

Assembly must be upheld unless it plainly and palpably violates the Constitution, and courts may not rely on "slight implication or inconclusive reasoning" to set aside legislative action. *Moore*, 66 Va. at 953. That limited role of judicial review underscores that courts do not police legislative policy choices or second-guess those judgments but consider only whether those choices exceed constitutional limits. *E.g.*, *Elizabeth River Crossings OpCo, LLC v. Meeks*, 286 Va. 286, 309 (2013) (courts have "no authority to override" policy decisions made within constitutional boundaries). That framework reflects the fundamental presumption that the legislature has acted within its constitutional authority.

The circuit court's reasoning cannot be squared with these principles. It treated compliance with internal agenda resolutions and voting thresholds as a constitutional prerequisite to valid legislative action. But whether the legislature adhered to its own procedural rules is a matter committed exclusively to the legislature itself—not a basis for judicial invalidation of an otherwise valid enactment.

This conclusion is reinforced by the nature of legislative rules themselves, which remain subject to legislative control at every stage.

Each chamber adopts its own rules pursuant to Article IV, § 7 and retains authority to amend or suspend those rules under procedures it has itself established. See Rules of the House of Delegates, Rule 81 (2024); Rules of the Senate of Virginia, Rules 49, 56 (2024). As a result, those rules are not fixed constitutional constraints but continuing expressions of legislative will. And a legislature cannot bind itself through ordinary rules or procedures—it can only do so through the constitutional amendment process. See 1 W. Blackstone, *Commentaries on the Laws of England* 90 (1765) ("Acts of parliament derogatory from the power of subsequent parliaments bind not."). Even where the General Assembly did not strictly adhere to a previously adopted procedural limitation, no constitutional defect would follow, because the legislature retains authority to revise or dispense with such rules in accordance with its own procedures. A rule that exists solely by virtue of legislative adoption—and remains subject to legislative revision—cannot be transformed into a constitutional command by judicial decree.

Virginia precedent likewise reflects the limited role of courts in reviewing non-constitutional procedural matters. Courts may not substitute their judgment for that of the legislature in matters committed

to legislative discretion, see *Bd. of Sup'rs of Fairfax Cnty. v. Allman*, 215 Va. 434, 445–46 (1975), and should not interfere with the amendment process while it remains ongoing, reserving review for compliance with constitutional requirements themselves, see *Scott v. James*, 114 Va. 297, 303 (1912).

Nor may internal procedural rules restrict the General Assembly's constitutional authority to propose amendments. Article XII grants that authority directly to the legislature (notably, it requires that the *second vote* occur after referral in "regular session," but not the first), and Virginia law emphasizes that compliance with constitutional amendment procedures turns on the Constitution itself—not on internal legislative arrangements left to each house's control. See *Coleman v. Pross*, 219 Va. 143, 154 (1978) (constitutional amendment procedures are mandatory and must be strictly followed). That limitation reflects a core separation-of-powers principle that the Constitution assigns distinct functions to each branch, and "no one branch may exercise the functions or powers of another except as specifically authorized." *Taylor v. Worrell Enters., Inc.*, 242 Va. 219, 221 (1991).

The circuit court's approach does exactly what these principles foreclose: it elevates internal procedural resolutions into constitutional conditions and uses them to nullify legislative action that otherwise satisfied Article XII. Because the Constitution imposes no such limitations, that reasoning cannot be sustained.

## III. Statutory notice provisions do not alter Article XII's requirements.

### A. Article XII itself supplies the rule of decision.

Article XII, not the Virginia Code, determines whether a proposed amendment has validly advanced through the constitutional process. The question here is not whether public officials complied with every statutory publication directive, but whether the requirements set out in Article XII were satisfied. Va. Const. art. XII, § 1; see also *Coleman*, 219 Va. at 154 (requiring strict compliance with Article XII's specified prerequisites).

That constitutional sequence matters here because the circuit court treated a statutory publication directive as if it were itself part of Article XII. But Article XII contains no publication requirement. It does not say that compliance with Code § 30-13, or any other statute for that matter, is one of those constitutional preconditions. See Va. Const. art. XII, § 1;

see also 2026 Op. Va. Att'y Gen. 3 (describing Article XII's requirements without incorporating statutory publication provisions as conditions of validity).

This is also not simply a dispute over implementation details. It is a dispute over which source of law controls. The Constitution derives its authority directly from the people of Virginia, and the ultimate power to amend it resides with them, not in the legislature. *Staples v. Gilmer*, 183 Va. 613, 620–21 (1945). The procedures set out in Article XII are therefore the means by which that sovereign authority is exercised and "must be followed" if a valid amendment is to result. *Id.*; see also *Coleman*, 219 Va. at 154.

That framework leaves no room for legislative supplementation. If the General Assembly could add to or alter the requirements set out in Article XII—and invalidate proposals for failing to satisfy those additional conditions—the constitutional procedure would no longer control. It would operate only at the sufferance of statute. A constitutional guarantee subject to legislative revision is no guarantee at all; it would be a "dead letter." *Black v. Trower*, 79 Va. 123, 125 (1884). And authority defined by higher law cannot be altered or relinquished

through statute or otherwise. See *Evans v. Smyth-Wythe Airport Comm'n*, 255 Va. 69, 72–73 (1998).

Complainants' theory would treat Code § 30-13 as though it supplied an additional constitutional step between first approval and second passage. The dispute therefore turns on a straightforward proposition: Article XII fully specifies the requirements for constitutional amendment, and a statute cannot be used to invalidate a proposed amendment that otherwise satisfies the Constitution.

### B. The circuit court erred in treating a statutory directive as a constitutional condition.

The circuit court held that Code § 30-13 prescribed steps that needed to occur before the second legislative vote and that the absence of those steps rendered the 2026 passage ineffective under Article XII. R. 600. That reasoning treated the statute not as background law, but as another constitutional condition on the amendment process.

