VIRGINIA: IN THE CIRCUIT COURT OF TAZEWELL COUNTY

RYAN T. MCDOUGLE, et al., Plaintiffs, v. G. PAUL NARDO, et al., Defendants.	Civil Action No. CL25-1582 Hon. Jack. S. Hurley

PROPOSED INTERVENOR-DEFENDANTS' PROPOSED MOTION TO DISMISS & DEMURRER TO PLAINTIFFS' VERIFIED COMPLAINT

Proposed Intervenor-Defendants, by counsel, respectfully submit this Proposed Motion to Dismiss and Demurrer to Plaintiffs' Verified Complaint for declaratory judgment and permanent injunction. The Court should sustain this Demurrer and dismiss Plaintiffs' Complaint for three independent reasons: First, the Court lacks jurisdiction to hear the matter under binding Supreme Court of Virginia precedent applying the principle of separation of powers. Second, this case is nonjusticiable because Plaintiffs lack standing. And third, Plaintiffs have failed to state a claim for relief because their legal arguments cannot be squared with the plain text and history of the Constitution of Virginia

BACKGROUND

On October 23, 2025, Speaker of the Virginia House of Delegates Don Scott informed members of the House that he was continuing a special legislative session, which was called by the Governor in 2024 but never adjourned *sine die*. Compl. ¶ 29. On October 27, Speaker Scott introduced, and the House passed, House Joint Resolution (HJR) 6006, which placed legislative items on the agenda for the special session, including a "joint resolution proposing an amendment

to the Constitution of Virginia related to reapportionment or redistricting."[1] This is the second time that the 2024 special session was continued to address legislative priorities. Earlier this year, the General Assembly met in a continuation of the 2024 special session and passed a similar joint resolution expanding the scope of items to be addressed.[2] Fifty-nine members of the House and every member of the Senate—including Plaintiffs Senator Ryan T. McDougle and Senator William M. Stanley, Jr.—voted for that joint resolution.[3]

Before any legislation had even been introduced in the continued special session, Senators McDougle and Stanley, joined by Delegate Terry Kilgore and Virginia Trost-Thornton, a Citizen Commissioner of the Virginia Redistricting Commission, filed this case seeking to short-circuit the legislative process. They allege that the same procedure that two of them voted for just months ago is a "Violation of the Virginia Governor's Power to Convene a Special Session" and seek a declaration that (1) HJR 6006 violates the Virginia Constitution and (2) that any amendments to the Virginia Constitution that are initiated under HJR 6006 are null and void. Compl. at 17 ¶¶ A, B. They also seek a permanent injunction prohibiting the Legislative Clerk Defendants from "attesting to, transmitting, or receiving any proposed constitutional amendment initiated under HJR 6006." *Id*. at 18 ¶ F. In other words, Plaintiffs ask this Court to put a halt to the entire legislative process, preventing the transmission of a potential legislatively referred constitutional amendment to the clerks of the circuit courts, as required by law. *See* Va. Code § 30-13. On October

[1] House Joint Resolution No. 6006, 2024 Special Session I (amending HJR Nos. 6001 & 6004), https://lis.virginia.gov/bill-details/20242/HJ6006.

[2] Patrick Larsen, *General Assembly Gavels Out-Maybe Not For Long*, VPM (Feb. 22, 2025), https://www.vpm.org/news/2025-02-22/virginia-general-assembly-sine-die-2025-legislation-budget.

[3] House Joint Resolution No. 6004, 2024 Special Session I (amending HJR No. 6001), https://lis.virginia.gov/bill-details/20242/HJ6004.

29, 2025, following a hearing, this Court denied the Plaintiffs' request for a temporary restraining order. Plaintiffs subsequently withdrew their request for a preliminary injunction.

Also on October 29, the House of Delegates passed HJR 6007 by a vote of 50-42, proposing a constitutional amendment related to the Commonwealth's congressional redistricting in light of developments around the country. The Senate likewise approved the proposed amendment on October 31 by a 21-16 vote.[4]

On October 31, 2025, another set of plaintiffs filed an action in the Circuit Court for the City of Richmond seeking effectively the same relief on identical grounds. *See* Compl., *Jett v. Nardo*, No. CL25005352 (Va. Cir. Ct. Oct. 31, 2025). After a hearing on November 3, 2025, the Richmond Circuit Court denied injunctive relief in an oral order, principally based on binding authority holding that the separation of powers bars courts from interfering in the ongoing legislative process. On November 5, 2025, a written order denying plaintiffs' injunctive relief was entered. The plaintiffs in that case have since filed a motion to nonsuit, which the Richmond Circuit Court granted on November 17, 2025.

