

VIRGINIA:

IN THE CIRCUIT COURT OF TAZEWELL COUNTY

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

Plaintiffs,

v.

G. PAUL NARDO, in his official capacity as
Clerk of the Virginia House of Delegates, et al.,
Defendants,

Civil Action No.: CL25-1582

and

DON SCOTT, in his official capacity as
Speaker of the Virginia House of Delegates,
Intervenor-Defendant.

**PLAINTIFFS' EMERGENCY MOTION FOR PRELIMINARY INJUNCTION
AND SUPPORTING MEMORANDUM**

Plaintiffs move for a preliminary injunction as to Counts 1 and 2 in their Verified Amended Complaint. *See* Va. Sup. Ct. R. 3:26(c)-(d). Plaintiffs will likely succeed on the merits of their claims and suffer irreparable harm without the preliminary injunction. And the balance of the hardships supports a preliminary injunction, as does the public interest. Plaintiffs respectfully request a hearing and relief on their motion before January 14, 2026.

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INTRODUCTION

Virginians voted to end partisan redistricting in 2020. They ratified an amendment to the Virginia Constitution that created the Virginia Redistricting Commission, vesting it with authority over drawing congressional districts. Va. Const. art. II, §6-A. Virginia Democrats are attempting to claw back that power. Four days before voting closed in the November 2025 general election, they passed a proposed constitutional amendment that will permit them to redraw congressional districts for a partisan purpose. Their stated goal is to oust as many as four sitting Republicans from the U.S. House of Representatives, transforming the Commonwealth's balanced bipartisan representation into a 10-to-1 Democratic Party advantage. This power grab is extraordinary not only for its cynical partisanship, but also for its procedural gamesmanship. At least two of their procedural ploys violate the Virginia Constitution.

First, the late hour of the proposed amendment violated the Constitution's amendment process. The Constitution requires the General Assembly to adopt a proposed constitutional amendment twice before submitting it to the voters. Va. Const. art. XII, §1. To give Virginians an opportunity to hold their elected officials accountable for their votes, the two passages must be separated by an intervening Virginia House election. Virginia law further provides that Commonwealth officials must give Virginians three months' notice of the proposed amendment before that intervening election. Code §30-13. Because the General Assembly introduced and adopted the proposed amendment while the 2025 general election was already underway, that election can't qualify as the intervening election under the Constitution and state law; and even if it could, the General Assembly still failed to give the electorate the three months' notice to which they're entitled under law.

Second, the General Assembly violated a host of constitutional provisions that constrain the General Assembly's procedure when conducting business. They purported to pass the proposed

amendment by reconvening a May 2024 special session concerning the state budget. That session ended long ago. It either ended when the General Assembly convened its regular 2025 session, which terminated any ability to maintain a separate special session or, at the latest, when the General Assembly adopted the proposed budget and fulfilled the special session’s limited purpose. The Virginia Constitution also constrains what subjects the General Assembly can consider during a special session and during a reconvened session. Va. Const. art. IV, §6. By transforming a budgetary session into a constitutional amendment session, the General Assembly further transgressed its constitutional authority.

Plaintiffs seek relief for these constitutional violations before the General Assembly’s next legislative session begins on January 14, 2025. Plaintiffs consist of public officials who are closest to the redistricting process (either because they appoint members of the redistricting commission, because they’re on the commission, or both) and voters who voted in the 2025 general election, including two who voted early, well before the Virginia Democrats even announced their redistricting ploy. Each Plaintiff has standing several times over, and each will likely suffer irreparable harm unless this Court intervenes. They are entitled to a preliminary injunction because they are likely to succeed on the merits, the balance of the hardships favors the preliminary injunction, and a preliminary injunction is not contrary to the public interest. Va. Sup. Ct. R. 3:26(d). The Court is familiar with the facts of this case, but as additional factual background, Plaintiffs incorporate their Amended Verified Complaint.