That conclusion cannot be reconciled with the constitutional structure governing amendments in Virginia. Article XII defines the conditions under which the Constitution may be altered, and nothing in that framework permits additional requirements to be supplied by statute or judicial fiat. Section 30-13 does not appear in Article XII, is

not incorporated by Article XII, and cannot be elevated into a constitutional requirement that the Constitution itself omits. See Va. Const. art. XII, § 1; 2026 Op. Va. Att'y Gen. 3. Virginia courts have long rejected efforts to "superadd" statutory requirements where the Constitution itself defines the governing rule. *City of Richmond v. Lynch*, 106 Va. 324, 325–26 (1907); accord *Bray v. Brown*, 258 Va. 618, 622 (1999) (rejecting statutory disqualification not grounded in the Constitution).

The circuit court's contrary approach would permit ordinary legislation to alter the amendment process established by the Constitution. If a statute can invalidate a proposal that satisfies Article XII, then the Constitution no longer governs its own amendment. The process would instead depend on whatever additional statutory procedures the General Assembly or a court might impose. Virginia law does not permit that inversion. See *Black*, 79 Va. at 125; *Old Dominion Comm. for Fair Util. Rates v. State Corp. Comm'n*, 294 Va. 168, 177 (2017) (legislative power is plenary but "restricted only by the Constitution of Virginia").

Nor does the text of Code § 30-13 support what the circuit court did with it. The statute directed the Clerk of the House of Delegates to publish proposed amendments and directed circuit court clerks to post copies on courthouse doors and make copies available for inspection. It also required the Clerk of the House of Delegates to report to the next regular session what action had been taken and what printing and distribution costs had been incurred. That is administrative machinery—duties associated with implementing and facilitating the election process, not conditions on constitutional validity. Cf. *Scott*, 114 Va. at 305–06 (describing statutory duties such as sending and posting copies of proposed amendments as "preliminary to, and in aid of, the election").

*Woodard* underscores the point. In construing statutes that required the Clerk of the House of Delegates to prepare tables of circuit-court terms under Code § 30-13, this Court explained that those tables "are not themselves legislative enactments" but are "merely lists containing information, furnished by clerical personnel for the use and benefit of the public." *Woodard v. Commonwealth*, 214 Va. 495, 498 (1974) (citation omitted). That description is telling here. Section 30-13

has always been a statute about publication and information, not a source of substantive constitutional conditions.

The circuit court's own remedy underscores the problem with its reasoning. Although the court ultimately concluded that non-compliance with Code § 30-13 invalidated the amendment process, it also ordered the Tazewell County Clerk to post the amendment on the courthouse door ninety days before the next House election. That order makes sense only if Code § 30-13 governs ministerial publication duties imposed on local officials. But that cannot be squared with the court's separate conclusion that the same statute imposes a constitutional prerequisite whose violation nullifies the amendment process itself.

### C. Section 30-13 does not govern the constitutional validity of a proposed amendment.

The history and structure of Code § 30-13 show that it was never intended to determine the constitutional validity of a proposed amendment—and certainly not in 2026.

*First*, Code § 30-13 is a vestige of an earlier constitutional regime. The predecessor to current Article XII in the Constitution of 1902 required that, after first approval by the General Assembly, a proposed amendment "shall be published for three months previous to the time of

such election." Va. Const. § 196 (1902). The early version of Code § 30-13 was enacted in 1927 to implement that constitutional publication requirement.

But that constitutional requirement did not survive the adoption of the 1971 Constitution. During the revision process, the Commission on Constitutional Revision recommended retaining the three-month publication language, but the House of Delegates rejected that approach and instead adopted the 90-day delay before submission to the voters now found in Article XII. See Commission on Constitutional Revision, *Report of the Commission on Constitutional Revision* 75, 324–25, 450 (1969).

As Delegate D. French Slaughter explained during the 1969 debates, the House omitted the former publication requirement because the point was to ensure public awareness, and that purpose would be served by requiring "at least ninety days' time between the final action of the General Assembly and the submission of the proposal to the people." Del. D. French Slaughter, Jr., *Proceedings and Debates of the House of Delegates Pertaining to Amendment of the Constitution* 496 (1969) (reproduced at R. 2228).

Professor Howard—the principal architect of the 1971 Constitution—then drew the doctrinal consequence: "[s]ection 1 does not require publication of amendments, only a delay of ninety days," and because publication was omitted, "an amendment cannot be challenged on the ground that publication was insufficient." Howard, *Commentaries on the Constitution of Virginia* at 1175.

That history explains why the circuit court's reasoning cannot be correct. Although the Constitution once contained a publication requirement, it no longer does. Once that requirement was removed, it could not be resurrected through statute. A court cannot put that requirement back into Article XII by invoking an implementing statute that outlived the constitutional provision it was enacted to serve.

*Second*, the text and operation of Code § 30-13 show that it regulates official duties, not constitutional validity. The statute requires the Clerk of the House of Delegates to publish and distribute amendments, requires circuit court clerks to post them and certify the posting, and requires a report back to the General Assembly at its next regular session. These provisions govern how public officials carry out

assigned responsibilities; they do not condition the validity of a constitutional amendment.

Nothing in the statute says that failure to comply voids the proposal, nullifies legislative votes, or prevents submission to the voters. That distinction matters because Virginia law has long distinguished between statutory requirements that go to the "essence of the thing to be done," which are mandatory, and those that regulate only the manner or timing of official action. *Redd v. Supervisors of Henry Cnty.*, 72 Va. 695, 700–01 (1879). Modern doctrine reflects the same principle. Statutes directing the mode of proceeding by public officers are ordinarily treated as directory absent clear legislative intent to the contrary. See *Bland-Henderson v. Commonwealth*, 303 Va. 211, 220 (2024).

