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 BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO AMEND COMPLAINT

Proposed Intervenor-Defendants, by counsel, respectfully submit this Brief in Opposition to Plaintiffs' Motion for Leave to Amend their Verified Complaint (the "Motion").

The proposed Amended Complaint is legally futile because it does not remedy the fatal defects that Proposed Intervenors already identified in their Demurrer to the original Complaint. *AGCS Marine Ins. Co. v. Arlington County*, 293 Va. 469, 487 (2017). First, the relief sought by the proposed Amended Complaint, like that in the original Complaint, is foreclosed by the Supreme Court of Virginia's decision in *Scott v. James*, holding that the Court would violate the separation of powers if it interfered with the ongoing legislative process. Second, the proposed Amended Complaint is nonjusticiable because Plaintiffs' challenge to House Joint Resolution ("HJR") 6007—a proposed constitutional amendment that is not yet law and may never become law—is unripe. Third, the new claims added by the proposed Amended Complaint concerning "notice" to voters ignore the text and history of the Constitution of Virginia and Virginia statutes. And finally, Plaintiffs' complaints about the special session in which HJR 6007 was passed continue to fail for the reasons already explained in Proposed Intervenors' Demurrer to the original Complaint.

Notwithstanding that Plaintiffs knew about these same facts and arguments after Proposed Intervenors stated them in the Demurrer and response to Plaintiffs' Preliminary Injunction Motion, Plaintiffs present no new facts or law to dispute them. Instead, they recycle the same arguments in the original Complaint. Those claims, without more, fail to "cure the shortcomings of the original complaint," rendering amendment legally futile. *Id.* This Court should therefore deny the Motion.

BACKGROUND

I. Plaintiffs' Original Complaint.

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*. Prop. Am. Compl. ¶ 44; Compl. ¶ 29. On October 27, Speaker Scott introduced, and the House passed, 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 alleged 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 sought a declaration that: (1) HJR 6006 violates the Constitution of Virginia and (2) any amendments to the Constitution of Virginia initiated under HJR 6006 are null and void. Compl. at 12, 17 ¶¶ A–B. They also sought a permanent injunction prohibiting the Legislative Clerk Defendants from "attesting to, transmitting, or receiving any proposed constitutional amendment initiated under

[1] H.D.J. Res. 6006, 2024 Spec. Sess. I (Va. 2025), https://lis.virginia.gov/bill-details/20242/HJ6006 (amending House Joint Resolutions Nos. 6001 & 6004).

[2] Patrick Larsen, *General Assembly Gavels Out - Maybe Not for Long*, VPM (Feb. 22, 2025, at 7:25 PM EST), https://www.vpm.org/news/2025-02-22/virginia-general-assembly-sine-die-2025-legislation-budget.

[3] H.D.J. Res. 6004, 2024 Spec. Sess. I (Va. 2025), https://lis.virginia.gov/bill-details/20242/HJ6004 (amending House Joint Resolution No. 6001).

HJR 6006." *Id.* at 18 ¶ F. In other words, Plaintiffs asked the Court to put a halt to the entire legislative process. On October 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. The Senate likewise approved the proposed amendment on October 31 by a 21–16 vote.[4]

On October 31, 2025, another set of plaintiffs (the "Jett Plaintiffs") filed an action in the Circuit Court for the City of Richmond seeking effectively the same relief on nearly identical grounds. *See* Compl., *Jett v. Nardo*, No. CL25005352 (Va. Cir. Ct. Oct. 31, 2025). After a hearing on November 3, 2025, the Richmond City 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, the day after the general election was held, a written order denying the Jett Plaintiffs' injunctive relief was entered, which Proposed Intervenors have since submitted to this Court in a Notice of Supplemental Authority. Prop. Intervs. Not. of Supp. Auth. The Jett Plaintiffs later filed a motion to nonsuit, which the Richmond City Circuit Court granted on November 17, 2025.

II. Plaintiffs' Proposed Amended Complaint.

On November 18, 2025, 21 days after the original Complaint was filed, Defendants and Proposed Intervenors both filed demurrers to the original Complaint. It was not until later that evening that Plaintiffs filed the Motion, attaching the proposed Amended Complaint.

