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' BRIEF IN REPLY TO PLAINTIFFS' OPPOSITION TO PROPOSED INTERVENORS' MOTION TO INTERVENE

Proposed Intervenors respectfully submit this Reply Brief in support of their Motion to Intervene (the "Motion") and in opposition to Plaintiffs' response thereto (the "Response").

Plaintiffs in this case challenge Speaker of the Virginia House of Delegates Don Scott's "legal authority to summon the House of Delegates [and] the Virginia Senate to reconvene a Special Session commenced by Virginia's Governor." Compl. ¶ 39. They allege that "[n]either Speaker Scott nor any other legislator has legal authority to determine, amend, or expand the subject of any Special Session commenced by Virginia's Governor." *Id.* ¶ 40. Without ever naming him as a defendant, they allege that "Speaker Scott's attempts to do so are unconstitutional and void." *Id.* ¶ 64. Instead of suing the Speaker, they sue House Clerk Nardo, who "perform[s] *all* the duties of [his] office under the *direction of the Speaker*." Va. H.D. R. 5 (adopted Jan. 10, 2024), [hereinafter H.R.] (emphasis added), https://perma.cc/M34Q-7VVR. Meanwhile, Plaintiffs—some of whom are themselves legislators—now contend that neither the Speaker nor his counterparts in Senate leadership, President Pro Tempore Louise Lucas and Majority Leader Scott Surovell, have a legally protectible interest in the outcome of this case. That is illogical. Plaintiffs

ask the Court to insert itself into an ongoing legislative process and to void Proposed Intervenors' exercise of their unique legislative power in directing that process. That is an attack not just on the legislature as a whole, but particularly on the Speaker and his Senate counterparts and their unique legislative roles.

Plaintiffs also contend that Proposed Intervenors seek entry into this case solely to "delay [the] proceedings," Pls.' Opp'n Mot. Intervene 5, but the case's procedural history directly undermines this claim. Proposed Intervenors have consistently acted with diligence in defending this action, including by successfully presenting argument against Plaintiffs' Motion for Temporary Restraining Order on twelve hours' notice. By contrast, it is the Plaintiffs who have introduced unnecessary delays by failing to oppose the Motion for six weeks. There is no credible basis for concluding that intervention will delay the proceedings, and Proposed Intervenors agree to abide by any deadlines the Court establishes and/or the parties mutually decide upon.

ARGUMENT

Proposed Intervenors are entitled to intervene because they "assert . . . defense[s] [that are] germane to the subject matter of the proceeding," Va. Sup. Ct. R. 3:14, and they "assert some right involved in the suit." *Eads v. Clark*, 272 Va. 192, 196 (2006) (citation modified) (emphasis removed); *see also Hudson v. Jarrett*, 269 Va. 24, 32 (2005) ("[A]n intervenor must be asserting an interest that is part of the subject matter of the litigation."). The rights they assert flow directly from their unique positions in the legislature and the central role they play in Plaintiffs' own allegations.

I. Proposed Intervenors have a personal interest implicated by this lawsuit that justifies intervention.

Proposed Intervenors, in their official capacities, "seek to intervene to defend the General Assembly from this attempt to undermine the constitutional separation of powers," and to defend

their own "constitutional right to order the affairs of the General Assembly" by the nature of the offices they hold. Mot. Intervene 3–4. The right vested in those officers by the Constitution of Virginia is undoubtedly a personal "interest" relevant to this suit's subject matter that is "different from [any harm] suffered by the public," or even other *legislators*, such as the legislator-Plaintiffs, "generally." *Friends of the Rappahannock v. Carline Cnty. Bd. of Supervisors*, 286 Va. 38, 48 (2013); *cf. Synchronized Constr. Servs. v. Prav Lodging, LLC*, 288 Va. 356, 364 (2014) ("Where an individual is in the actual enjoyment of the subject matter, or has an interest in it . . . which is likely either to be defeated or diminished by the plaintiff's claim, in such case he has an immediate interest in resisting the demand, and all persons who have such immediate interests are necessary parties to the suit." (citation omitted)). The Constitution of Virginia and the legislative rules of procedure vest each Proposed Intervenor with unique and significant power to control and direct the legislative process. *See* Va. Const. art. IV, § 7; Va. Code Ann. § 30-19; H.R. 5; Va. Sen. R. 7 (adopted Jan. 10, 2024) [hereinafter Sen. R.], https://perma.cc/EFM9-TDAW; Clerk of the Senate, *Senate of Virginia Handbook* (2023) [hereinafter Sen. Handbook], https://perma.cc/WKR3-23V6. They are entitled to intervene.