The same distinction has been applied in the election context. In *Gregory v. Hubard*, for example, this Court treated a statutory timing requirement as "only directory" and declined to let it invalidate the election at issue. 123 Va. 510, 512–13 (1918). Courts therefore do not treat timing or procedural directives as limiting authority absent clear consequences, *Huffman v. Kite*, 198 Va. 196, 199 (1956), and the General

Assembly knows how to impose such consequences when it intends to, *Nelms v. Vaughan*, 84 Va. 696, 699 (1888).

*Third*, Code § 30-13 has now been repealed. The 2026 legislation providing for submission of the amendment to the voters expressly repealed the statute. See 2026 Acts ch. 6. That repeal confirms what the constitutional history already shows. Code § 30-13 was never the source of a constitutional prerequisite. If the validity of a proposed amendment truly depended on Code § 30-13, the General Assembly could not remove that statute without amending Article XII itself.

The circuit court tried to avoid that problem by reasoning that Code § 30-13 had been amended several times after 1971 and therefore remained enforceable. But continued statutory amendment cannot supply constitutional force where the Constitution itself no longer contains the requirement. And crediting these statutory amendments while treating a dead-letter statute as operative reflects selective adherence. There is no reason to consider the repeal invalid if other amendments somehow elevate the statute to constitutional status.

The court's Code § 30-13 ruling ultimately rests on a category error. Article XII governs constitutional validity. Section 30-13 governed

publication by clerks. The 1902 Constitution required publication; the 1971 Constitution replaced that requirement with a ninety-day waiting period. Because Article XII no longer requires publication, a proposed amendment cannot be invalidated on the ground that publication was insufficient—the remedy for a violation of Code § 30-13 could only be directing publication, not invalidating the amendment. In any event, the statute has now been repealed. Against that backdrop, the circuit court's conclusion that non-compliance with Code § 30-13 could nullify the 2026 vote or prevent submission of the proposal to the voters is erroneous.

## CONCLUSION

For the foregoing reasons, the judgment of the circuit court should be reversed.

Respectfully submitted,

COMMONWEALTH OF VIRGINIA

By: /s/ *Tillman J. Breckenridge*
TILLMAN J. BRECKENRIDGE (#84657)
Solicitor General


JAY JONES
*Attorney General*

TRAVIS G. HILL
*Chief Deputy Attorney General*

JACQUELINE C. HEDBLOM
PEBBLES L. BURGESS (#74817)
*Senior Assistant Attorneys General*

TILLMAN J. BRECKENRIDGE (#84657)
*Solicitor General*

MIKAELA A. PHILLIPS (#97164)
TRISTON C. O'SAVIO (#100111)
*Assistant Solicitors General*

Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219
(804) 786-2071 – Telephone
(804) 786-1991 – Facsimile
SolicitorGeneral@oag.state.va.us

*Counsel for the Commonwealth*


March 23, 2026

## CERTIFICATE OF TRANSMISSION AND SERVICE

I certify that on March 23, 2026, this document was electronically filed with the Court via VACES. This brief complies with Rule 5:26 because it does not exceed 50 pages, excluding the cover page, table of contents, table of authorities, signature blocks, and certificate. A copy was transmitted by email to:

Richard F. Hawkins, III
The Hawkins Law Firm, PC
2222 Monument Avenue
Richmond, Virginia 23220
Tel: (804) 308-3040
Fax: (804) 308-3132
rhawkins@thehawkinslawfirmpc.com

Matthew A. Seligman*
Grayhawk Law
3015 Main Street, Suite 330
Santa Monica, California 90405
Tel: (310) 571-5993
matthew@grayhawklaw.com
**pro hac vice*

*Counsel for Appellants*

Michael A. Thomas
Gillespie, Hart, Pyott & Thomas, P.C.
179 Main Street
Tazewell, Virginia 24651
Tel: 276-988-5525
Fax: 276-988-6427
mthomas@ghartlaw.com

Thomas R. McCarthy
Conor D. Woodfin
Consovoy McCarthy PLC
1500 Wilson Blvd., Ste. 700
Arlington, Virginia 22209
Tel.: 703-243-9423
tom@consovoymccarthy.com
conor@consovoymccarthy.com

*Counsel for Appellees*

*/s/ Tillman J. Breckenridge*
TILLMAN J. BRECKENRIDGE (#84657)

# VIRGINIA:

***In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday, the 4th day of March, 2026.***

Present: All the Justices

STEVEN KOSKI, ET AL., APPELLANTS,

against Record No. 260169
Circuit Court No. CL26-266

REPUBLICAN NATIONAL COMMITTEE, ET AL., APPELLEES.

UPON A PETITION FOR REVIEW UNDER CODE § 8.01-626

This matter comes before the Court upon a petition for review under Code § 8.01-626. Among other things, the petitioners seek a stay of a temporary restraining order issued by the Circuit Court of Tazewell County that enjoins state election officials and Tazewell election officials from "administering, preparing for, taking any action to further the procedure of the referendum, or otherwise moving forward with causing an election to be held on the proposed constitutional amendment" until March 18, 2026, *see* Order at 5 (Feb. 19, 2026). For the following reasons, we grant the petition for review, stay the temporary restraining order ("TRO"), and rule on various other motions arising out of this case.

I.

