**VIRGINIA:**

**IN THE CIRCUIT COURT OF TAZEWELL COUNTY**

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| RYAN T. MCDOUGLE, Virginia State Senator and Legislative Commissioner for the Virginia Redistricting Commission, WILLIAM M. STANLEY JR., Virginia State Senator and Legislative Commissioner for the Virginia Redistricting Commission, TERRY KILGORE, Delegate to the Virginia House of Delegates, VIRGINIA TROST-THORNTON, Citizen Commissioner of the Virginia Redistricting Commission; CAMILLA SIMON, and FAYTHE SILVEIRA<br><br>Plaintiffs,<br><br>v.<br><br>G. PAUL NARDO, in his official capacity as Clerk of the Virginia House of Delegates, SUSAN CLARKE SCHAAR, in her official capacity as 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 Clerk of Court of the Tazewell Circuit Court<br><br>Defendants. | ) | Civil Action No.: CL25-1582 |



**PLAINTIFFS' OPPOSITION TO DEFENDANT LEGISLATIVE CLERKS' OBJECTION TO VENUE AND MOTION TO TRANSFER VENUE**

## INTRODUCTION

On November 5, 2025, Defendants G. Paul Nardo, Susan Clarke Schaar, and Tara Perkison—the Legislative Clerks—objected to venue in Tazewell County. They request that the Court transfer venue to the City of Richmond. Their venue objections are baseless, relying on outdated cases and now-repealed statutes. The Court should deny the transfer motion, which is nothing more than an attempt to delay proceedings in this time-sensitive case.

Venue in Tazewell is appropriate—and preferred—because Plaintiffs are suing a Tazewell-based official, the Tazewell court clerk, in her official capacity. That alone makes Tazewell a proper and preferred venue. Tazewell is also a preferred venue because Plaintiffs seek an injunction against conduct that will take place in Tazewell. Plaintiffs' request for a declaratory judgment does not detract from their request for injunctive relief. And the Legislative Clerks cite no authority that a declaratory judgment—which is just a milder alternative to an injunction—renders venue inappropriate where the conduct will be enjoined.



The Legislative Clerks are also wrong to seek a transfer to Richmond because there is no good cause for a transfer. This case involves pure questions of law that can be decided without discovery. Richmond would not be a more convenient location for Richmond-based witnesses, as no such witnesses are likely to be part of the case. And controlling authority makes clear that the convenience of Richmond lawyers has no bearing on whether to transfer venue.

### I. Venue is proper in Tazewell County.

Tazewell is a preferred venue for two independent reasons. First, Tazewell is a preferred venue under Subsection 2 of the venue statute, Code §8.01-261, because

Plaintiffs are suing a Tazewell official in her official capacity. Second, Tazewell is a preferred venue under Subsection 15 of the venue statute because Plaintiffs seek to enjoin an action that is set to take place in Tazewell. Each subsection independently makes Tazewell a preferred venue.

**A. Venue is proper because the Tazewell court clerk is a defendant.**

"[W]here the action is against one or more officers of the Commonwealth in an official capacity, the county or city where any such person has his official office" is "designated" as the "place[] of preferred venue." Code §8.01-261(2). Here, Plaintiffs sue Charity D. Hurst, the Tazewell court clerk, in her official capacity. Am. Compl. ¶¶26-27. So venue is proper in Tazewell, where "the office of the official being sued" is located. *See Brammer v. State Highway Com'r of Va.*, 2 Va. Cir. 18 (1980) (applying Code §8.01-261(2)).

Hurst's presence as an official-capacity defendant makes venue proper in Tazewell. Am. Compl. ¶29. That's true even "if more than one preferred place of venue applies," because "any such place shall be a proper forum." Code §8.01-261. So Tazewell is the preferred venue under Subsection 2, independent of any other basis for venue in Tazewell or elsewhere.



**B. Venue is proper because Plaintiffs seek to enjoin conduct in Tazewell.**

Venue in Tazewell is appropriate for another independent reason. "In proceedings to award an injunction" against "any" act, "venue shall be in the circuit court of the county or city in which the act is to be done, or being done, or is apprehended to be done." Code §8.01-261(15)(c). Plaintiffs seek an injunction to prevent Defendant Hurst—the Tazewell court clerk—from posting the proposed amendment or making it available for inspection at the Tazewell courthouse. Am. Compl. ¶98; Prayer for Relief A. In the alternative,

Plaintiffs request that this Court issue an injunction ordering Hurst to post the amendment and make it available for inspection at least three months before the next election. Am. Compl. ¶105; Prayer for Relief B. That Tazewell is the location of the enjoined conduct is an additional reason why Tazewell is a proper and "preferred venue" for this lawsuit. *See generally* Code §8.01-261.