Plaintiffs' proposed Amended Complaint differs from the original Complaint in three ways. First, Plaintiffs add new claims alleging that article XII, section 1 of the Constitution of Virginia and title 30, section 13 of the Virginia Code require that any proposed constitutional amendment

[4] H.D.J. Res. 6007, 2024 Spec. Sess. I (Va. 2025), https://lis.virginia.gov/bill-details/20242/HJ6007.

be published twice by circuit court clerks: once at least 90 days before an "intervening" general election, and once at least 90 days before the election in which the voters will cast a ballot on the proposed amendment. Prop. Am. Compl. ¶¶ 142, 147. In the alternative, Plaintiffs argue that the November 4, 2025 general election cannot constitute the intervening election, or, even if it does, that there was insufficient time for the "posting requirement" to be satisfied. *Id.* ¶¶ 155, 159–60.

Second, the proposed Amended Complaint adds two new Plaintiffs: Faythe Silveira and Camilla Simon. *Id.* ¶¶ 12, 18. Simon is a registered Democratic voter who voted early for Delegate Rodney Willett during the November 2025 general election. *Id.* ¶¶ 12, 15. Simon claims that, had she been aware of Delegate Willett's recorded vote on the proposed constitutional amendment prior to casting her ballot, she would have voted differently. *Id.* ¶ 17. While Silveira is a registered Republican voter who voted early, she similarly claims that she was deprived of adequate notice when casting her ballot during the November 2025 general election, but does not allege that this alleged lack of notice affected her vote. *Id.* ¶¶ 18–19.

Finally, the proposed Amended Complaint directly challenges the proposed amendment, HJR 6007, rather than the resolution that led to it. Prop. Am. Compl. ¶¶ 50–51, A; Compl. ¶¶ 33, A. It asks the Court to "Declare that HJR 6007 . . . is null and void; and permanently enjoin [defendants] from . . . posting a copy of any purported redistricting amendment under HJR 6007." Prop. Am. Compl. at 30, ¶ A. Alternatively, it seeks a declaration that the 2027 general election, not the 2025 general election, is the "next" general election under article XII, section 1 of the Virginia Constitution and title 30, section 13 of the Virginia Code. *Id.* at 31, ¶ B.

LEGAL STANDARD

A court should not grant a motion for leave to amend a complaint when "the proffered amendments are legally futile." *AGCS Marine*, 293 Va. at 487. A proposed amended complaint is

legally futile when it "fails to cure the shortcomings of the original complaint," such that the "amended allegations and the reasonable inferences from them" do not support a "viable legal theory of recovery." *Id.*; *see Studer v. Hurley*, No. CL10-7168, 2011 WL 7478301, at *1 (Va. Cir. Ct. Mar. 29, 2011).

ARGUMENT

I. Plaintiffs' requested relief continues to violate the separation of powers, rendering the claims nonjusticiable.

Plaintiffs' proposed Amended Complaint, like their original Complaint, would require the Court to interfere with the ongoing constitutional amendment process. It asks the Court to declare unconstitutional an entire special legislative session as well as any legislation derived therefrom. It also seeks an injunction that would permanently prohibit Defendant Nardo from distributing, and Defendant Hurst from posting, any proposed constitutional amendment passed during that special session. Prop. Am. Compl. at 30, ¶ A. As Proposed Intervenors previously explained in response to Plaintiffs' original Complaint, that relief is squarely foreclosed by the Supreme Court of Virginia's holding in *Scott v. James*, 114 Va. 297 (1912). That is true whether the operative complaint is framed as a challenge to the legislature's action in calling the special session (as in the original Complaint) or as a challenge to HJR 6007 itself (as in the proposed Amended Complaint). Because the proposed Amended Complaint cannot change that reality, it is legally futile and the Motion should be denied.