Code § 8.01-626 applies only to a preliminary injunction, not a TRO. A TRO is an order of "brief duration" entered "for the limited purpose of preserving the status quo between the parties pending a hearing on a motion for a preliminary injunction." Rule 3:26(b). If a TRO carries "many of the hallmarks of a preliminary injunction," the TRO may be treated as "an appealable preliminary injunction" for purposes of an interlocutory appeal. *Department of Educ. v. California*, 604 U.S. 650, 651 (2025); *see also Sampson v. Murray*, 415 U.S. 61, 86-88 (1974).[1]

[1] *See generally* 13 James Wm. Moore et al., Moore's Federal Practice § 65.24 (3d ed. 2026); 16 Charles Alan Wright, Arthur R. Miller, & Edward H. Cooper, Federal Practice and Procedure § 3922.1, at 90 (2012).

Given the scope and impact of the circuit court's TRO in this case, we believe it has the characteristics of a preliminary injunction and thus falls within our appellate jurisdiction under Code § 8.01-626. The petitioners in this case have moved for an appellate stay of the TRO. "A stay does not affect the finality or validity of the judgment; only an order of reversal by an appellate court can do that. The stay merely suspends the plaintiff's right to execute on the judgment." W. Hamilton Bryson, Virginia Civil Procedure § 12.06, at 12-27 (5th ed. 2017). We agree that the TRO should be stayed until further order of this Court. In an ordinary case, we would limit our appellate review of the circuit court's de facto preliminary injunction to the factors outlined in Rule 3:26. But this is not an ordinary case.

II.

In a constitutional republic, "[i]t is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). That axiom of Chief Justice John Marshall remains as true today as it was two centuries ago. *See, e.g.*, *Vlaming v. West Point Sch. Bd.*, 302 Va. 504, 563 n.32 (2023); *Howell v. McAuliffe*, 292 Va. 320, 350 (2016). This axiom is a meta principle that governs not only what courts say the law is but also how it should be enforced. This may seem like a semantic nuance, but it is nothing of the kind. The power to declare the law and the power to enforce it are different foundational pillars in the architecture of judicial power.

For over a century, we have recognized the "well settled principle regulating the jurisdiction of courts of equity that such courts will not, with few exceptions, enjoin the holding of an election, or interfere, by its process of injunction, with the holding of an election." *Scott v. James*, 114 Va. 297, 304-05 (1912). This principle does not mean that judicial review of allegedly unlawful elections ceases to exist. It only means that, as a prudential matter, Virginia courts generally should not prematurely enjoin an upcoming election. As we explained in *Scott*:

> [T]he amending of the Constitution is the making of a permanent law for the people of the State by which they are to be governed in the future, and the courts cannot interfere to stop any of the proceedings while this permanent law is in process of being made. If the amendment is not adopted, of course, no question will ever come before the court. If, upon completion of the proceedings, the validity of the amendment is assailed on the ground that the several provisions of the Constitution have not been complied with, then the courts can pass upon the validity of the amendment.

*Id.* at 304.

In *Scott*, we relied heavily on Professor Pomeroy's celebrated treatise on equitable remedies. *See id.* at 307 (citing 5 John Norton Pomeroy, A Treatise on Equity Jurisprudence § 331-32, at 587-89 (3d ed. 1905)). The weight of historical authority, Pomeroy demonstrated, established that "an injunction will not issue to restrain the holding of an election although it is alleged that it is without authority of law, or that the act authorizing it or providing for apportionment is unconstitutional." 5 Pomeroy, *supra*, § 331, at 587-88 (footnote omitted). Furthermore, "the mere fact that the cost of the election will have to be borne by the state and indirectly by the taxpayers, is no ground for an injunction at the relation of a taxpayer, for the injury is too trifling." *Id.* at 588. We also relied upon Halbert Paine's commentary in *Scott*, and our holding tracked his reasoning:

> If the election, when held, was not according to statute, or if the statute was enacted without any constitutional authority, the courts might very well hold the election invalid. But that is quite another thing from enjoining the people from peaceably assembling and casting their votes for, or against, any proposition submitted to them under the color of law.

Halbert E. Paine, A Treatise on the Law of Elections to Public Offices 780-81 (1888).[2] These prudential concerns, *Scott* concluded, apply to requests for injunctive relief to "enjoin an election upon a proposition to change the fundamental law." *Scott*, 114 Va. at 307.[3]

---

[2] *Scott* relied on other respected legal scholars that joined fully in Pomeroy's restatement of the governing principles. *See* 2 James L. High, A Treatise on the Law of Injunctions § 1316, at 1333 (Shirley T. High ed., 4th ed. 1905) ("[I]t has been held that, the power of holding an election being a political power, equity has no jurisdiction to restrain officers entrusted by law with the duty of holding elections from the exercise of such power." (altering archaic spelling)); George W. McCrary, A Treatise on the American Law of Elections § 386, at 290-91 (4th ed. 1897) (recognizing that absent statutory authority, "a court of chancery has no power to enjoin the holding of an election"); 10 The American and English Encyclopedia of Law 817 (2d ed. 1899) ("The power to hold elections is a political one, and a court of equity has no jurisdiction to enjoin the proper officer from holding an election." (footnote omitted)).

[3] We leave for another day the precedential impact of *Coleman v. Pross*, 219 Va. 143 (1978). *Coleman* involved the Attorney General filing a mandamus petition pursuant to statutory authority when the Comptroller entertained doubts about the constitutionality of the submission of proposed constitutional amendments to the voters. The case now before us, however, does not involve a challenge by the executive branch pursuant to statutory authority. *Coleman* did not apply (or even cite) *Scott*'s discretionary separation-of-powers principles. Finding it unnecessary to expound upon hypothetical scenarios that may arise in future cases, we limit our application of *Scott* to the sui generis circumstances of the present case.