LEGAL STANDARDS

A preliminary injunction is appropriate if the Court “determines that the movant will more likely than not suffer irreparable harm without the preliminary injunction.” Va. Sup. Ct. R. 3:26(c). The Court must also “determine” “whether the movant has asserted a legally viable claim based on credible facts (not mere allegations) demonstrating that the underlying claim will more likely

than not succeed on the merits”; “whether the balance of hardships—that is, the harm to the movant without the preliminary injunction compared with the harm to the nonmovant with the preliminary injunction—favors granting the preliminary injunction”; and “whether the public interest, if any, supports the issuance of a preliminary injunction.” Va. Sup. Ct. R. 36(d). A preliminary injunction must be “supported by” the likelihood of success on the merits and balance of equities and “not contrary to” the public interest. *Id.*

ARGUMENT

Plaintiffs are entitled to a preliminary injunction as to Count 1 and Count 2 of their Verified Amended Complaint. Each Plaintiff has standing. And Plaintiffs are likely to succeed on the merits of their claims: the proposed redistricting amendment failed the constitutional amendment procedural requirements for the 2025 general election; the General Assembly had no authority to reconvene the 2024 special session in October 2025; and it had no authority to expand the scope of that session to enact partisan redistricting reform. Preliminary injunctive relief is needed to prevent the immanent and irreparable harm that Plaintiffs will suffer when the legislature attempts to repass the proposed constitutional amendment on January 14, 2026. Am. Compl. ¶69.

I. Plaintiffs have standing.

Plaintiffs must have “a sufficient interest in the subject matter of the case so that the parties will be actual adversaries and the issues will be fully and faithfully developed.” *Cupp v. Bd. of Sup’rs*, 227 Va. 580, 589 (1984). “Once it is determined that a particular plaintiff is harmed by the defendant, and that the harm will likely be redressed by a favorable decision,” the case is justiciable. *Clinton v. City of New York*, 524 U.S. 417, 434-35 (1998). Plaintiffs have four legally protectible interests that make them “actual adversaries” of Defendants.

First, Defendants deprived Plaintiffs Simon and Silveira of notice of the proposed constitutional amendment before they cast their ballots in the 2025 general election. Virginia law

requires that Defendants provide Plaintiffs Simon and Silveira with public notice “three months prior to the next ensuing general election” about the proposed constitutional amendment. Code §30-13. That notice serves the constitutional requirement that voters have the opportunity to hold their Delegates responsible at the ballot box before a second vote on a constitutional amendment. Va. Const. art. XII, §1. But Defendants didn’t provide Plaintiffs with that notice. Am. Compl. ¶¶87-91. Plaintiffs Simon and Silveira had already cast their ballots in the 2025 general election when Defendants introduced and passed HJR 6007 in late October. *Id.* ¶76.

Plaintiffs “assuredly can” seek to enforce their “procedural rights” to pre-election notice because Virginia’s notice requirement is “designed to protect” their “concrete interest” in casting an informed vote. *Cf. Morgan v. Bd. of Sup’rs of Hanover Cnty.*, 302 Va. 46, 66-67 (2023) (cleaned up). “A plaintiff who alleges a deprivation of a procedural protection to which he is entitled never has to prove that if he had received the procedure the substantive result would have been altered.” *Id.* at 66 n.10. But Plaintiffs show prejudice anyway. Had Ms. Simon known before she voted that the General Assembly had passed the proposed amendment, she would have changed her vote. Am. Compl. ¶78. Plaintiffs have “the right to act on proposed constitutional amendments” with “knowledge” that constitutional procedures have been followed. *Coleman v. Pross*, 219 Va. 143, 158 (1978). Defendants deprived them of that notice. That “informational injury” is “directly related to voting, the most basic of political rights,” and is sufficient for standing. *Cf. FEC v. Akins*, 524 U.S. 11, 24-25 (1998). Other courts agree. Constitutional notice requirements avert a “November surprise” and prevent voters from being “taken unawares in the voting booth” by a proposed amendment. *Armstrong v. Harris*, 773 So. 2d 7, 11 (Fla. 2000).

Second, Plaintiffs McDougle and Kilgore have a right to approve redistricting commissioners who will establish electoral districts for U.S. Representatives. Va. Const. art. II, §6-

A(b)(1)(B). The Constitution vests those commissioners with authority to “propose[.]” the “plan for districts for members of the United States House of Representatives” which shall stay in place for “ten years.” *Id.* §6-A(a), (d)(1). As minority legislative leaders, Plaintiffs McDougle and Kilgore thus have a plain, direct, and adequate interest in “confer[ring] their approval” on the commissioners who will propose the 10-year plan for Virginia’s congressional districts. *Cf. Lucas v. Stimson*, 2025 WL 2144389, at *11 (Va. Cir. Ct. July 29) (quoting *Dennis v. Luis*, 741 F.2d 628, 631 (3d Cir. 1984)); *Turner v. Shumlin*, 204 Vt. 78, 88-89 (Vt. 2017) (legislators have standing when their constitutional duty to appoint state officers is interfered with). But the proposed amendment shifts redistricting authority from the redistricting commission to the General Assembly. By transmitting and passing the proposed constitutional amendment and illegally convening the General Assembly in special session, Defendants have taken unlawful action that will rob Plaintiffs of their authority to appoint those responsible for redistricting.