The Rules of the House of Delegates vest Speaker Scott with significant power to set the legislative agenda in the House and order and direct its affairs. That includes a unique role in the constitutional amendment process: "All enrolled bills and *joint resolutions proposing amendments to the Constitution will be signed by the Speaker* and . . . attested by the Clerk." H.R. 5 (emphasis added). This part of the legislative process is also codified by statute, which specifically provides for unique roles for both the Speaker and President of the Senate: Any resolution proposing a constitutional amendment,

> [S]hall contain such proposed amendment . . . prepared in such form as is in accordance with that *prescribed by the rules of the House of Delegates and the Senate* . . . and be spread

> at length on the journal of the house in which it is offered . . . and when so agreed to by both houses, it shall be enrolled as provided by law and *signed by the President of the Senate and Speaker of the House of Delegates*.

Va. Code Ann. § 30-19 (emphasis added). Indeed, the Speakers' role is even more significant than the House Clerk, who is already a defendant in this action. For example, although the House Clerk keeps "a journal of the proceedings of the House," which includes any proposed amendment once adopted, it is the Speaker who possesses "the power to supervise and correct the Journal," and "announce[s] to the House the approval of the Journal," which "[u]pon the last day of the [legislative] session . . . will be signed by the Speaker and the Clerk." *Compare* H.R. 7 *with* H.R. 3. The Rules provide that: "The Clerk will perform *all* the duties of the office under the *direction of the Speaker*." H.R. 7(emphasis added).[1] Plaintiffs' decision to sue the legislative clerks rather than the Speaker and Senate leaders is simply a transparent attempt to evade the limits imposed on this Court by the separation of powers. Mot. Intervene at 4 (citing *Scott v. James*, 114 Va. 297, 298 (1912)).

Indeed, recognizing his unique role in the constitutional amendment process, the Complaint names Speaker Scott *a dozen times*, alleging in various forms that *he*—not the General Assembly as a whole—through the exercise of his constitutionally delegated legislative functions, violated the Constitution of Virginia. Compl. ¶¶ 28–34, 38–40, 43, 64. The Complaint alleges that Speaker Scott "reconvened the House of Delegates to propose" the redistricting amendment, *id.* ¶ 30, and

[1] The Senate's Rules vest similar powers in President Pro Tempore Lucas and Majority Leader Scott, who are in the chain of command in the event of an emergency or natural disaster. The Majority Leader, who is elected by the Senate's majority political party, wields procedural power to manage the legislative process and is the floor leader. *See* Sen. R. 7; *see also* Sen. Handbook at 16. The President Pro Tempore is elected by the entire Senate and presides over the Senate if the Lieutenant Governor is unavailable. *See* Sen. R. 2(b)–(d). Both played an integral role in shepherding the proposed amendment through the Senate. *See* Markus Schmidt, *Virginia Senate Approves Mid-Decade Redistricting Amendment in Party-Line Vote*, Va. Mercury (Oct. 31, 2025, 1:21 PM EST), https://virginiamercury.com/2025/10/31/virginia-senate-approves-mid-decade-redistricting-amendment-in-party-line-vote/.