For the reasons discussed below, Plaintiffs' Verified Complaint should be dismissed. In particular, (i) Plaintiffs' requested relief would violate the separation of powers and is nonjusticiable; (ii) Plaintiffs do not articulate a concrete and particularized injury and consequently lack standing; and (iii) Plaintiffs' claims are foreclosed by the plain text and history of the Constitution of Virginia.

[4] House Joint Resolution No. 6007, 2024 Special Session I, https://lis.virginia.gov/bill-details/20242/HJ6007.

LEGAL STANDARD

Under Va. Code Ann. § 8.01-276, a party may move at any point to dismiss a complaint for lack of subject matter jurisdiction. "The phrase 'subject matter jurisdiction' means the power of a court to adjudicate a specified class of cases." *Commonwealth ex rel. Beales v. JOCO Found.*, 263 Va. 151, 160 (2002). "[S]ubject matter jurisdiction 'can only be acquired by virtue of the Constitution or of some statute.'" *Verizon Va. LLC v. State Corp. Comm'n*, 302 Va. 467, 473 (2023) (quoting *Pure Presbyterian Church of Wash. v. Grace of God Presbyterian Church*, 296 Va. 42, 49 (2018)). "Once a Court determines that it lacks subject matter jurisdiction, 'the only function remaining to the court is that of announcing the fact and dismissing the cause.'" *Pure Presbyterian Church of Wash.*, 296 Va. at 50 (quoting *Ex parte McCardle*, 74 U.S. 506, 514 (1868)).

On a demurrer, the Court considers the legal sufficiency of the facts alleged in a complaint. Va. Code § 8.01-273; *Hubbard v. Dresser, Inc.*, 271 Va. 117, 119 (2006). While a demurrer "accepts as true all facts properly pled, as well as reasonable inferences from those facts," *Steward ex rel. Steward v. Holland Fam. Props., LLC*, 284 Va. 282, 286 (2012), it does not "admit the correctness of the pleader's conclusions of law." *Yuzefovsky v. St. John's Wood Apartments*, 261 Va. 97, 102 (2001). A demurrer shall be granted if the plaintiff's pleading fails to state a cause of action or fails to state facts upon which relief can be granted. Va. Code § 8.01-273; *Hubbard*, 271 Va. at 122 (holding that demurrer must be granted when a pleading fails to provide "sufficient definiteness to enable the court to find the existence of a legal basis for its judgment").

ARGUMENT

I. The Court lacks jurisdiction to adjudicate Plaintiffs' claims.

The Court should decline to consider the Complaint at the threshold because it lacks jurisdiction to adjudicate Plaintiffs' claims at all: First, because the claims are nonjusticiable under

binding Supreme Court of Virginia precedent applying the separation of powers, and second, because Plaintiffs have failed to show that they have standing to pursue these claims to begin with.

A. Plaintiffs' claims are not justiciable under the separation of powers.

Plaintiffs request that the Court declare unconstitutional the entirety of a legislative session and any legislation that resulted therefrom. Compl. at 17 ¶¶ A, B. And they seek to permanently enjoin the Legislative Clerks from "attesting to, transmitting, or receiving" any such legislation. *Id.* at 18 ¶ F. Both requests ask this Court to adjudicate nonjusticiable questions in violation of the constitutional separation of powers.

In *Scott v. James*, a case addressing materially identical circumstances over a century ago, the Supreme Court of Virginia held that the very relief requested by Plaintiffs here—enjoining officials from performing statutory duties to effectuate a constitutional amendment—would "manifestly be an unwarranted interference by the courts with the constitutional processes of the legislative department," and was therefore nonjusticiable. 114 Va. 297, 304 (1912). In that case, a "citizen and taxpayer" sought to enjoin the Secretary of the Commonwealth from transmitting to circuit court clerks a proposed constitutional amendment passed by the General Assembly. *Id.* at 299. Like Plaintiffs here, Scott alleged that the General Assembly passed the amendment through an unconstitutional procedure. *Id.* at 298, 302. The Supreme Court of Virginia denied relief, explaining that no "court of equity, nor any tribunal of the judiciary department of government, is authorized to interfere with *the process of legislation*." *Id.* at 304 (emphasis added). This includes the constitutional amendment process: "[A]mending of the Constitution is the making of a permanent law for the people of the state . . . and the courts *cannot* interfere to stop *any* of the proceedings while this permanent law is in the *process of being made.*" *Id.* (emphases added).[5]