Third, Plaintiffs McDougle, Stanley, and Trost-Thornton have standing as members of the Virginia Redistricting Commission. Senators McDougle and Stanley are legislative commissioners, and Ms. Trost-Thornton is a citizen commissioner. Am. Compl. ¶¶8-9, 11. All three have constitutional duties to “submit to the General Assembly plans for districts for the United States House of Representatives.” Va. Const. art. II, §6-A(d). They have a right to “vote” on those plans, and no plan can be submitted to the General Assembly unless it “receive[s] affirmative votes of at least six of the eight legislative members and six of the eight citizen members.” *Id.* “[C]laims that assert that a legislator’s vote or official authority has been impaired or nullified” support standing. *Fumo v. City of Philadelphia*, 972 A.2d 487, 500 (Pa. 2009). The proposed redistricting amendment nullifies the votes of the Commissioners, giving a majority of the General Assembly power to “modify one or more congressional districts” without the Commission’s input. Am. Compl. ¶50.

These Plaintiffs “have a plain, direct and adequate interest in maintaining the effectiveness of their votes.” *Coleman v. Miller*, 307 U.S. 433, 438 (1939).

Fourth, as Virginia voters, Plaintiffs have a constitutionally protected “interest” to contest “unconstitutional manipulations of the electorate.” *Howell v. McAuliffe*, 292 Va. 320, 333 (2016). To establish this interest, Plaintiffs need not show that the particular electoral districts in which they reside will be redrawn due to the proposed constitutional amendment. *Id.* Rather, Plaintiffs must merely “base their alleged standing on their status as qualified voters who live and are registered to vote in the Commonwealth, and who plan to vote in the [upcoming] General Election.” *Id.* at 330 (cleaned up). Plaintiffs thus have “a freestanding constitutional claim” to protect “the underlying interest” in constitutional elections. *Id.* at 333. “[T]he right of Virginia voters to seek judicial review of unconstitutional manipulations of the electorate” is an interest sufficient for standing. *Id.* Here, Plaintiffs are registered voters who voted in the 2025 general election. Am. Compl. ¶¶8-19. They allege that HJR 6007 is an unconstitutional attempt to manipulate the electorate without providing constitutionally required notice in an illegally convened session of the General Assembly. *Id.* at ¶¶41-91. Plaintiffs thus “have standing to assert that their voting rights have been harmed by an allegedly unconstitutional manipulation of the electorate.” *Howell*, 292 Va. at 335. And this Court has “authority to decide this dispute.” *Id.* “To not do so would be an inexcusable failure” to “interpret and apply Virginia law in a case where the parties are actual adversaries and the legal issues have been fully and faithfully developed.” *Id.* (cleaned up). Given “the unprecedented circumstances of this case,” those principles apply with full force. *Id.* at 334.

II. The proposed redistricting amendment did not comply with the constitutional procedural requirements for the 2025 general election.

To amend the Constitution, the General Assembly must pass a proposed amendment twice—once before a “general election” for “the House of Delegates,” and once afterwards. Va.

Const. art. XII, §1. To ensure that voters receive adequate notice, the House clerk must publish and distribute the proposed amendment to the circuit clerks in each county, who must post the amendment for “public inspection.” Code §30-13. This must be done no later than “three months prior to the next ensuing general election” for “the House of Delegates.” *Id.* The proposed redistricting amendment can’t be considered for a second passage because there hasn’t yet been an intervening general election. Nor has the three-month notice requirement been met.

A. The proposed amendment has not yet satisfied Article XII’s requirement of an intervening election.

The General Assembly passed the proposed amendment after the 2025 general election had already begun. So the 2025 general election doesn’t count as “the next general election” for purposes of Article XII, §1. Advisory Op. to Hon. Terry Kilgore, 2025 WL 3046240, at *1 (Va. A.G. Oct. 28, 2025); *see also Beck v. Shelton*, 267 Va. 482, 492 (2004) (“While it is not binding on this Court, an Opinion of the Attorney General is entitled to due consideration.” (cleaned up)). Rather, the first regular session held after the next general election begins in January 2028, after the fall 2027 general election of House delegates. The General Assembly theoretically can reapprove the proposed amendment in that January 2028 session, but no earlier.