"introduced HJR 6006 to expand the 'scope of business'" of the special session so legislators could debate the resolution on the proposed amendment, HJR 6007, *id.* ¶ 33. It directly questions Speaker Scott's "legal authority" to take these actions. *Id.* ¶¶ 39–40. Plaintiffs allege that "the *Speaker of the House* has no constitutional power to call a special session, extend the length of an existing special session, or expand the scope of matters to be considered at an existing special session. *Speaker Scott's attempts to do so are unconstitutional and void*." *Id.* ¶ 64 (emphasis added). In Plaintiffs' own telling, Speaker Scott is *the* central actor. *See, e.g.*, *N.C. Green Party v. N.C. State Bd. of Elections*, 619 F. Supp. 3d 547, 562 (E.D.N.C. 2022) (holding that a party can intervene as of right where there were "numerous allegations in plaintiffs' amended complaint concerning the intervenor[]" to which it was entitled to respond). That is why, putting forth almost identical arguments, similarly situated plaintiffs in Richmond sued both Clerk Nardo *and* Speaker Scott when trying to enjoin the ongoing legislative process of proposing this constitutional amendment and declare the process unconstitutional. Complaint at 3, *Jett v. Nardo*, No. CL25-5352 (Richmond Cir. Ct. Oct. 31, 2025).[2]

For these reasons, Plaintiffs' citations to federal cases holding that individual legislators lack standing to speak for the legislature as a whole—in addition to being nonbinding on this Court—are wholly inapposite. *E.g.*, Pls.' Opp'n Mot. Intervene at 3 (citing *Raines v. Byrd*, 521 U.S. 811 (1997); *Va. House of Delegates v. Bethune-Hill*, 587 U.S. 658 (2019)). The lesson of these cases is that "at least as to individual legislators, there is no standing *unless their own institutional position*, as opposed to their position as a member of the body politic, is affected." *Newdow v. U.S.*

[2] The Richmond Circuit Court denied the plaintiffs injunctive relief, holding that, under binding Supreme Court of Virginia precedent, it lacked authority to interfere with an ongoing legislative process. Order at 2, *Jett v. Nardo*, No. CL25-5352 (Richmond Cir. Ct. Nov. 5, 2025) (citing *Scott*, 114 Va. 297); *see* Proposed Intervenor-Defs.' Notice Suppl. Auth. The plaintiffs nonsuited their remaining request for declaratory relief, which the court granted.

Cong., 313 F.3d 495, 499 (9th Cir. 2002) (emphasis added). For example, in *Bethune-Hill* a "single chamber" of a bicameral legislature sought to displace the authority of Virginia's Attorney General to defend a challenged redistricting plan that had been enacted by the legislature. 587 U.S. at 661–62, 668. Proposed Intervenors here do not merely seek to defend the constitutionality of an already-enacted statute they supported. They seek to defend *the legislative process itself*—and their unique roles in it——from Plaintiffs' unconstitutional assault on the separation of powers.[3]

As a result, Proposed Intervenors here are more like the state legislators who had standing in *Coleman v. Miller*, 307 U.S. 433 (1939). In *Coleman*, the Supreme Court considered whether state legislators had standing to challenge their chamber's ratification of an amendment to the U.S. Constitution after the Lieutenant Governor cast a tie-breaking vote. *Id.* at 438. The Court held that the legislators were sufficiently aggrieved for purposes of standing, as their votes—and the effectiveness of those votes in an ongoing legislative process—were directly nullified. *Id.* at 438–39. The injury asserted was thus the impairment of the legislators' present authority, not an abstract institutional harm that merely "runs with" their seats, as in *Raines*. *Id.* at 821. So too here: Proposed Intervenors assert that their authority to manage and direct the legislative process will be usurped if Plaintiffs' requested relief is granted, an injury Plaintiffs readily claim for themselves but insist does not apply to Proposed Intervenors.

[3] The legislator-Plaintiffs, who possess no unique legislative function or office, are *worse*-positioned to claim standing than Proposed Intervenors. Those disgruntled legislators voted against HJR 6006 and HJR 6007 and bring this suit to enjoin the legislative process as it unfolds in direct contravention of *Scott*. 114 Va. at 304. It is unclear what personal right or interest these legislator-Plaintiffs, compared to any other similarly situated Virginia legislator, possess that would give them standing to sue. *See Raines*, 521 U.S. at 824 (noting that when a legislator simply "lost [a] vote," they do not have standing to sue on the grounds that their vote was "nullified"). Instead, they merely allege perceived harms to the *Governor*'s authority, not their own as legislators. Proposed Intervenor-Defs.' Proposed Mot. Dismiss & Demurrer to Pls.' Verified Compl. 9–10.