It cannot be overstated that *Scott* focused only on the timing of the exercise of judicial injunctive remedies — not on a court's constitutional power of judicial review. To be sure, *Scott* emphasized that "[t]he judiciary department has the power, and it is its duty, to pass upon the validity of a constitutional enactment when put in force, as well as upon the validity of an act of the legislature regularly passed and put in effect." *Id.* at 304; *see also* Stephen R. McCullough, Virginia Constitutional Law § 9.03[9][c], at 267 (2025 ed.). If the electorate rejects the proposed amendment, any pending legal proceedings will be dismissed as moot. *See Scott*, 114 Va. at 304. If the electorate approves the proposed amendment, we then must exercise our constitutional duty to review lower courts' declaratory judgments[4] before us on appeal and address de novo what equitable remedies, if any, are appropriate. With these principles in view, we grant the motion to stay the de facto preliminary injunction issued by the circuit court in this case that enjoins or interferes with the holding of an election.

III.

*Scott* counsels that we stay the circuit court's de facto preliminary injunction. Our appellate stay, however, implies no rejection of the circuit court's declaratory judgments in *Scott v. McDougle*, Record No. 260127, which are still pending review in our Court, nor of the legal challenges asserted by complainants in the present case that have yet to be ruled upon by the lower court. It would be a perilous mistake to infer from our application of *Scott* that these holdings and claims fail any aspect of the "likelihood of success" criterion in Rule 3:26(d)(i). In the absence of *Scott*, the de facto preliminary injunction may have survived our review solely under Rule 3:26(d).

---

[4] *See* Code § 8.01-184. "The Declaratory Judgment Act created an intermediate tier of judicial power between the open-gate response to fully accrued claims and the closed-gate response to anything less than that." *Ames Ctr., L.C. v. Soho Arlington, LLC*, 301 Va. 246, 253 (2022); *see also* Kent Sinclair, Sinclair on Virginia Remedies § 4-1[A], at 4-2 (5th ed. 2016). "When rendered, declaratory judgments are '*binding* adjudications of right.'" Sinclair, *supra*, § 4-1[A], at 4-4 (emphasis in original) (citation omitted). Declaratory judgments can be enforced through both prohibitory and mandatory injunctions. *See id.* § 4-4[B], at 4-19. A court, however, "has the duty to decide the appropriateness and the merits of the declaratory request irrespective of its conclusion as to the propriety of the issuance of the injunction." *Zwickler v. Koota*, 389 U.S. 241, 254 (1967). For these reasons, *Scott*'s limitation on enjoining the holding of an election does not foreclose a court's duty to issue a declaratory judgment regarding the validity of that election.

In the first case appealed to this Court, *Scott v. McDougle*, the circuit court entered declaratory judgments on several legal challenges to the proposed constitutional amendment, and those judgments are currently pending review in this Court. In those declaratory judgments, the circuit court held:

- The General Assembly violated its own rules by improperly expanding the scope and purpose of the 2024 Special Session to consider and pass the proposed constitutional amendment, and thus, the first passage of the proposed constitutional amendments is void ab initio.
- Even if the General Assembly's first passage of the proposed constitutional amendment on October 31, 2025, were valid, no "next general election of members of the House of Delegates," *see* Va. Const. art. XII, § 1, occurred after that first passage because the election began on the first day of early voting on September 19, 2025.
- Even if the General Assembly's first passage of the proposed constitutional amendment were valid and even if "election" is defined narrowly as only Election Day and not the entire period of voting, the General Assembly failed to comply with the statutory notice requirement, *see* Code § 30-13 (requiring the Clerk of the House of Delegates to provide copies of the proposed constitutional amendment to every circuit court clerk to post at the front door of the courthouse at least three months prior to the "next ensuing general election of members of the House of Delegates").

In the present case, different plaintiffs again assert the second challenge above as a declaratory judgment claim, and their complaint pleads several additional declaratory judgment claims that were not raised or ruled upon in the first case:

- The ballot language passed by the General Assembly to be submitted to the voters regarding the proposed constitutional amendment is misleading and violates the Submission Clause of Article XII, Section 1 of the Constitution of Virginia because it submits a different question on the referendum ballot than the language of the constitutional amendment passed by the General Assembly.
- Article XII, Section 1 of the Constitution of Virginia requires the proposed constitutional amendment to be submitted to the voters "not sooner than ninety days after final passage by the General Assembly." Assuming that the second passage of the proposed constitutional amendment on January 16, 2026, was valid, the 90-day requirement before submission to the voters

has been violated because early voting is scheduled to begin on March 6, and 90 days after January 16 would not occur until April 16.

- HB 1384 violates the Form of Laws Clause of Article IV, Section 12 of the Constitution of Virginia, which prohibits the General Assembly from passing laws that "embrace more than one object, which shall be expressed in its title." HB 1384 addresses multiple objects by (i) providing for appropriations of public revenues, (ii) establishing the ballot question and procedures for submitting the proposed constitutional amendment to the voters, (iii) repealing Code § 30-13, and (iv) transferring venue to the Richmond Circuit Court for civil actions challenging the proposed constitutional amendment. Only the first three of these objects are referenced in the title of the bill.

The circuit court's declaratory judgment holdings in *Scott v. McDougle* and the new claims asserted in the present case involve weighty assertions of invalidity against the process employed by the General Assembly in an effort to submit a proposed constitutional amendment to the citizens of the Commonwealth. These issues are of grave concern to the Court. But consistent with *Scott*, we offer no opinion on the ultimate resolution. It is the process, not the outcome, of this effort that we may ultimately have to address. Issuing an injunction to keep Virginians from the polls is not the proper way to make this decision.

IV.

In sum, we stay the de facto preliminary injunction entered by the circuit court in this case.[5] The circuit court on remand shall promptly bring the case to closure and enter final judgment.

This order shall be certified to the Circuit Court of Tazewell County.