State legislators nevertheless intend to take up the proposed constitutional amendment in the 2026 regular session, violating the intervening-election requirement. House Democrats pre-filed the proposed constitutional amendment for “January 14, 2026” and promise to take “the next step” to pass the amendment. Am. Compl. ¶¶68-69. But January 14, 2026, won’t be after the next general election of the House. The proposed amendment passed the House on October 29, and the Senate on October 31, 2025. *See id.* ¶¶52-53. By statute, the 2025 election began on September 19, 2025. Code §24.2-701.1. In the 2025 election, nearly a third of Virginia voters voted early. *See Voting Methods in the November 2025 Election*, Va. Public Access Proj., perma.cc/X2NE-43U6.

This means the General Assembly adopted the proposed amendment in the *middle* of the 2025 election. Va. Const. art. XII, §1. So the “next general election” of “the House” will take place in fall 2027. *Id.* The amendment must be “referred” to the January 2028 regular session.

The Constitution requires an intervening election to prevent precisely the injury that Ms. Simon experienced here. Simon’s own representative, Delegate Willett, introduced the proposed amendment after Simon had already voted. Am. Compl. ¶¶15-16. As Simon herself verified, “had [she] known about the proposed constitutional amendment introduced on October 27, 2025, she would have voted differently in the 2025 Virginia general election. *Id.* ¶17. She thus was deprived of the structural remedy the Virginia Constitution and Code provide the electorate.

Article XII’s strictures aren’t optional—nor can an amendment be passed if they are only partly satisfied. Rather, “strict compliance with these mandatory provisions is required in order that all proposed constitutional amendments shall receive the deliberate consideration and careful scrutiny that they deserve.” *Coleman*, 219 Va. at 154. The “first regular session held after the next general election” will occur in January 2028. Va. Const. art. XII, §1. That is the earliest that the legislature can repass the proposed amendment.

B. The proposed amendment has not complied with the statutory notice requirements.

The 2026 regular session is too early for the General Assembly to reapprove the proposed amendment for another reason: the Democrats deprived the electorate of the three months’ notice as required by law. Virginia Code §30-13 mandates that the Clerk of the House of Delegates “distribut[e]” all proposed amendments to the Constitution to the circuit court clerks of each county and city. Next, those clerks must post one copy “at the front door of the courthouse,” and another copy must be “available for public inspection.” *Id.* The clerks must complete the posting “three

months prior to the next ensuing general election” of “the House” and “certify” such posting to the House Clerk. *Id.*

The proposed redistricting amendment was not “posted” at all—let alone three months before the 2025 general election. Nor could it have been. After all, it *became* a proposed amendment just four days before the November 4 election. Only after the fall 2027 general election has occurred—with the amendment posted at least three months prior—can the amendment be referred to the General Assembly for its second passage.

III. The proposed redistricting amendment is void because it is the product of an unlawfully convened legislature.

To pursue its redistricting ploy, the General Assembly purported to reconvene a 2024 special session that expired long ago. The Governor called the 2024 special session in April 2024 to address the state budget. Am. Compl. ¶¶41-42. The General Assembly and Governor sent those budget bills back and forth over the course of 2024, adopting various amendments. *Id.* ¶¶120-23. The General Assembly adopted the final budget in April 2025. *Id.* ¶123. For at least two reasons, the 2024 special session ended before October 2025. First, the 2024 special session ended when the General Assembly convened its 2025 regular session, eliminating any need to legislate outside the Constitution’s default procedures. Second, at the latest, the General Assembly lost the ability to convene the 2024 special session when it passed the final budget in April 2025, thereby accomplishing the Governor’s purpose in calling the special session in the “interest of the Commonwealth.” Va. Const. art. IV, §6.

A. The General Assembly cannot reconvene a 2024 special session after it met in regular session in 2025.

Special sessions are special. Their purpose is to “provide for the convening of the legislature under extraordinary circumstances.” *Opinion of the Justs.*, 152 So. 2d 427, 428 (Ala. 1963). It follows that “the special session should be considered as concluded upon the convening of the

regular session,” since “[t]he necessity for the special session ... disappear[s] with the convening of the legislature in regular session.” *Id.* at 428-29.