II. Granting intervention will not unduly delay or prejudice the proceedings.

Plaintiffs next assert that granting intervention would prejudice the existing parties and would be duplicative and unnecessary. Pls.' Opp'n Mot. Intervene 5. Neither argument is credible.

A. Intervention will not unduly delay these proceedings.

First, Plaintiffs argue that, by seeking entry into the case to defend the vital legislative interests of their offices, Proposed Intervenors "intend to delay [the] proceedings." Pls. Opp'n Mot. Intervene 5. They could not be more wrong. Plaintiffs filed their Complaint and Motion for Temporary Restraining Order and Preliminary Injunction on October 28 with an accompanying Notice to set a hearing in the early morning hours of October 29. Proposed Intervenors moved to intervene *immediately* and appeared virtually to argue the Motion. With barely twelve hours' notice, Proposed Intervenors were prepared to present argument on Plaintiffs' equitable relief requests, and provided the Court with binding authority that supported denying the Plaintiffs' relief. Plaintiffs did not object to the Motion to Intervene at that hearing. The Court set a hearing on November 5 to consider Plaintiffs' request for a preliminary injunction.

In anticipation of the November 5 hearing, and even though they were not yet parties to the case, on November 4, Proposed Intervenors filed a 20-page proposed brief in opposition to Plaintiffs' Motion for Preliminary Injunction to defend their interests in the litigation.[4] Simultaneously, Proposed Intervenors filed a Motion to Transfer Venue, believing it prudent and proper that the Court address that threshold issue before taking up the merits of Plaintiffs' request for injunctive relief. Proposed Intervenors filed these papers, which address complex questions of

[4] Later that afternoon, Plaintiffs' counsel informed counsel for Proposed Intervenors that they would be withdrawing their request for injunctive relief and would ask the Court to cancel the November 5 hearing, which, after hours after so informing counsel, Plaintiffs did that evening.

Virginia procedural and constitutional law, expeditiously, in a good faith effort to meet the demands of this litigation and the deadlines of the Court.

By contrast, Plaintiffs themselves have caused substantial delay and cumulative filings in this litigation. For instance, Proposed Intervenors repeatedly sought to schedule a hearing on this Motion. Plaintiffs waited until November 19 to indicate they opposed the Motion and stated they would file an opposition "in the coming days." No written response came until *three weeks* after this communication and *six weeks* after the Motion was filed. And, even then, the response only came after Proposed Intervenors pressed the issue by filing a Notice of Hearing on the Motion on December 2. That Notice prompted a scheduling conference wherein the Court forced Plaintiffs' hand by setting a hearing date—which Plaintiffs objected to—for December 12, and a December 8 deadline to respond to the Motion.

B. Proposed Intervenors' presence is necessary and not duplicative.

Finally, Plaintiffs oppose the Motion by relying on inapplicable federal caselaw regarding the adequacy of an existing party's representation of a proposed intervenor's interest. Pls.' Opp'n Mot. Intervene 6–8; *see* Fed. R. Civ. P. 24(a)(2) (requiring a proposed intervenor to show that existing parties do not adequately represent its interests). Virginia's intervention rule, unlike its federal counterpart, does not require a showing of inadequate representation. Va. Sup. Ct. R. 3:14. All that the Rules of the Supreme Court of Virginia require is that Proposed Intervenors have a personal interest in the litigation so that they "assert any . . . defense germane to the subject matter of the proceeding." *Id.*; *see Hudson v. Jarrett*, 269 Va. 24, 32 (2005). As explained *supra* Section I, Proposed Intervenors have met that standard.