[5] The Constitution of Virginia provides that the whole of the "legislative power of the Commonwealth shall be vested in a General Assembly." Va. Const. art. IV, § 1. The "legislative

Plaintiffs seek precisely the same relief here that the Supreme Court of Virginia found beyond the judiciary's power in *Scott*—and more. The only difference is that, today, the duty of transmitting a proposed amendment to the county clerks for publication falls, by statute, on the Clerk of the House instead of the Secretary of the Commonwealth. *Compare* Va. Code § 30-13 ("[T]he 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 . . . and shall certify such posting to the Clerk of the House of Delegates."), *with Scott*, 114 Va. at 301 ("The Secretary of the Commonwealth shall cause to be sent to the clerks of each county . . . copies of this [proposed constitutional amendment] . . . and it shall be the duty of said clerks to deliver the same to the sheriff for distribution, whose duty it shall be forthwith to post the said copies at some public place in each election district."). Here, as was true of the Secretary in *Scott*, the General Assembly has chosen the House clerk and circuit court clerks as part of the "manner" in which it will submit any proposed constitutional amendment to the people. *See* Va. Code § 30-13. To permanently enjoin those actions would

power" is the power to "enact laws or to declare what the law shall be," which stands in contrast to the "judicial power," the power to "declare what law *is* or *has been*." *Wise v. Bigger*, 79 Va. 269, 274 (1884) (emphasis in original) (quoting *Wolfe v. McCaul*, 76 Va. 876, 880 (1882); *see* Va. Const. art. VI, § 1. The legislative power includes all the duties of elected representatives as well as officers—including clerks—of the General Assembly, such as transmitting, printing, reading, and recording bills. *See* Va. Const. art. IV, § 11 (stating that "[n]o bill shall become a law unless, prior to its passage," it has been (a) "reported," (b) "printed," (c) "read," and (d) the votes on it have been "recorded in the journal"). The legislative power and process also includes "the duty of the General Assembly to submit such proposed . . . amendments to the voters qualified to vote in elections by the people, in such manner as it shall prescribe." *Id.* art. XII, § 1.

intrude upon the legislative process by thwarting the General Assembly from carrying out its constitutionally prescribed role. That relief is squarely foreclosed by *Scott*.

The same is true of Plaintiffs' request to enjoin the House and Senate clerks from transmitting any proposed constitutional amendment between the chambers. Indeed, that would be an even greater intrusion into the legislative process: the Legislative Clerks are officers of the respective houses of the General Assembly, and transmitting legislation between the chambers is plainly a core legislative function. *E.g.*, *Marshall v. Warner*, No. CH04-504-3, 2004 WL 963528, at *3 (Va. Cir. Ct. Apr. 29, 2004) (refusing to enjoin the Lieutenant Governor, as President of the Senate, and the Speaker of the House of Delegates from signing passed bills in their respective chambers and the House clerk from transmitting those bills to the Governor for his signature because doing so would require the court to "mandate to the General Assembly how it should go about the drafting, introduction, debate and voting on a [bill]" and, consequently, impermissibly "intervene in the business of the legislature" (citing *Scott*, 114 Va. at 304)); *Jett*, No. CL25005352, Order at *2 (holding that plaintiffs' desired injunctive relief was nonjusticiable because ruling on the matter "invites the Court to prematurely invade the province of the legislature" during a process that the Constitution "le[aves] exclusively to the sound judgment of the legislature"). Additionally, on October 31, 2025, the Virginia Senate voted to adopt the proposed constitutional amendment. Jahd Khalil, *Virginia Senate Votes to Propose Redistricting Amendment*, VPM (Oct. 31, 2025), https://www.vpm.org/generalassembly/2025-10-31/ga-hj6007-gerrymandering-senate-favola-stanley-vanvalkenburg-obenshain. Thus, to the extent Plaintiffs seek to enjoin the clerk of the House from transmitting the proposed amendment for action by the Senate, that request is moot. *See Bd. of Supervisors of Fairfax Cnty v. Ratcliff*, 298 Va. 622, 622 (2020) (noting that an action

is moot when "the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome" (citation omitted)).