The 2024 special session ended when the regular session convened in January 2025. At that point, the “necessity for the special session” ended. *Id.* Any business relating to the budget could be handled by the general session. Indeed, that’s precisely what happened. On December 18, 2024, the Governor recommended amendments to the 2024-2026 biennial budget. *Governor Glenn Youngkin Announces, “Keep Virginia Winning” Budget*, Off. of Gov. of Va., perma.cc/BJ7W-G4Y7. The Governor’s recommendations triggered the rules for a “reconvened session.” Va. Const. art IV, §6. Complying with its constitutional mandate, the General Assembly reconvened on April 2, 2025, the “sixth Wednesday” after it adjourned the regular session. *Id.* Both houses considered and approved the Governor’s recommendations and proposed amendments to the budget. *House Minutes*, Va. House of Delegates Clerk’s Off., perma.cc/5PPH-2QD5; *Senate Minutes*, Va. Legis. Info. Serv., perma.cc/7898-74WS. The same day, both houses adjourned their reconvened sessions sine die. *House Minutes, supra; Senate Minutes, supra.*

When the General Assembly adjourned sine die on April 2, it ceased to be in session and began its recess. “A legislative session is the period of time between the initial convening and adjournment sine die.” Mason’s Manual of Legislative Procedure §781(5) (2010). So an adjournment “sine die” is “a final and complete adjournment.” *Thomas v. Elizabeth River Tunnel Comm’n*, 5 Va. Cir. 487, *1 (1977) (unpublished op.). The General Assembly also can’t “reconvene” the 2024 special session. Reconvened sessions are triggered by the Governor returning a bill with “recommendations” or “objections.” Va. Const. art. IV, §6. Even if the General Assembly could reconvene on its own, a reconvened session is limited to “three days,” with a maximum of “seven additional days.” *Id.* So the 2024 session can’t be reconvened months after it ended.

It's no answer to say that the General Assembly never adjourned the 2024 special session sine die. The Constitution's restrictions on legislative sessions would be meaningless if the General Assembly could maintain a permanent special session merely by avoiding the words "sine die." *Cf. id.* The very nature of a "special session" is to "provide for the convening of the legislature under extraordinary circumstances." *Opinion of the Justs.*, 152 So. 2d at 428. Those "extraordinary circumstances" end when the legislature meets in regular session, which is why "a special session" cannot be "adjourned beyond the regular session of the legislature." *Id.* at 428-29.

To conclude that the General Assembly could reopen its special session would eviscerate the Constitution's strict limits on legislative activity. It would mean that anytime legislative leadership wanted to enact a new policy, they could *sua sponte* reopen the most recent special session. But Virginia's Constitution was designed to prevent perpetual sessions. It strictly limits regular sessions to a brief annual period, and it places high barriers to enter special session. Since the 2024 special session ended when the 2025 regular session began in January 2025, the General Assembly could not meet in special session in October 2025 to pass the proposed constitutional amendment.

B. At the latest, the 2024 special session ended when the General Assembly accomplished that session's purpose by finalizing the budget in April 2025.

Even if the 2024 special session could survive contact with the 2025 regular session, at the latest, the special session ended on April 2, 2025, when the General Assembly passed the Governor's proposed budget amendments. That act completed the purpose of the Governor's call for the 2024 special session, leaving the General Assembly no prerogative to continue convening. After they passed the budget amendments on April 2, both houses adjourned their respective reconvened sessions sine die. *House Minutes, supra; Senate Minutes, supra.* That "final and complete adjournment" persists until the next regular session begins in 2026, or until the Governor calls a special session. *Thomas*, 5 Va. Cir. at *1.

Part of what makes special sessions “special” is that the legislature is called to address the narrow purpose that the Governor identified as being in the “the interest of the Commonwealth.” Va. Const. art. IV, §6. The Governor has plenary authority to identify that purpose and trigger “when” the General Assembly will meet. *Id.*

The legislature is limited not only in *when* they convene, but also in *what* legislation they can consider. “It is well established that the legislature while in special session can transact no business except that for which it was called together.” *Arrow Club, Inc. v. Neb. Liquor Control Comm’n*, 131 N.W.2d 134, 137 (Neb. 1964); accord *State v. Woollen*, 161 S.W. 1006, 1014 (Tenn. 1913). “There can be no doubt that unless a law passed at a special session is germane to some subject within the call, the Legislature is without power to pass it.” *State ex rel. Conway v. Versluis*, 120 P.2d 410, 413 (Ariz. 1941). “[T]he Legislature must confine itself to the matters submitted.” *Com. ex rel. Schnader v. Liveright*, 161 A. 697, 703 (Pa. 1932).