The Supreme Court of Virginia held in *Scott* 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). The proposed Amended Complaint, like the original Complaint, seeks precisely the same relief that the Supreme Court of Virginia found beyond the judiciary's power in *Scott*—and more. *See, 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 and the House clerk from transmitting those bills to the Governor for 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)); Order at 2, *Jett*, No. CL25005352 (Nov. 5, 2025) (holding that plaintiffs' 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").[5]

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

[5] Additionally, on October 31, 2025, the Senate voted to adopt the proposed constitutional amendment. Jahd Khalil, *Virginia Senate Votes to Propose Redistricting Amendment*, VPM (Oct. 31, 2025, at 3:51 PM ET), 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. To the extent that the relief sought in the proposed Amended Complaint can be construed as seeking an injunction against the House and Senate clerks from transmitting a version of the proposed constitutional amendment between chambers during the *upcoming* 2026 legislative session, that request is also foreclosed by *Scott* and its progeny, 114 Va. at 304, and, for the reasons explained *infra*, it is unripe.

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 that proposed amendment. A declaratory judgment here would be just such an interference.

Plaintiffs have been on notice of this fatal defect in their legal theory since Proposed Intervenors brought *Scott* to the Court's attention at the October 29 hearing on Plaintiffs' TRO request.[6] Nonetheless, the proposed Amended Complaint fails to remedy those defects. Plaintiffs add no meaningful new facts or legal argument to distinguish or otherwise address *Scott*. That failure should be treated as an admission that they cannot do so. Indeed, the only relevant change that has occurred since Plaintiffs filed their original Complaint is the Richmond City Circuit Court's decision that *Scott* forecloses the relief that Plaintiffs seek. Order at 2, *Jett*, *supra*.

Plaintiffs' newfound reliance on *Coleman v. Pross* for the proposition that this Court has the power to review the constitutionality of HJR 6007, Pls.' Mot. at 4 (citing *Coleman v. Pross*, 219 Va. 143, 154 (1978)), is misplaced. In *Coleman*, the Attorney General of Virginia invoked a statute that permits the Attorney General, upon the written request of the Comptroller of Virginia, to seek judicial review of a proposed constitutional amendment that will require appropriations from the Treasury of the Commonwealth. 219 Va. at 145–46 (citing Va. Code Ann. § 8.01-653). That does not apply here. *Scott*'s principle of judicial noninterference during the ongoing constitutional amendment process therefore controls. *See Fund for Animals, Inc. v. Va. State Bd. of Elections*, No. HN-1856-1, 2000 WL 1618006, at *3 (Va. Cir. Ct. Oct. 27, 2000) (holding that,

[6] On November 4, 2025, Proposed Intervenors and Defendants filed oppositions to Plaintiffs' Preliminary Injunction Motion. Both make the same nonjusticiability arguments based on *Scott*.

based on *Scott*, it would be "premature" to assess the constitutionality of a proposed constitutional amendment prior to its referral to the voters and noting that plaintiffs' reliance on *Coleman* was "misplaced" because, like here, the suit was not initiated by the Attorney General pursuant to section 8.01-653 (citing *Scott*, 114 Va. at 304; *Coleman*, 219 Va. 143)).

Scott renders this case nonjusticiable. Nothing in the proposed Amended Complaint alters that fact. The amendments Plaintiffs propose are legally futile and their Motion should be denied.

II. Plaintiffs' challenge to HJR 6007 is unripe.

For related reasons, Plaintiffs' request for a declaratory judgment that HJR 6007 is "void," and for an injunction against its enforcement, is unripe. The ripeness doctrine prevents courts from issuing advisory opinions by requiring that claims be "based upon present rather than future or speculative facts." *River Heights Assoc. v. Batten*, 267 Va. 262, 267 (2004) (quoting *City of Fairfax v. Shanklin*, 205 Va. 227, 229 (1964)). This ensures that courts do not adjudicate "claims that, while potentially viable at some point in the future, have yet to mature into a justiciable controversy." *Berry v. Bd. of Supervisors of Fairfax Cnty.*, 302 Va. 114, 131 (2023); *see Sch. Bd. of Stafford Cnty. v. Sumner Falls Run, LLC*, 303 Va. 253, 256 (2024) ("The Declaratory Judgment Act, however, does not give trial courts the authority to render advisory opinions, decide moot questions, or answer inquiries that are merely speculative." (citation modified)).