Finally, issuing a declaratory judgment as to the legality of a constitutional amendment that has not yet been finally approved would be no less an intrusion upon the legislative process. *See McEachin v. Bolling*, No. CL11-5456, 2011 WL 10909615, at *3 (Va. Cir. Ct. Dec. 16, 2011) (refusing to issue a declaratory judgment because the court "cannot intervene in the normal operating procedures of the Senate" and, if it did so, it would have been "intervening at a stage much earlier in the legislative process than was the case in either *Scott* or *Marshall*"). Courts may not "interfere to stop *any of the proceedings* while this permanent law is *in the process of being made*." *Scott*, 114 Va. at 304 (emphases added). That includes all steps necessary to submit the proposed constitutional amendment to the voters and enact the amendment. A declaratory judgment here would be just such an interference.

Plaintiffs fail to acknowledge this binding law and mistakenly rely on several nonbinding cases holding that "a court may order a clerk to *comply* with the law in performing his ministerial duties." Compl. ¶ 74 (collecting cases) (emphasis added). Each of those cases was an action to compel a clerk to perform a ministerial duty—not an action to *prohibit* the clerk from carrying out functions necessary to the operation of the legislature. For instance, in *Wolfe v. McCaull*, the House clerk refused to comply with his statutory duty of submitting for publication a bill passed by the General Assembly. The Supreme Court of Virginia issued a writ of mandamus commanding the clerk to submit the bill. *Wolfe v. McCaull*, 76 Va. 876, 879, 891 (1882).[6] The relief sought here, in

[6] Plaintiffs cite *Wise*, 79 Va. 269, for the same proposition. Compl. ¶ 74. While *Wise* presented a similar question as *Wolfe*, the Court did "not deem it necessary to decide" the question, and, instead, ruled on other grounds to deny the writ of mandamus against the House clerk to strike from the rolls a published act. *Wise*, 79 Va. at 278, 282. *Wise* is inapposite.

contrast, would grind the legislative process to a halt, just as in *Scott*. That is precisely the sort of "manifestly . . . unwarranted" intervention in the legislative process that the Supreme Court of Virginia has forbidden. *Scott*, 114 Va. at 304.

B. Plaintiffs lack standing.

Plaintiffs' request for declaratory and injunctive relief is also nonjusticiable because they lack standing. "A plaintiff has standing to institute a declaratory judgment proceeding if it has a 'justiciable interest' in the subject matter of the proceeding, either in its own right or in a representative capacity. In order to have a 'justiciable interest' in a proceeding, the plaintiff must demonstrate an actual controversy between the plaintiff and the defendant." *Lafferty v. Sch. Bd. of Fairfax Cnty.*, 293 Va. 354, 360, (2017) (quoting *W.S. Carnes, Inc. v. Bd. of Supervisors*, 252 Va. 377, 383, (1996)); *see Morgan v. Bd. of Supervisors of Hanover Cnty.*, 302 Va. 46, 58 (2023) ("Standing to sue is part of the common understanding of what it takes to make a justiciable case."). The standing requirement "ensure[s] that the person who asserts a position has a substantial legal right to do so and that his rights will be affected by the disposition of the case." *Cupp v. Bd. of Supervisors of Fairfax Cnty.*, 227 Va. 580, 589 (1984). This requires a complainant to "allege facts demonstrating a particularized harm to some personal or property right, legal or equitable, or imposition of a burden or obligation upon the petitioner different from that suffered by the public generally." *Friends of the Rappahannock v. Caroline Cnty. Bd. of Supervisors*, 286 Va. 38, 48 (2013) (citation modified); *see also Howell v. McAuliffe*, 292 Va. 320, 330 (2016) ("It is incumbent on petitioners to allege facts sufficient to demonstrate standing.").