The subject-matter limitation applies even where a State’s constitution contains no explicit limit on the subject matter of special sessions. Compare Ala. Const. of 1901, art. V, §122, with *In re Opinions of the Justs.*, 166 So. 710, 712 (Ala. 1936). “In issuing a call for a special session of the legislature, the governor may confine legislation to the subjects specified in the governor’s proclamation.” Mason’s Manual, *supra*, §780(2).

It follows that the General Assembly loses authority to convene after it has accomplished the Governor’s purpose for calling the special session. That’s true regardless of whether the General Assembly “must confine itself to the matters submitted” during a special session. *Schnader*, 161 A. at 703. The Governor has exclusive authority over “when” a special session “may convene.” Va. Const. art. IV, §6. So even if he can’t limit “what” legislation the General Assembly can pass, *cf. infra* Section IV, his plenary authority over “when” to convene a special session means that the

session expires when the purpose is accomplished. The General Assembly can't perpetually convene after it has addressed "the interest of the Commonwealth" identified by the Governor as the basis for the special session. Va. Const. art. IV, §6.

Permitting the legislature to reopen an adjourned special session would circumvent the Constitution's limits on the time and subject of legislative sessions. It would nullify the Governor's authority to determine whether convening the legislature is "the interest of the Commonwealth." *Id.* It would nullify the strict supermajority threshold for convening a special session without the Governor's support. And it would mean that the Governor's calling a special session would give the General Assembly license to reconvene any time to address any subject.

Permitting endless special sessions with boundless scope would lead to all manner of absurdities. It would mean that legislative immunity "during the sessions of the General Assembly" is effectively permanent until the General Assembly chooses to end it. Va. Const. art. IV, §9. It would mean that the General Assembly's members and employees are "entitled to a continuance as a matter of right" in "any court" so long as the General Assembly purports to hold open its special session. Code §30-5. It would confuse when the legislature must confirm gubernatorial appointments. *E.g., id.* §§46.2-201, 52-2, 60.2-108. It would mire other vacancies in disputes like this one, §§16.1-69.9:2, 17.1-512, including vacancies on this Court, §17.1-303. It would cast doubt on the effective dates of laws. *See* Va. Const. art. IV, §13. And it would affect everything from reporting lobbying activities, Code §2.2-425, to compensating legislators, §30-19.13, to flying the flag over the Capitol, §1-509. Further, indefinite special sessions would create a perverse disincentive for Governors not to call special sessions even when they are needed, to avoid being stuck with an imperial legislature for the rest of their term. And if a Governor did call one to address an emergency, Virginians would be left with the exact thing its Constitution was intended

to prevent: a perpetual session. The absurdity of these consequences is good evidence the Constitution doesn't authorize the General Assembly to hold open special sessions indefinitely.

IV. The proposed redistricting amendment is void because it exceeded the call of the 2024 special session.

Even if the October meeting were a legitimate legislative session, the General Assembly had no authority to enact *redistricting* legislation during a *budgetary* session. Absent an application from supermajorities of both legislative houses, the Constitution places power to call a special legislative session solely in the Governor's hands. "The Governor may convene a special session of the General Assembly when, in his opinion, the interest of the Commonwealth may require." Va. Const. art. IV, §6; *see also id.* art. V, §5.

When Virginia ratified the 1971 Constitution, it had long been understood that a special legislative session called by the governor is limited to the subjects of the governor's call. *See, e.g., Arrow Club*, 131 N.W.2d at 137; *Conway*, 120 P.2d at 413; *Schnader*, 161 A. at 703; *Woollen*, 161 S.W. at 1014; *In re Opinions of the Justs.*, 166 So. at 712. The Virginia Constitution is clear: the subjects of a special session are limited to what the Governor deems to be in "the interest of the Commonwealth." Va. Const. art. IV, §6.