A Copy,

Teste:

Clerk

[5] There are several other outstanding motions that have been filed in this case. We grant the Motion to Intervene filed by Don Scott, Louise Lucas, and Scott Surovell. The Motion for Administrative Stay and Vacatur, the Motion to Consolidate *Scott* and *Koski*, and any other requested relief in the Petition for Review are denied at this time pending the entry of a final declaratory judgment by the circuit court in *Koski*.

**VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday, the 13th day of February, 2026.*

DON SCOTT, IN HIS OFFICIAL CAPACITY AS SPEAKER OF THE VIRGINIA HOUSE OF DELEGATES, ET AL., APPELLANTS,

against Record No. 260127
Court of Appeals No. 0190-26-3

RYAN T. McDOUGLE, VIRGINIA STATE SENATOR AND LEGISLATIVE COMMISSIONER FOR THE VIRGINIA REDISTRICTING COMMISSION, ET AL., APPELLEES.

AND

G. PAUL NARDO, IN HIS OFFICIAL CAPACITY AS CLERK OF THE VIRGINIA HOUSE OF DELEGATES, ET AL., APPELLANTS,

against Court of Appeals No. 0189-26-3

RYAN T. McDOUGLE, VIRGINIA STATE SENATOR AND LEGISLATIVE COMMISSIONER FOR THE VIRGINIA REDISTRICTING COMMISSION, ET AL., APPELLEES.

FROM THE COURT OF APPEALS OF VIRGINIA

Before the Court is the Motion of the Court of Appeals of Virginia that this Court certify the above-captioned cases for review in this Court pursuant to Code § 17.1-409, including certain ancillary matters and motions. Having reviewed the motion of the Court of Appeals and considered the appellate filings made by the parties to date, the Court orders as follows:

1. It appearing to the Court that these matters have not been determined by the Court of Appeals of Virginia and that the case is of such imperative public importance as to justify the deviation from normal appellate practice and to require a prompt decision in this Court, the

motion of the Court of Appeals of Virginia that we certify these cases for review pursuant to Code § 17.1-409 is hereby granted. Accordingly, appellate jurisdiction over these cases is transferred to this "Court for all purposes[,]" Code § 17.1-409, and all further appellate proceedings in these matters shall be had in this Court unless and until further order of this Court provides otherwise.[1]

2. This order constitutes certification pursuant to Rule 5:23 that an appeal has been awarded. Because no assignments of error or petitions for appeal have been filed, the parties may assign any purported errors in the judgment below in their initial briefing in this Court.

3. The Clerk of the Circuit Court of the County of Tazewell is hereby ordered to provide the certified record of the proceedings held in this matter in that court to the Clerk of this Court on or before February 20, 2026. With the exception of the deadline, the circuit court clerk shall provide the record in accordance with the specifications of Rules 5:13 and Rule 5:13A.

4. The motion of the Attorney General of Virginia to intervene in this matter is hereby granted.

5. The parties designated by the Court of Appeals as appellants in this matter and the Attorney General of Virginia are directed to file their respective Opening Briefs, if any, on or before March 23, 2026. With the exception of the filing deadline, said briefs shall comply in all other respects with the requirements of Rule 5:26 and Rule 5:27.

6. Any person wishing to intervene on the side of the parties designated by the Court of Appeals as appellants in this matter shall move to intervene on or before March 16, 2026. Any

[1] Although there was only one proceeding in the circuit court, the Court of Appeals of Virginia assigned separate case numbers to the filings of the various parties. Going forward, all filings shall be made in *Scott, et al., v. McDougle, et al.*, Record No. 260127.

brief on behalf of any such intervenor shall be filed on or before March 23, 2026. With the exception of the filing deadline, said briefs shall comply in all other respects with the requirements of Rule 5:26 and Rule 5:27.

7. Any person wishing to file a brief amicus curiae in support of the parties designated by the Court of Appeals as appellants in this matter shall move for leave to file such a brief on or before March 16, 2026. Any such brief amicus curiae shall be filed on or before March 23, 2026. With the exception of the filing deadline, said briefs shall comply in all other respects with the requirements of Rule 5:26 and Rule 5:30.

8. The parties designated by the Court of Appeals as appellees in this matter are directed to file their respective Briefs of the Appellees, if any, on or before April 13, 2026. With the exception of the filing deadline, said briefs shall comply in all other respects with the requirements of Rule 5:26 and Rule 5:28.

9. Any person wishing to intervene on the side of the parties designated by the Court of Appeals as appellees in this matter shall move to intervene on or before April 6, 2026. Any brief on behalf of any such intervenor shall be filed on or before April 13, 2026. With the exception of the filing deadline, said briefs shall comply in all other respects with the requirements of Rule 5:26 and Rule 5:28.

10. Any person wishing to file a brief amicus curiae in support of the parties designated by the Court of Appeals as appellees in this matter shall move for leave to file such a brief on or before April 6, 2026. Any such brief amicus curiae shall be filed on or before April 13, 2026. With the exception of the filing deadline, said briefs shall comply in all other respects with the requirements of Rule 5:26 and Rule 5:30.

11. The parties designated by the Court of Appeals as appellants in this matter and the Attorney General of Virginia are directed to file Reply Briefs, if any, on or before April 23, 2026. With the exception of the filing deadline, said briefs shall comply in all other respects with the requirements of Rule 5:26 and Rule 5:29.

12. Pursuant to Rule 5:32(c), the Court hereby dispenses with the requirements regarding an appendix and the matter will proceed on the original record. Briefs shall cite to the certified record produced by the circuit court.