The harms Plaintiffs complain of are entirely speculative. Each of their alleged harms assumes that the proposed amendment will be enacted. For example, Plaintiffs highlight that HJR 6007 "*would* divest the Virginia Redistricting Commission of" its statutory authority and "*will* allow for . . . a plan to redraw Virginia's electoral districts." Prop. Am. Compl. ¶¶ 51, 54, 67 (emphases added). Even if those injuries were valid, and they are not, they would not occur unless the proposed amendment becomes law, which will only happen if two future events occur: (1) both houses of the next General Assembly, beginning in 2026, approve the proposed amendment and

refer it to the voters, and (2) a majority of voters vote to approve the amendment. Va. Const. art. XII, § 1. Neither has yet occurred and certainly neither is certain. "If the amendment is not adopted, of course, no question will ever come before the court." *Scott*, 114 Va. at 304; *see Fund for Animals*, 2000 WL 1618006, at *3 (stating that "the case is not mature for consideration" until the legislative process, including referral to, and voting by, the voters, is complete).

Plaintiffs cite *Morgan v. Board of Supervisors of Hanover County* for the proposition that "procedural rights" can be enforced "before [state action] takes effect." *See* Prop. Am. Compl. ¶ 108 (citing *Morgan v. Bd. Of Supervisors of Hanover Cnty.*, 302 Va. 46, 66–67 (2023)). *Morgan* holds, unremarkably, that a plaintiff has standing to enforce "procedural rights that affect the public at large so long as the procedures in question are designed to protect some threatened concrete interest *of his* that is the ultimate basis of standing." 302 Va. at 65 (citation modified). "It is crucial, therefore, that the alleged procedural violation endangers a concrete interest of the plaintiff (apart from his interest in having the procedure observed), because without this endangerment, no litigant can protest a procedural right in vacuo." *Id.* at 66 (citation modified). As Proposed Intervenors have previously explained, by seeking to halt the legislative process, Plaintiffs are not seeking to enforce any procedural right that is *personal to them*. They do not claim that the process of passing the proposed constitutional amendment violates any *personal* interest of theirs. Instead, to the extent they allege any procedural injury at all, they purportedly seek to protect only the *Governor's* power to convene a special session, which, of course, is not a personal interest that they themselves possess. The harms Plaintiffs allege to themselves will occur only if HJR 6007 passes.

III. Plaintiffs' new claims alleging a lack of notice are wrong as a matter of law.

In Counts II and IV of the proposed Amended Complaint, Plaintiffs seek both (1) an "Injunction requiring notice of proposed amendment before the next general election," and (2) a "Declaratory judgment that the 2025 general election is not the 'next general election' after the

General Assembly passed HJR 6007." Prop. Am. Compl., Counts II, IV. The two new voter-Plaintiffs, in particular, allege that the General Assembly "deprived" them of the "notice and procedure guaranteed under Va. Const. art. XII, §1 and Va. Code §30-13." *Id.* ¶¶ 89, 157. But the proposed Amended Complaint repeatedly and mistakenly conflates these distinct constitutional and statutory requirements—neither of which has been violated here. These amendments are thus legally futile, warranting denial of the Motion.

A. The "next general election" after the General Assembly voted on, and passed, HJR 6007 in October 2025 was the November 4, 2025 general election.

Article XII, section 1 of the Constitution of Virginia provides that a proposed constitutional amendment adopted by the General Assembly in one legislative session 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." Va. Const. art. XII, § 1 (emphasis added). Then, if at that next "such regular session or any subsequent special session," a majority of the members again pass the proposed amendment, the General Assembly shall submit the proposed amendment to the voters "in such manner as it shall prescribe and not sooner than ninety days after final passage by the General Assembly." *Id.* The "next general election" referred to in this provision is the "next" election after the proposed amendment was "agreed to by a majority of the members elected to each of the two houses." *Id.* Here, that occurred on October 31, 2025, making the "next general election" the November 2025 general election for purposes of that provision.

Plaintiffs erroneously argue that, because Virginians were already casting ballots for the November 2025 general election when the General Assembly approved HJR 6007, the "next general election" for purposes of article XII, section 1 is the November 2027 election. Prop. Am. Compl. ¶¶ 146–62. And, they argue that such an intervening election is necessary to "ensure that voters and government officials receive notice of the proposed amendment and an opportunity to

hold their elected officials accountable at the ballot box in the 'next general election.'" *Id.* ¶ 147. Plaintiffs are wrong on both scores.