By contrast, Defendants endorse a runaway legislature. According to Defendants, the General Assembly can meet whenever it wants, for whatever purpose it wants. The Constitution says otherwise. If a special session could be broadened indefinitely, it wouldn't be "special" at all. It would be a regular session by another name. Allowing the General Assembly to expand the subjects of a special session beyond the Governor's call would circumvent the Constitution's strict limits on regular sessions. And it would undermine Virginians' policy choice favoring a limited legislature. Governor Youngkin called the 2024 special session to complete the biennial budget. Am. Compl. ¶¶41-42 He did not call for redistricting reform or for a constitutional amendment.

The proposed redistricting amendment thus exceeds the scope of the Governor’s call, and “the Legislature [was] without power to pass it.” *Conway*, 120 P.2d at 413.

V. Plaintiffs satisfy the remaining factors for a preliminary injunction.

The Virginia Supreme Court has emphasized that “[n]o single test is to be mechanically applied, and no single factor can be considered alone as dispositive,” if equity otherwise favors an injunction. *Bowyer v. Sweet Briar Inst.*, 2015 WL 3646914, at *2 (Va. June 9, 2015). Virginia courts have nevertheless looked to the traditional federal test. *Winter v. NRDC*, 555 U.S. 7, 20 (2008); *see CFM Va., L.L.C. v. MJM Golf, L.L.C.*, 94 Va. Cir. 404, *2 (2016) (collecting cases); *Loudoun Cnty. Sch. Bd. v. Cross*, 2021 WL 9276274, at *5 (Va. Aug. 30, 2021) (affirming an injunction granted under the *Winter* factors). Under the *Winter* test, a preliminary injunction is warranted where the plaintiff shows that he likely to succeed on the merits, that he will likely suffer irreparable harm absent the injunction, that the balance of equities tips in his favor; and that the injunction is in the public interest. *See Zachary Piper LLC v. Popelka*, 109 Va. Cir. 71 (2021). These factors correspond to those listed in Virginia Supreme Court Rule 3:26 (c)-(d).

For the reasons explained in Section I through IV, Plaintiffs are likely to succeed on the merits. The traditional equitable factors also favor issuance of a preliminary injunction here.

First, Plaintiffs will more likely than not suffer irreparable harm without the injunction. *See* Va. Sup. Ct. R. 3:26(c). A “presumption of irreparable injury” flows “from a violation of constitutional rights.” *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996); *accord Johnson v. Bergland*, 586 F.2d 993, 995 (4th Cir. 1978). As legislators and voters, the Plaintiffs have the right to participate in the amendment process as laid out in the Constitution. *See* Va. Const. art. XII, §1. And as legislative leaders and Commissioners, Plaintiffs have the constitutional right to participate in the redistricting process. *See id.* art. II, §6-A. The loss of constitutional rights “for even minimal periods of time, rises to the level of irreparable injury.” *Young v. Northam*, 107 Va. Cir. 281, *6

(2021) (unpublished op.) (citing *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020)). And “[t]he restriction on the fundamental right to vote therefore constitutes irreparable injury.” *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012).

Plaintiffs risk losing their right to participate in the constitutionally mandated amendment process. Plaintiffs’ injuries are caused by the Defendant clerks’ acts in furtherance of an unconstitutional process. Courts recognize that “monetary damages are inadequate to compensate” for the deprivation of constitutional rights. *Legend Night Club v. Miller*, 637 F.3d 291, 302 (4th Cir. 2011). So no after-the-fact damages can make the Plaintiffs whole.

Second, the balance of the equities tips in the Plaintiffs’ favor. See Va. Sup. Ct. R. 3:26(d)(ii). In Virginia, “the balance of equities weighs in favor of enforcing . . . agreements.” *CG Riverview, LLC v. 139 Riverview, LLC*, 98 Va. Cir. 59 (2018). The Constitution is the preeminent social contract, so equity favors strictly enforcing its terms. See *Coleman*, 219 Va. at 145. Moreover, if this Court grants the injunction, the only harm to Defendants is that “at worst [they] will suffer the inconvenience of not being able to [pass the proposed amendment] for some period of time.” *Fontaine v. Watson*, 106 Va. Cir. 430 (2020). By contrast, the deprivation to the Plaintiffs—they will lose their rights to participate in a lawful amendment process and the Plaintiff Commissioners will lose their lawful role in redistricting—will be “quite severe.” *Id.* Because Defendants have no legitimate interest in enacting an unlawful amendment, the equities strongly favor the Plaintiffs.