13. Oral argument, if any, will be scheduled at a date and time selected by the Court.

14. The motions for stay previously filed in the Court of Appeals of Virginia are hereby denied. Given the limited scope of the injunctive relief issued in the circuit court's order, s*ee* Order at 6 (Jan. 27, 2026) ("The Court hereby GRANTS a TEMPORARY and PERMANENT INJUNCTION, requiring the Clerk of the Circuit Court of Tazewell County to post the proposed Constitutional Amendment at least ninety (90) days BEFORE the next ensuing election of the members of the House of Delegates election"), the denial of the motions to stay has no effect on the referendum scheduled for April 21, 2026, and nothing in this order shall prevent the parties from raising the underlying arguments and issues as this matter goes forward.

A Copy,

Teste:

Clerk

# IN THE SUPREME COURT OF VIRGINIA

## Record No. _____

G. Paul Nardo, in his official capacity as
Clerk of the Virginia House of Delegates, et al., Appellants,

against Court of Appeals Record No. 0189-26-3
Circuit Court No. CL25-1582-00

Ryan T. McDougle, Virginia State Senator and
Legislative Commissioner for the
Virginia Redistricting Commission, et al., Appellees.

Don Scott, in his official capacity as
Speaker of the Virginia House of Delegates, et al., Appellants,

against Court of Appeals Record No. 0190-26-3
Circuit Court No. CL25-1582-00

Ryan T. McDougle, Virginia State Senator and
Legislative Commissioner for the
Virginia Redistricting Commission, et al., Appellees.

**MOTION FOR CERTIFICATION UNDER CODE § 17.1-409**

The Court of Appeals of Virginia moves the Supreme Court of Virginia to certify these cases for review under Code § 17.1-409(B)(1). Appellants challenge an order of the Tazewell County Circuit Court that, among other things, declared void ab initio "any and all matters, motions, actions and votes" in the General Assembly regarding House Joint Resolution 6007 during the 2024 Special Session I. House Joint Resolution 6007 proposed an amendment to the Constitution of Virginia that would allow the General Assembly, under certain circumstances, "to modify one or more congressional districts, outside of the standard decennial redistricting cycle." 2024 Va. Acts Spec. Sess. I ch. 5 (H.J. 6007); *see also* House Joint Res. 4 (Jan. 16, 2026) (approving same amendment). The circuit court's order also acknowledged that the General Assembly "has attempted or is attempting to repeal [Code] Section 30-13" but declared that "any

attempt to repeal" the statute "which does not comply with" Article IV, Section 13 of the Constitution of Virginia "is NULL and VOID." *See* H.B. 1384 (2026). In addition to repealing Code § 30-13, House Bill 1384 would appropriate $5,000,000 to fund an April 21, 2026 special election on whether to adopt the proposed constitutional amendment. House Bill 1384 was approved by the House on January 26 and approved by the Senate on January 29, 2026. *See* https://lis.virginia.gov/bill-details/20261/HB1384.

The Court of Appeals submits that these appeals present questions "of such imperative public importance as to justify the deviation from normal appellate practice and to require prompt decision in the Supreme Court." Code § 17.1-409(B)(1). Accordingly, the Court of Appeals respectfully requests that the Supreme Court certify the appeals for review.

Attached to this motion are the filings in the Court of Appeals and correspondence issued in these cases.

Judges Chaney and Bernhard respectfully note they do not support the filing of this motion at this time. Prior to considering certification of the case to the Supreme Court of Virginia, Judges Chaney and Bernhard believe this Court should first adjudicate the appellants' Emergency Motion to Stay the circuit court's judgment, filed in this Court January 28, 2026, taking into account among other issues whether the trial court was divested of subject-matter jurisdiction pending the electorate's vote on the proposed amendment, and whether the trial court's action contravened the constitutional principle of separation of powers.

WHEREFORE, the Court of Appeals of Virginia respectfully requests

by 
A. John Vollino, Clerk of Court

**CERTIFICATE OF SERVICE**

The Court of Appeals certifies that on Wednesday, February 4, 2026, it emailed a copy of this motion to counsel of record, as follows:

1) John E. Lichtenstein
Gregory L. Lyons
Jacob B. Lichtenstein
Lichtenstein Law Group PLC
347 Highland Avenue, SW (24016)
P.O. Box 601
Roanoke, Virginia 24004-0601
Tel: (540)343-9711
john.lichtenstein@lichtensteinlawgroup.com
greg.lyons@lichtensteinlawgroup.com
jake.lichtenstein@lichtensteinlawgroup.com

2) Aria C. Branch
Richard A. Medina
Derek A. Zeigler
Elias Law Group LLP
250 Massachusetts Ave NW, Suite 400
Washington, DC 20001
Tel: (202)968-4490
abranch@elias.law
rmedina@elias.law
dzeigler@elias.law

3) Michael A. Thomas
Gillespie, Hart, Pyott & Thomas, P.C.
179 Main Street
Tazewell, Virginia 24651
Tel: (276)988-5525
mthomas @ghartlaw.com

4) Thomas R. McCarthy
Conor Woodfin
Consovoy McCarthy PLLC
1600 Wilson Boulevard, Suite 700
Arlington, Virginia 22209
Tel: (703)243-9423
tom@consovoymccarthy.com
conor@consovoymccarthy.com

Additionally, a courtesy copy of this motion is being provided to:

Tillman Breckenridge
Solicitor General
Office of the Attorney General
202 North 9th Street
Richmond, VA 23219
tbreckenridge@oag.state.va.us

Respectfully submitted, 

# NOTICE OF APPEAL FROM TRIAL COURT

VA CODE § 17.1-407, Rule 5A:6

VIRGINIA: IN THE CIRCUIT COURT OF Tazewell County
COUNTY/CITY

Ryan T. McDougle, Virginia State Senator and Legislative Commissioner for the Virginia Redistricting Commission, et al., v. G. Paul Nardo, in his official capacity as Clerk of the Virginia House of Delegates, et al.