Plaintiffs do not even attempt to allege an injury to a right that is personal to them. They never identify a "legal interest that has been harmed by another's actions." *Howell*, 292 Va. at 330 (citation modified). Instead, they purportedly seek to protect the *Governor's* power to convene a special session. Compl., Count I. But the Governor is not a plaintiff here, and Plaintiffs—individual

legislators and a citizen member of the redistricting commission—do not explain how the General Assembly's alleged usurpation of that gubernatorial power injures them specifically. Their claim is "but a wholesale, broadside assault" on the General Assembly's chosen procedures, "bereft of a single real complaint of injury, or threatened injury." *City of Fairfax v. Shanklin*, 205 Va. 227, 230 (1964). And to the extent they purport to advance a general public interest in the constitutionality of the legislature's actions, that does not suffice to establish standing: "[I]t is not sufficient that the sole interest of the petitioner is to advance some perceived public right or to redress some anticipated public injury when the only wrong he has suffered is in common with other persons similarly situated." *Historic Alexandria Found. v. City of Alexandria*, 299 Va. 694, 698 (2021). Because Plaintiffs have failed to identify, much less demonstrate, "a direct interest, pecuniary or otherwise, in the outcome of the controversy that is separate and distinct from the interest of the public at large," *Howell*, 292 Va. at 330, they lack standing to sue and this case is not justiciable. *See also Marshall*, 2004 WL 963528, at *2 (holding that legislators lacked standing to challenge the constitutionality of legislation pending before the General Assembly).

II. The Complaint fails to state a claim.

Plaintiffs' claims fail on the merits because HJR 6006 is a constitutional exercise of the legislative power. First, HJR 6006 did not call a *new* special session, but rather continued the existing special session that was never adjourned. And second, although the Governor originally convened the present special session in 2024 to complete Virginia's budget, Virginia's Constitution, unlike those of other states, does not limit the General Assembly's power to take up any business it deems appropriate at a special session. Compl. ¶ 29.

A. The 2024 Special Session was never adjourned.

HJR 6006 did not declare a new special session, but rather continued the previous special session convened in 2024 and revised its agenda. A special session ends only when it is formally

adjourned *sine die* or when the legislature for which it was called expires. *See* Va. Const. art. IV, § 6. The legislature never finally adjourned the current special session. The legislature originally sat for the special session in May 2024, with one of its purposes being to address budgetary issues as requested by the Governor. It then recessed that special session without final adjournment. As that special session never adjourned, the General Assembly exercised its legislative power to continue the same special session earlier this year and address other (nonbudgetary) matters. *See id.*; Larsen, *supra* note 2; *see also* 1981–82 Va. Op. Atty. Gen. 188, 1982 WL 175652. Indeed, Plaintiffs, Senators McDougle and Stanley, who challenge this same legislative procedure today as blatantly unconstitutional, voted in favor of continuing the same special session in April 2025 to address other (nonbudgetary) issues. *See supra* note 3. After addressing these additional issues, the legislature again recessed the special session without adjourning until it continued the session once more in late October to consider a proposed constitutional amendment on redistricting. *See supra* note 1.

Nothing in the Constitution limits the duration of a special session once called by the Governor (or the legislature by a two-thirds vote). Although the Constitution authorizes the Governor to *convene* special legislative sessions, he has no power to adjourn, or otherwise limit the duration of, those sessions—just as he has no constitutional authority to set the legislative agenda at those sessions. *See infra* Section II.B; Va. Const. art. IV, § 6. The decision when or whether to adjourn a special session, like the legislative agenda of the special session itself, falls within the core of the legislative power vested in the General Assembly. *See* Va. Const. art. IV, §§ 1, 6. When the Constitution *does* set durational limits on a legislative session, it does so expressly: "no regular session of the General Assembly convened in an even-numbered year shall continue *longer than sixty days*; no regular session of the General Assembly convened in an odd-

numbered year shall continue *longer than thirty days*" with limited exceptions. *Id.* § 6 (emphases added). There is no similar limitation on the duration of a special session. "[W]hen the General Assembly includes specific language in one section of a statute, but omits that language from another section of the statute, we must presume that the exclusion of the language was intentional." *Fines v. Rappahannock Area Cmty. Servs. Bd.*, 301 Va. 305, 317 (2022) (quoting *Halifax Corp. v. First Union Nat'l Bank*, 262 Va. 91, 100 (2001)).