First, under the plain text of the Constitution of Virginia and Virginia statutes, the "next general election" for the House of Delegates after the passage of HJR 6007 on October 31, 2025, was the one that occurred on November 4, 2025. *See* Va. Code Ann. § 24.2-101 ("'General election' means an election held in the Commonwealth on the Tuesday after the first Monday in November . . . ."); *see also id*. § 24.2-215 (stating that Delegates shall be elected at the "general election" every odd-numbered year). Virginia's early voting statutes reinforce this fact, by explicitly recognizing that early ballots are cast *prior* to the "election." They provide that: "[a]bsentee voting in person shall be available on the forty-fifth day *prior to any election*," *id.* § 24.2-701.1(A) (emphasis added), and "voter satellite offices [may] be used in the locality for absentee voting in person . . . within 60 days next *preceding any general election*," *id.* § 24.2-701.2 (emphasis added).

Second, Plaintiffs' purported constitutional "notice" requirement appears nowhere in the Constitution's text and is contradicted by Virginia's constitutional history. When the Constitution of Virginia was revised in 1971, the drafters purposely "omit[ted] the requirement that is . . . in the present Constitution, that the first General Assembly to approve an amendment must publish it ninety days before the next election for the House of Delegates." *House Debates on Constitutional Revision* 496 (Apr. 2, 1969) [hereinafter *House Debates*]. Instead, the drafters adopted an alternative approach: there must be a 90-day period between the final approval of the proposed amendment by the *second* General Assembly and submission of it to the people. *Id.*; Va. Const. art. XII, § 1. In doing so, the drafters "str[uck] out any reference to publication" prior to the intervening election between the first and second passage of any proposed constitutional amendment because "the real purpose" of ensuring an informed public would "be served by

requiring a lapse of at least ninety days' time between the final action of the General Assembly and the submission of the proposal to the people." *House Debates* at 496. Contrary to Plaintiffs' allegations, the explicit purpose of Article XII's waiting period, then, was not to give voters an "opportunity to hold their elected officials accountable at the ballot box," Prop. Am. Compl. ¶ 147, but only "to have some way for the people to be informed as to the text of the proposed amendment" before voting on that amendment once referred to them. *House Debates* at 496.

B. The posting obligations of Section 30-13 have not yet been triggered.

Section 30-13 of the Virginia Code, meanwhile, charges Clerk of the House Nardo with distributing copies of a proposed constitutional amendment to the circuit court clerks who then "shall" make them available for "public inspection . . . not later than three months prior to the next ensuing general election of members of the House of Delegates." Va. Code Ann. § 30-13. Under the statute's plain terms, the publication requirements will not arise until "the end of the session of the General Assembly" because that is the triggering event for the House Clerk's statutory obligations, including "distribut[ing] . . . to the clerk of the circuit court of each county and city two copies of the proposed amendments." *Id.* The special session of the General Assembly has not ended and—unless adjourned *sine die*—will not end until the legislature for which it was called expires. At that point, the House Clerk will begin arranging the "index to the journal of the House" and distributing any proposed amendments to the circuit court clerks. *Id.* Only after receiving the proposed amendments from the House Clerk must the county clerks post them "not later than three months prior to the *next ensuing* general election." *Id.* (emphasis added). The "next ensuing general election" after the end of the current special session will be the November 2027 general election.

Plaintiffs are therefore simply wrong that the "'next ensuing general election of members of the House of Delegates' under Va. Code §30-13 refers to the same election as 'the next general election of members of the House of Delegates' under Va. Const. art. XII, §1." Prop. Am. Compl.

¶ 146. The term "next" is a relative term and it refers to different triggering events in the two provisions. *See Next*, Brittanica Dictionary, https://www.britannica.com/dictionary/next (last visited Dec. 4, 2025) ("[I]n the time or place that follows or comes directly after someone or something."). While the publication requirements of section 30-13 are triggered only at the "end of the session of the General Assembly," Va. Code Ann. § 30-13, article XII, section 1 refers to the "next general election" after the proposed amendment was "agreed to by a majority of the members elected to each of the two houses." Va. Const. art. XII, § 1. As explained, that was the 2025 general election.