The Legislative Clerks counter that venue is not appropriate in Tazewell. Obj. to Venue at 1-2. Relying on a 150-year-old case applying a 175-year-old statute, the Legislative Clerks argue that only a "pure bill of injunction" satisfies venue under Subsection 15. Obj. to Venue at 2 (*quoting Winston v. Midlothian Coal Min. Co.*, 61 Va. 686, 690 (1871)). And the Legislative Clerks claim that Plaintiffs don't seek a pure bill of injunction because they request declaratory relief in addition to the injunction. *See* Am. Compl. Prayer for Relief A-B. Those arguments fail for three independent reasons: Subsection 15 doesn't apply only to "pure" injunction cases; even if it did, declaratory relief doesn't detract from an injunction; and even if the Legislative Clerks were right on the law, the injunctive relief requested in the Amended Complaint predominates over the declaratory relief.



***First***, Subsection 15 doesn't apply only to "pure" injunction cases. The text alone rebuts that argument. Subsection 15 supplies proper venue "[i]n proceedings to award an injunction." Code §8.01-261(15). It does not set venue rules in proceedings to award "only" an injunction, or in proceedings to award a "pure" injunction. The Court should reject the Legislative Clerks' invitation to add those words to the statute. Regardless of what other relief Plaintiffs seek, this case is at a minimum a proceeding "to award an injunction." *Id.* So venue is "preferred" in Tazewell, where the injunction would lie. *Id.*

The primary precedent the Legislative Clerks cite for their "pure injunction" argument is *Winston*, decided well over 150 years ago. *Winston* concerned a different statute with different rules, which is reason enough not to apply it here. More fundamentally, the Legislative Clerks' reliance on *Winston* confuses jurisdiction for venue. In *Winston*, the Supreme Court confronted a statute providing, "Jurisdiction of a bill for an injunction to any judgment, act or proceeding, shall be in a circuit, county or corporation court of a county or corporation in which … the act or proceeding is to be done." Code of Va. (1849), ch. 179, §4. That jurisdictional statute from 1849—even if it were still on the books—is critically different from the "preferred venue" statute at issue here. Code §8.01-261. "Subject matter jurisdiction gives a court the power to hear and adjudicate a case. Venue, on the other hand, determines only the place where the trial will be held." *Jones v. Commonwealth*, 42 Va. App. 142, 146 (2004) (citation omitted). The Legislative Clerks have confused these two distinct concepts. But the Court should not—and cannot.



Even aside from this fundamental distinction, the 1849 jurisdictional statute employed much different language from the current venue statute. While the 1849 act concerned "[j]urisdiction," the statute here concerns "venue." And while the 1849 act was mandatory ("shall be"), the venue statute is "preferred." Section 8.01-261 even acknowledges that "more than one preferred place of venue" could apply. The Proposed Intervenors try to buttress their argument with subsequent cases, but the circuit court in *Argos Utilities Corp. v. Perrin* overlooked those crucial differences, claiming with no analysis that "[t]he language of the statute construed by the *Winston* court is essentially the same as that contained in current Code §8.01-261(15)." 83 Va. Cir. 344 (2011). The venue statute's neighboring section, 8.01-258, puts to rest any doubt that jurisdiction is different

from venue: "The provisions of this chapter relate to venue—the place of trial—and are not jurisdictional."

*Winston* concerned mandatory jurisdiction, not preferred venue. In that case, the Richmond Circuit Court "dissolve[d]" an injunction it had previously granted and "dismiss[ed] the bill and petitions, on the ground that the court had no jurisdiction of the suit." *Winston*, 61 Va. at 690. The circuit court reasoned that because the injunction "restrain[ed] the sale of real estate in another county," jurisdiction was mandatory in that county. *Id.* at 686, 690. The statute, after all, provided that "[j]urisdiction" over injunctions "shall be" in the circuit court of the county where the injunction would lie. Code of Va. (1849), ch. 179, §4. The Supreme Court reversed, holding that the true action was one to set aside the deed of trust for the property and resolve the title. *Winston*, 61 Va. at 690-91. Moreover, §6 of the same 1849 statute provided that "[e]very judge of a circuit court shall have a general jurisdiction in awarding injunctions, whether … the party, against whose proceeding the injunction be asked, reside in or out of the same." Code of Va. (1849), ch. 179, §6. So jurisdiction in the Richmond Circuit Court was appropriate, and the court erred in dissolving the injunction and dismissing the case. *Winston*, 61 Va. at 690-91.