Historical practice further supports the view that the General Assembly may continue a special session that has not yet been adjourned, even after an intervening regular session. As described *supra*, the legislature earlier this year sat for a second portion of the special session originally convened in 2024. In another example, the Governor convened two special sessions of the General Assembly in 2018. As part of those sessions, the General Assembly noted that the special sessions did not "constitutionally expire[]" until January 8, 2020, which coincided with "the expiration of the terms of the members of the 2018-2019 Sessions of the House of Delegates." *See* Journal of the Senate of Virginia, 2018 Special Session I (Monday, June 11, 2018); Journal of the Senate of Virginia, 2018 Special Session II (Thursday, Aug. 30, 2018). Following those 2018 special session meetings and their expiration at the start of 2020 was, of course, a regular session in 2019.

B. The General Assembly has the power to set the agenda for a special session.

In Virginia, the power to set the agenda for a legislative session—including a special session—lies with the General Assembly, not the Governor. The Constitution provides that the whole of the "legislative power of the Commonwealth shall be vested in a General Assembly." Va. Const. art. IV, § 1. The "authority of the General Assembly *shall extend to all subjects* of legislation not" otherwise forbidden by the Constitution in Article IV, § 14, or other specific provisions. *See*

id. art. IV, § 14 (emphasis added). The power to set the agenda for a special session is a core part of this legislative power.[7]

The Virginia Constitution grants the Governor the power to "convene the General Assembly on application of two-thirds of the members elected to each house thereof, or when, in his opinion, the interest of the Commonwealth may require." *Id.* art. V, § 5; *see also id.* art. IV, § 6. To "convene" means to "to cause to assemble," or "to come together in a body." *Convene*, Merriam-Webster Dictionary (last updated Nov. 16, 2025), https://www.merriam-webster.com/dictionary/convene. That is the extent of the Governor's role. As then-Attorney General John Marshall Coleman explained in a 1982 official opinion: "[t]he 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 the subject matter specified in the Governor's proclamation which convenes the special session." 1981–82 Va. Op. Atty. Gen. 188, 1982 WL 175652.

Plaintiffs contend that within Article IV, § 6 and Article V, § 5 lies an unwritten executive power to restrict what legislation the General Assembly may consider while sitting in a special session. Their argument flows not from the constitutional text but from a significant misreading of

[7] For example, in May 2024 the General Assembly adopted a resolution to include election of judges and confirmation of gubernatorial appointments among the topics to be addressed at the special session, in addition to the budget. House Joint Resolution No. 6001, 2024 Special Session I, https://lis.virginia.gov/bill-details/20242/HJ6001. Senator McDougle, Senator Stanley, and Delegate Kilgore—along with all but one member of the General Assembly—voted for that resolution. *Id.* And earlier this year, a majority of the General Assembly—including Senators McDougle and Stanley—voted for another resolution adding the selection of judges to several state courts, including the Supreme Court of Virginia, to the agenda for the special session. *See supra* note 3; Minute Book, 2024 Special Session I (Apr. 2, 2025), https://lis.virginia.gov/session-details/20242/minutes/3437. To credit Plaintiffs' argument would be to declare invalid all of these legislative actions.

Virginia's constitutional history. Plaintiffs claim that the new Constitution of Virginia ratified in 1971 radically and "exclusively" expanded the Executive's powers to "convene a special session of the General Assembly." Compl. ¶¶ 62, 64 (citing Va. Const. art. IV, § 6; *id.* art. V, § 5). They state, incorrectly, that this "specific power to convene a 'special session' was a new feature of the 1971 Constitution." *Id.* ¶ 62 (*comparing* Va. Const. art. IV, § 6; *id.* art. V, § 5, *with* Va. Const. art. V, § 73 (1902)). And they claim that this change left the General Assembly without any constitutional power to expand the scope of matters to be considered at an existing special session. *Id.* ¶ 64. That, too, is incorrect.

To start, Plaintiffs' initial premise that special sessions are an invention of the 1971 Constitution is wrong. Virginia's 1902 Constitution also granted the Governor the power to convene a special session—and it similarly lacked any textual limitation on the General Assembly's legislative power to set its own agenda. Va. Const. art. V, § 73 (1902) ("The Governor shall . . . convene the General Assembly on application of two-thirds of the members of both houses thereof, or, when in his opinion, the interest of the State may require."). The language of the 1902 Constitution carried over to Article V, § 5 of the 1971 Constitution, which defines the executive power. *See* Va. Const. art. V, § 5 (1971). The drafters of the 1971 Constitution *also* added similar language to Article IV of the 1971 Constitution, which defines the *legislative power*. *Id.* art. IV, § 1; *id.* art. IV § 6 ("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."). In Plaintiffs' view, the addition of this companion provision greatly expanded the Governor's role in legislative affairs by introducing to Virginia for the first time the concept of the "special session." Compl. ¶¶ 62–65.