The clerks' compliance with section 30-13 has no bearing on the constitutional validity of the amendment proposed by HJR 6007. *Contra* Prop. Am. Compl. ¶ 106. Section 30-13 does not purport to alter the requirements for amending the Constitution set forth in article XII, nor could it. It is a statutory requirement that directs the House and Circuit Court Clerks to publish proposed amendments. That is *all* it does. Nothing in the text of section 30-13 nor article XII suggests that such publication is a prerequisite to amending the Constitution. Indeed, section 30-13 was originally enacted to implement a constitutional notice requirement that was effectively rendered obsolete by the 1971 Constitution.[7] The public notice function is now fulfilled through the 90-day constitutional waiting period, not through any separate publication requirement executed by circuit court clerks.

[7] Recognizing this, the Virginia Code Commission, as part of an effort to remove outdated provisions throughout Title 30, recently voted unanimously to repeal § 30-13 because the provision is outdated and "not reflective of the modern constitutional amendment process" as explicitly prescribed in Article XII, § 1. *See* Va. Code Commission Meeting Materials 4 (Oct. 22, 2025); *see also* Virginia Code Commission, *Meeting of October 22, 2025*, at 11:23:18–24:35, available at https://sg001-harmony.sliq.net/00304/harmony/en/PowerBrowser/PowerBrowserV2/20251022/-1/21047?startposition=20251022112318&mediaEndTime=20251022112435&viewMode=2&globalStreamId=4. The vote was unanimous, with Senator McDougle voting in favor of this change.

IV. The proposed Amended Complaint does not change the fact that Plaintiffs' claims concerning legislative procedure remain foreclosed by the plain text and history of the Constitution of Virginia.

Plaintiffs' claims that "HJR 6007 is void because it is the product of an unlawful special session," Prop. Am. Compl. ¶¶ 94, 138, fail for the same reasons already explained in Proposed Intervenors' Demurrer. First, HJR 6006—the resolution pursuant to which HJR 6007 was adopted—did not call a *new* special session but rather continued the existing special session that was never adjourned. Second, although the Governor of Virginia originally convened the present special session in 2024 to complete Virginia's budget, the Constitution of Virginia, unlike other states' constitutions, does not limit the General Assembly's power to consider any business it deems appropriate at a special session. *Contra id.* ¶¶ 115–16. Nothing in the proposed Amended Complaint changes these facts; therefore, amendment is futile and the Motion should be denied.

A. The 2024 special session was never adjourned.

HJR 6006 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, §§ 1, 6. 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 recessed that special session without final adjournment. In April 2025, it exercised its legislative power to continue the same special session and address other (nonbudgetary) matters. *See id.*; Larsen, *supra* note 2; *see also* 1981–82 Va. Op. Att'y Gen. 188, 1982 WL 175652. Indeed, Plaintiffs McDougle and Stanley voted in favor of that continuance. *Supra* note 3. After addressing those additional issues, the legislature again recessed the special session without adjournment until it continued the session once more in late October to consider the constitutional amendment on redistricting. *Supra* note 1.

Nothing in the Constitution of Virginia 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 limit the duration of, those sessions—just as he has no constitutional authority to set the legislative agenda at those sessions. *See infra* Section IV.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. 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. Similar to the events of the present special session, in 2018 the Governor convened two special sessions of the General Assembly. As part of those sessions, the legislature 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." 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). Between 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 legislature possesses the power to set the agenda for legislative sessions—including special sessions—not the Governor. The Constitution vests the whole of the "legislative power of the Commonwealth . . . 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, section 14, or other specific provisions. *Id.* § 14 (emphasis added). The power to set the agenda for a special session is a core part of this legislative power.[8]

The Constitution of Virginia grants the Governor 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 id.* art. IV, § 6. To "convene" means to "to cause to assemble," or "to come together in a body." *Convene*, Merriam-Webster Dictionary (Dec. 7, 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: "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

[8] For example, in May 2024, in addition to the budget, the General Assembly included electing judges and confirming gubernatorial appointments in the special session's agenda. H.D.J. Res. 6001, 2024 Spec. Sess. I (Va. 2024), https://lis.virginia.gov/bill-details/20242/HJ6001. Sen. McDougle, Sen. Stanley, and Del. Kilgore—along with all but one legislator—voted for that resolution. *Id.* And, earlier this year, a majority of the legislature—including Sens. McDougle and Stanley—voted for another resolution adding the selection of judges to several state courts, including the Supreme Court of Virginia, to that agenda. *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 at those portions of this special legislative session as well.