Don Scott, in his official capacity as Speaker of the Virginia House of Delegates, Intervenor-Defendant

NAME(S) OF PARTY(IES) — PLAINTIFF, RESPONDENT OR OTHER DESIGNATION IN TRIAL COURT

hereby appeals to the Court of Appeals of Virginia from the Final Judgment and/or Order Granting Preliminary Injunction

FINAL JUDGMENT / APPEALABLE ORDER OR DECREE

of this court entered on 1/27/2026 in case no(s) CL25-1582-00

DATE

Please check if:

[ ] This is a termination of parental rights case (Va. Code §16.1-283, §16.1-277.01, §16.1-277.02 or §16.1-278.3).

A transcript [X] will [ ] will not be filed.

A statement of facts, testimony, and other incidents of the case [ ] will [X] will not be filed.

[ ] [In criminal cases only:] Appellant requests the clerk of the circuit court to cause a transcript to be prepared of the following circuit court proceedings:

## CERTIFICATE

The undersigned certifies as follows:

(1) The name(s) and address(es) of appellant(s) are:

Intervenor-Defendant Don Scott, in his official capacity as Speaker of the Virginia House of Delegates
General Assembly Building, 201 North 9th Street, Room 1403
Richmond, Virginia 23219

[ ] Appellant(s) is (are) not represented by counsel. The telephone number(s), facsimile number (if any) and e-mail address (if any) of appellant(s) are:

(2) The name(s), Virginia State Bar number(s), address(es), telephone number(s), facsimile number (if any), and e-mail address (if any) of counsel for appellant(s) is (are):

Aria C. Branch (VSB No. 83682); abranch@elias.law; T: (202) 968-4490; F: (202) 312-5904
Elias Law Group LLP
250 Massachusetts Ave. NW, Suite 400 Washington, DC 20001

(3) The name(s) and address(es) of appellee(s) is (are):

Ryan T. McDougle,
General Assembly Building, 201 North 9th Street, Room 1406, Richmond, Virginia 23219;
(remaining appellees listed in Exhibit A)

[ ] Appellee(s) is (are) not represented by counsel. The telephone number(s), facsimile number (if any), and e-mail address (if any) of appellee(s) (are):

(4) The name(s), Virginia State Bar number(s), address(es), telephone number(s), facsimile number (if any), and e-mail address (if any) of counsel for appellee(s) is (are):

Michael A. Thomas (VSB 93807), mthomas@ghartlaw.com, T: 276-988-5525, F: 276-988-6427
Gillespie, Hart, Pyott & Thomas, P.C. 179 Main Street Tazewell, Virginia 24651;
(remaining counsel listed in Exhibit B)

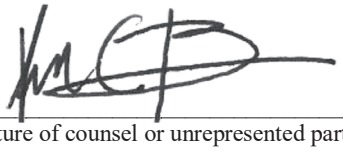
(5) The name(s), address(es) and telephone number(s) of the guardian(s) *ad litem* for the child(ren) is (are):

(6) [X] [ In civil cases only:] Counsel for appellant, or appellant if not represented by counsel, has ordered from the court reporter who reported the case the transcript for filing as required by Rule 5A:8(a).

(7) [In criminal and termination of parental rights cases:] Counsel for appellant has been [ ] appointed [ ] privately retained.

(8) A copy of this Notice of Appeal has been mailed, e-mailed or delivered to all opposing counsel, and/or to unrepresented parties, to the guardian *ad litem*, if applicable, and to the Clerk of the Court of Appeals.

1/28/2026
Date


(Signature of counsel or unrepresented party)

**NOTICE TO APPELLANT:** The notice of appeal must be filed with the clerk of the trial court and a copy must be transmitted to the Clerk of the Court of Appeals of Virginia and, except as otherwise provided by law, must be accompanied by the $50.00 filing fee required by Va. Code § 17.1-418. The fee is due at the time the Notice of Appeal is presented. The Clerk of the Court of Appeals of Virginia will file any notice of appeal that is not accompanied by such fee, but if the fee, or evidence that the appellant is entitled to be exempt from the payment of the fee, is not received by the clerk within 10 days, the notice of appeal will be dismissed.

# Exhibit A

**Ryan T. McDougle, Virginia State Senator and Legislative Commissioner for the Virginia Redistricting Commission**
General Assembly Building
201 North 9th Street, Rm. 1406
Richmond, VA 23219

**William M. Stanley Jr., Virginia State Senator and Legislative Commissioner for the Virginia Redistricting Commission**
General Assembly Building
201 North 9th Street, Rm. 514
Richmond, VA 23219

**Terry Kilgore, Delegate to the Virginia House of Delegates**
General Assembly Building
201 North 9th Street, Rm. 1401
Richmond, VA 23219

**Virginia Trost-Thornton, Citizen Commissioner of the Virginia Redistricting Commission**
1201 Meadow Wood Drive
Forest, Virginia 24551

**Camilla Simon**
8807 Watlington Rd.
Richmond, VA 23229

**Faythe Silvera**
960 Rosedale Drive
Rockingham, VA 22801

# Exhibit B

Michael A. Thomas (VSB No. 93807)
mthomas@ghartlaw.com
T: (276) 988-5525
F: (276) 988-6427
Gillespie, Hart, Pyott & Thomas, P.C.
179 Main Street
Tazewell, VA 24651

Thomas R. McCarthy (VSB No. 47154)
tom@consovoymccarthy.com
T: (703) 342-9423
F: N/A
Consovoy McCarthy PLLC
1600 Wilson Blvd., Ste. 700
Arlington, VA 22209
conor@consovoymccarthy.com

Conor D. Woodfin (VSB No. 98937)
conor@consovoymccarthy.com
T: (703) 342-9423
F: N/A
Consovoy McCarthy PLLC
1600 Wilson Blvd., Ste. 700
Arlington, VA 22209