The only tangentially related Virginia authority that Plaintiffs cite is *Kelly v. R.S. Jones & Associates, Inc.*, 242 Va. 79 (1991). In that case, the Supreme Court of Virginia held that the

consideration of a motion to intervene "would be duplicative" and "unnecessary" when the trial court had already decided the merits of the case in a separate action and the motion merely alleged a procedural error that "would not invalidate" that order and so would not provide any relief to the applicant. *Id.* at 87. That is clearly not the case here where the Court has yet to rule—or even have full briefing and a hearing—on any merits issue. Further, *Kelly* neither cites nor relies on any authority that would suggest this standard is encompassed within Virginia's intervention standard; it is instead a highly fact-bound case. *See id.*[5]

But even if inadequacy of representation—or something like it—were relevant under Virginia law, Proposed Intervenors easily make that showing. Contrary to Plaintiffs' claims, Defendants and Proposed Intervenors neither share the same duties *nor* the same interests. *Contra* Pls.' Opp'n Mot. Intervene 6–7. As demonstrated *supra*, Proposed Intervenors perform legislative functions and duties distinct from Defendants. Plaintiffs ultimately seek to stop the Speaker and his Senate counterparts from directing the legislative process; the clerks' ministerial duties are merely a consequence of the Speaker's conduct. Indeed, this is clear from Plaintiffs' own allegations, which are repeatedly directed to the Speaker and about his actions. Proposed Intervenors must be allowed intervention to defend their unique interests at stake in this suit, rendering their presence necessary.

The arguments that Defendants and Proposed Intervenors make in this litigation are also distinct, reflecting their distinct interests at issue in the case. For example, Proposed Intervenors'

[5] Moreover, *Kelly* was decided in 1991, over a decade before the Supreme Court of Viriginia's recent amendments to Rule 3:14. That Rule, and the cases interpreting it, are clear: all that is required is that Proposed Intervenors have a personal interest in the litigation. *See Hudson*, 269 Va. at 32; *Eads*, 272 Va. at 196 n.4 (detailing Rule 3:14's amendment history); *see also Va. Elec. & Power Co. v. State Corp. Comm'n*, 284 Va. 726, 741 (2012) ("In the absence of an express limitation, [the court] will not add language to the statute by inference.").

Motion to Transfer Venue emphasizes that the case should be transferred for "good cause" because all relevant events took place in Richmond, while Defendants argue that venue in Tazewell County is inappropriate under Va. Code § 8.01-261. *Compare* Proposed Intervenors' Mot. Transfer Venue at 4 *with* Defs.' Mot. to Transfer Venue at 2. These differences are not mere "disagreement[s] over how to approach the conduct of the litigation," as Plaintiffs argue. Pls. Opp'n Mot. Intervene at 7 (quoting *Stuart v. Huff*, 706 F.3d 345, 353–54 (4th Cir. 2013)). Instead, they represent distinct legal arguments based on the unique interest that Proposed Intervenors have in this case compared to that of Defendants.

For these reasons, Proposed Intervenors' participation is important and their inclusion in the case will not meaningfully delay or duplicate proceedings.[6]

CONCLUSION

Proposed Intervenors request that the Court grant the Motion to Intervene.

Dated: December 11, 2025

Respectfully submitted,

/s/ *Aria C. Branch*
Aria C. Branch (VSB No. 83682)
Derek A. Zeigler*
ELIAS LAW GROUP LLP
250 Massachusetts Ave NW, Suite 400
Washington, DC 20001
Tel.: (202) 968-4490
abranch@elias.law
dzeigler@elias.law

Counsel for Proposed Intervenor-Defendants

**Pro hac vice* application filed

[6] Participation as amicus curiae is an inadequate substitute for intervention—amici are not parties and do not possess a right to appeal. *See, e.g.*, *Sayre v. Grymes*, 11 Va. (1 Hen. & M.) 404, 407 (1807) (opinion of Roane, J.) ("A mere volunteer or *amicus curiae* has not the liberty of appealing."); *Tidewater Psychiatric Inst. v. Buttery*, 8 Va. App. 380, 383 (1989) ("A person cannot appeal a case to which he is not a party.").

CERTIFICATE OF SERVICE

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

Dated: December 11, 2025

/s/ *Aria C. Branch*
Aria C. Branch