Virginia's constitutional history squarely refutes Plaintiffs' understanding of Article IV, § 6. The Virginia Commission on Constitutional Revision drafted, assessed, and commented on the proposed constitutional amendments enacted in 1971 via a report to the General Assembly, Governor, and people of Virginia. *See* Rep. of Comm'n on Const. Revision, H.D. No. 1 (Jan. 1, 1969) [hereinafter Const. Comm'n Rep.]; *see also* A.E. Dick Howard, *Commentaries on the Constitution of Virginia* 1171 (1974) (discussing the same). The Commission explicitly noted that the proposed "special session" language in Article IV "effects *no change in substance*" from the 1902 Constitution, that the change was "merely one of organization," and that it "simply duplicates a provision *already found* in the Executive article (present section 73)." Const. Comm'n Rep. at 132, 139 (emphases added). The new language appeared in Article IV merely for "completeness": "The provision belongs in the Executive article, as that article is, among other things, a catalogue of the Governor's powers; it belongs as well in proposed section 6 of the Legislative article, since this section deals with the convening of legislative sessions and ought to list all of the ways in which the General Assembly can be convened." *Id.* at 139–40. In other words, the addition of the words "special session" to Article IV, § 6 effected no change at all to the balance of powers between the Governor and the General Assembly.[8]

Plaintiffs nonetheless argue that, by inserting the term "special session" into Article VI, § 6, the drafters of the 1971 Constitution intended to grant the Governor a new and expansive power to limit the subject matter of a special session that he convenes. Compl. ¶ 67. They cite no Virginia authority for this proposition. Instead, they rely on a collection of cases from courts in

[8] As to Article V, § 5, the Commission similarly commented that there was "no change in substance" between the 1971 provision and its counterpart in Section 73 of the 1902 Constitution of Virginia that granted the Governor the power to convene a special session. Const. Comm'n Rep. at 164.

Nebraska, Arizona, Pennsylvania, Tennessee, Alabama, Georgia, Ohio, and Colorado that demonstrate those states' constitutions granted their governors greater power over special legislative sessions. *Id.* ¶¶ 67–68 (collecting cases). Based on these out-of-state precedents, Plaintiffs contend that the drafters and ratifiers of the 1971 Constitution would have understood that a "special" session is one whose agenda the Governor controls. *Id.* ¶ 67. But these authorities support the reverse proposition: that the framers of the 1971 Constitution *purposely omitted* this expansion of gubernatorial power from its provisions on legislative sessions.

Unlike Virginia's Constitution, the constitutions of Nebraska, Arizona, Pennsylvania, Tennessee, Alabama, Georgia, Ohio, and Colorado *expressly granted* to the Governor the power to set and limit the "purpose" of a special session and the items that the legislature may consider at such a session.[9] The lack of such an express limitation on the legislative power in Virginia's

[9] *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 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

1971 Constitution is further proof that the omission was intentional—especially since, as Plaintiffs allege, it was "long understood" that other states had such limitations. *Id.*

In additional contrast, other provisions of the Constitution of Virginia *do* set limits on what the General Assembly can take up at certain types of legislative sessions. For example, the Constitution provides that the legislature may reconvene "after adjournment of each regular or special session for the purpose of considering bills which may have been returned by the Governor with recommendations for their amendment . . . *No other business shall be considered at a reconvened session*. Such reconvened session *shall not continue longer than three days* unless the session be extended, for a period not exceeding seven additional days." Va. Const. art. IV, § 6. (emphases added). The omission of similar language from the Constitution's provisions on special sessions was intentional. *Fines*, 301 Va. at 317.

CONCLUSION

For the foregoing reasons, Proposed Intervenor-Defendants respectfully request that the Court sustain the demurrer and dismiss Plaintiffs' verified complaint.

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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)).

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Respectfully submitted,

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**Pro Hac Vice* Motion forthcoming

CERTIFICATE OF SERVICE

I hereby certify that this document, as well as all supporting documents filed herewith, will be served on all parties, consistent with Rule 1:12 of the Rules of the Supreme Court of Virginia.

Dated: November 18, 2025

Aria. C. Branch