In short, the venue objection doesn't challenge this Court's *jurisdiction*, as was the case in *Winston*. That case would be analogous if Plaintiffs had filed this case in Richmond, and the Richmond Circuit Court *dismissed* the case (not merely transferred it) on the grounds that the injunction would lie in Tazewell, where it had no jurisdiction. Dismissal on those grounds would be error, since venue objections "are not jurisdictional." Code §8.01-258. But that's far removed from the facts here, which is yet another reason *Winston* doesn't apply.

The cases applying *Winston* underscore the difference between jurisdiction and venue. In *Poole v. Poole*, the plaintiff filed a custody dispute in the "Corporation Court of the City of Charlottesville." 210 Va. 442, 442 (1970). The Corporation Court ruled for the plaintiff, but the Supreme Court held that "[t]he juvenile and domestic relations court had original exclusive jurisdiction of the question of custody." *Id.* at 445. The court thus vacated the "decree awarding custody" because "[t]he corporation court had no inherent power to grant custody of the infant child to the plaintiff." *Id.* Another case, *McClaugherty v. McClaugherty*, likewise addressed whether "the circuit court was without jurisdiction" to try a custody dispute and whether "the Juvenile and Domestic Relations Court … had original and exclusive jurisdiction." 180 Va. 51, 55 (1942). These cases concerned transferring a case from a court of general jurisdiction (the circuit court) to a court of limited jurisdiction (the juvenile and domestic relations court). But the Legislative Clerks aren't asking to transfer this case to a different type of court. They're asking to transfer this case to a different *county*. So *Winston* doesn't apply.



***Second***, even if *Winston* applied, no authority supports the idea that a request for declaratory relief renders injunction-based venue improper. Even in cases where other relief precluded venue based on the injunction, Plaintiffs sought legal relief or a change in legal status—not a declaratory judgment. The Roanoke Circuit Court held, for example, that injunction-based venue was improper where a plaintiff sought "substantial compensatory and punitive damages." *Argos Utils.*, 83 Va. Cir. at *4. Other courts have held that the request for an injunction did not suffice for venue where the complaint also requested "actual and compensatory damages in the amount of $150,000.00, [and] punitive damages in the amount of $350,000.00." *MeadWestvaco Corp. v. Bates*, 91 Va. Cir. 509,

at *7 (2013). In the seminal Supreme Court cases, the plaintiff sought a change in custody over a child, *Poole*, 210 Va. at 445, or a change in title to land, *Winston*, 61 Va. at 690. In other words, a request for a transfer of money or a change in legal status made the request for an injunction a secondary concern. The plaintiffs were not seeking a mere declaration of rights.

This case could not be more different. In requesting declaratory relief, Plaintiffs seek merely an "adjudication[] of right, whether or not consequential relief is, or at the time could be, claimed." Code §8.01-184. They do not seek damages, nor do they seek a transfer of custody or legal title. Rather, the declaratory relief that Plaintiffs seek is "a milder alternative to the injunction remedy." *Steffel v. Thompson*, 415 U.S. 452, 467 (1974). To hold that a request for declaratory relief precludes injunction-based venue would be an illogical departure from existing precedent.

Plaintiffs' request for declaratory relief complements their request for an injunctive remedy—it does not contradict it. That is because a declaratory judgment is "simply an injunction without sanctions." Owen M. Fiss, *The Civil Rights Injunction* 107 n.39 (1978). That's especially clear in Virginia, where the declaratory judgment emerged as an equitable remedy. Seth M. Land, *The History and Scope of the Virginia Declaratory Judgments Act*, 42 U. RICH. L. REV. 197, 198 (2007). And it has long been Virginia law that declaratory relief can "supplement rather than supersede" ordinary requests for injunctive relief. *Winborne v. Doyle*, 59 S.E.2d 90, 93 (Va. 1950).