Assembly to the subject matter specified in the Governor's proclamation which convenes the special session." 1981–82 Va. Op. Att'y Gen. 188, 1982 WL 175652.

In Plaintiffs' proposed Amended Complaint, they contend that within article IV, section 6 and article V, section 5 lies an unwritten executive power to restrict what legislation the General Assembly may consider while sitting in a special session. That same argument appears in their original Complaint and flows not from the constitutional text but from a significant misreading of Virginia's constitutional history. Like in their original Complaint, Plaintiffs continue to claim that the 1971 Constitution expanded the Executive's powers to "convene a special session of the General Assembly." Prop. Am. Compl. ¶¶ 113–14 (quoting Va. Const. art. IV, § 6) (citing Va. Const. art. V, § 5). They state, incorrectly, that this "specific power to convene a 'special session' [wa]s 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.* ¶¶ 63–66. That, too, remains incorrect. Just like the other issues with their proposed amendment discussed above, failing to cure these legal infirmities—which are core to their merits argument—renders amendment legally futile and warrants denial of the Motion.

1. Plaintiffs' premise that the 1971 Constitution created special sessions is wrong.

Virginia's 1902 Constitution granted the Governor the power to convene a special session—and its text similarly did not limit 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. 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, 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."). But, contrary to Plaintiffs' repeated claims, the addition of this companion provision did not expand the Governor's role in legislative affairs by introducing to Virginia for the first time the concept of the "special session." Prop. Am. Compl. ¶ 62.

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. Rep. of Comm'n on Const. Revision, H. Doc. No. 1 (Jan. 1, 1969) [hereinafter Const. Comm'n Rep.]; *see* A.E. Dick Howard, *Commentaries on the Constitution of Virginia* 1171 (1974) (discussing the same). The Commission noted that: the proposed "special session" language in article IV "effects *no change in substance*" from the 1902 Constitution, the change was "merely one of organization," and 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. Adding the words "special session" to article IV, section 6 effected no change to the balance of powers between the Governor and the General Assembly.[9]

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

In neither the original Complaint nor the Proposed Amended Complaint do Plaintiffs identify any Virginia authority for their argument that by inserting the term "special session" into article IV, section 6, the drafters of the 1971 Constitution intended to grant the Governor a new and expansive power to limit the subject matter of special sessions he convenes. Prop. Am. Compl. ¶ 115. Instead, they continue to rely on a collection of cases from courts in Nebraska, Arizona, Pennsylvania, Tennessee, Alabama, Georgia, Ohio, and Colorado that demonstrate those states' constitutions granted their governors greater power over special legislative sessions. *Id.* ¶¶ 115–116 (collecting cases). Based on these out-of-state cases, Plaintiffs continue to 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.* ¶ 115. 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. That was true at the time Plaintiffs filed their original Complaint and remains true today notwithstanding their proposed amendments.

2. The Constitution of Virginia vests exclusive authority over special legislative sessions' agenda and duration with the General Assembly, not the Governor.

Unlike the Constitution of Virginia, the constitutions of Nebraska, Arizona, Pennsylvania, Tennessee, Alabama, Georgia, Ohio, and Colorado *expressly grant* the Governor of those states the power to set and limit the "purpose" of a special session and the items that the legislature may consider at such a session.[10] The lack of such an express limitation on the legislative power in the

[10] *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

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

In additional contrast, other Virginia constitutional provisions *do* set limits on what the General Assembly can take up at certain legislative sessions. For example, 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. *See Fines*, 301 Va. at 317.

CONCLUSION

For the foregoing reasons, the Court should deny the Motion for Leave to Amend the Complaint.

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such [special] session." (quoting Pa. Const. art. III, § 25)); *State v. Woollen*, 161 S.W. 1006, 1009 (Tenn. 1913) ("[T]he 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. V, § 1, ¶ 13)); *State ex rel. Bond v. Beightler*, 21 N.E.2d 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)).

Dated: December 10, 2025

Respectfully submitted,

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**Pro hac vice* application filed

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 10, 2025

/s/ *Aria C. Branch*
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