***Third***, even if the Legislative Clerks were right on the law, the injunctive relief in the Amended Complaint predominates over the declaratory relief. In the jurisdictional cases that the Legislative Clerks rely on, injunction-based jurisdiction was inappropriate

only when "[t]he prayer for the injunction [i]s merely ancillary to the relief sought." *Poole*, 171 S.E.2d at 687. In the original case establishing that principle, "[t]he prayer for the injunction was merely ancillary to the other and principal relief prayed for." *Winston*, 61 Va. at 690; *see also id.* at 691 ("[T]hough the bill in this case prays an injunction, it also prays other relief, to which the prayer for an injunction is ancillary."). In other words, the mere request for other forms of relief does not foreclose jurisdiction based on the requested injunction.

Here, Plaintiffs seek two forms of relief: an injunction and a declaratory judgment. *See* Am. Compl. Prayer for Relief A-B. Of these two forms of relief, the request for an injunction is primary—and the request for declaratory relief decidedly secondary. Under the Supreme Court's teaching, the "ultimate relief sought" determines which form of relief is principal and which is ancillary. *Poole*, 171 S.E.2d at 687. And what Plaintiffs seek is to prevent the enforcement of an unconstitutional amendment—or the use of unconstitutional procedures to effectuate that amendment. Am. Compl. ¶¶92-100 ("Count 1 – Injunction against enforcing proposed amendment"), 101-10 ("Count 2 – Injunction requiring notice of the proposed amendment before the next general election"). The declaratory judgment is a means to the end that Plaintiffs seek in their request for injunctive relief. *See* Am. Compl. Prayer for Relief.



Throwing in a "prayer for other relief beyond the injunction" does not prevent jurisdiction based on the request for an injunction. *Winston*, 61 Va. at 690. That point was so obvious the Supreme Court thought it "hardly necessary to add." *Id.* Including a request for declaratory judgment thus does not detract from Plaintiffs' primary goal of enjoining the passage of an unconstitutional amendment. Indeed, the request for an injunction would

be insufficient for venue only if it had been tossed in as an afterthought. *See Argos*, 83 Va. Cir. 344, at *4 ("[T]he prayer for a[n] … injunction, contained in a single sentence at the end of the amended complaint, is at best secondary and subordinate."). But here, Plaintiffs have put their requests for injunctive relief front and center. *See* Am. Compl. Counts 1-2.

When a plaintiff seeks both injunctive and declaratory relief, there is no reason to view the former as subordinate to the latter. And even if it were possible for injunctive relief to play second fiddle to declaratory relief, the injunctive relief has clear primacy here. So Tazewell, where Plaintiffs seek to enjoin unlawful conduct, is the preferred venue.

## II. There is no good cause to transfer venue to Richmond.

To transfer this case from one preferred venue to another, Plaintiffs must establish "good cause" for the transfer. Code §8.01-265. "Good cause shall be deemed to include, but not to be limited to, the agreement of the parties or the avoidance of substantial inconvenience to the parties or the witnesses, or complying with the law of any other state or the United States." *Id.* The "good cause" requirement is defined narrowly. It does not include "the convenience of [the parties'] attorneys." *City of Danville v. Va. State Water Control Bd.*, 446 S.E.2d 466, 469 (Va. App. 1994). So a trial court abused its discretion when it transferred a case to Richmond for the sake of the attorneys. *See id.* at 468.

This case presents purely legal issues. There is no need for witness testimony. So the parties and the witnesses are unlikely to appear in court. Because this case can be "decided on the record"—the papers submitted by the parties—"[t]he issue of inconvenience to witnesses is not applicable." *Id.* at 469. And the "inconvenience" to Richmond lawyers of traveling "to argue motions and the merits of the case is not adequate good cause to transfer the case." *Id.* Because no good cause exists to transfer this case to Richmond, any such transfer would be an abuse of this Court's discretion.

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In the end, the Legislative Clerks' objections to venue are baseless. Their motion to transfer venue should be seen for what it is—an attempt to delay the resolution of the merits of this case. The Court should deny the motion and not allow the Legislative Clerks to derail this important and time-sensitive case.

**CONCLUSION**

For these reasons, the Court should overrule the venue objections and deny the motion to transfer.

Respectfully submitted December 8, 2025,

By: */s/ Michael A. Thomas*

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## CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that a copy of the foregoing was this 8th day of December 2025 was served on all defendants and proposed intervenors.

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