Third, the public interest also supports a preliminary injunction. Va. Sup. Ct. R. 3:26(d)(iii). “The public interest advanced by granting a temporary injunction outweighs the public interest in denying the motion.” *Young v. Northam*, 107 Va. Cir. 281 (2021). That is because “it is always in the public interest to protect constitutional rights.” *Carson v. Simon*, 978 F.3d 1051,

1061 (8th Cir. 2020). And “the public interest favors enjoining a constitutional violation.” *Elhert v. Settle*, 105 Va. Cir. 544 (2020). At the very least, a preliminary injunction “is not contrary to the public interest,” which is all that is required here. Va. Sup. Ct. R. 3:26(d).

The *Winter* and Rule 3:26 factors thus support a preliminary injunction under Counts 1 and 2 of the Amended Complaint. In Count 1, Plaintiffs seek to enjoin the Defendant legislative clerks from transmitting, and the Defendant court clerk from posting, the invalidly proposed amendment. And in Count 2, Plaintiffs seek, in the alternative, to enjoin the court clerk to post the proposed amendment in advance of the fall 2027 election. The preliminary injunctive relief is necessary to prevent Plaintiffs’ rights from being violated when the General Assembly attempts to repass the proposed amendment on January 14, 2026. Am. Compl. ¶¶68-69.

Scott v. James, 76 S.E. 283, 283 (Va. 1912), is no obstacle to the preliminary injunctions sought here. To start, *Scott* doesn’t apply at all to Claim 2, regarding an injunction compelling the Defendant clerks to *post* the proposed amendment. In *Scott*, the Supreme Court declined to enter an injunction prohibiting the *submission* of a proposed amendment to the voters, in part because it didn’t want to “interfere with the process of legislation.” 114 Va. at 304 (cleaned up). But compelling ministerial *posting* duties doesn’t “interfere with the process of legislation.” *Id.* The General Assembly would be free to continue pursuing this very amendment. It would just have to comply with the Constitution’s notice and public posting requirements in doing so. So *Scott* doesn’t apply to Claim 2, requiring compliance with the ministerial posting requirements.

Even as to Claim 1, *Scott*’s facts don’t match this case. In *Scott*, “a taxpayer and citizen” sought to enjoin the Secretary from submitting a proposed constitutional amendment to the people for a vote. *Id.* at 302-03. The General Assembly had adopted two proposed amendments modifying the rules for re-election of city treasurers and revenue commissioners. *Id.* at 300. Those

amendments were submitted to the voters as a package, and they failed. The General Assembly then sought to resubmit them to the voters on separate ballots. Scott objected, arguing that the amendments couldn't be resubmitted to the people without going through the amendment process again, and asked the court to enjoin the Secretary from enforcing the act establishing the election. *Id.* at 301-02. The court declined, reasoning that “with few exceptions,” it could not “enjoin the holding of an election.” *Id.* at 304-05 (cleaned up). Plaintiffs don't ask the Court “to enjoin the holding of an election,” so *Scott* doesn't apply.

Even if Plaintiffs were seeking to enjoin an act that “direct[s] an election to be held upon the proposed amendments,” *id.* at 305, *Scott*'s other rationale about interfering with the legislative process has been abrogated by more recent precedent. In *Coleman v. Pross*, just as in *Scott*, the General Assembly adopted an act directing officials to hold an election “upon the ratification or rejection of certain proposed amendments to the Constitution of Virginia” affecting legislative sessions. *Coleman*, 219 Va. at 145. The “Acting Comptroller entertained doubts as to the constitutionality” of the proposed amendment because the two versions of the amendment adopted in the two legislative sessions were not “the same.” *Id.* at 145, 154. The Attorney General sought a writ of mandamus ordering officials to hold the election. Rather than apply *Scott*'s reasoning that it couldn't “interfere with the process of legislation,” 114 Va. at 304, the Court in *Coleman* held that the proposed constitutional amendment *couldn't* be submitted to the voters because it flunked the amendment procedures, 219 Va. at 1458-59. The two versions of the proposed amendment “were not the same,” so “there ha[d] not been strict compliance” with “Article XII, Section 1 of the Constitution.” *Id.*

Coleman, not *Scott*, controls. “[I]n determining whether proposed amendments to the Constitution may properly be referred to the electorate, a standard of strict compliance with all

specified prerequisites, rather than a standard of substantial compliance, must be applied.” *Id.* at 158. That’s because “[v]oters have the right to act on proposed constitutional amendments with confidence, secure in the knowledge that the proposals have been put to them for final action only after careful analysis, elimination of errors of form and substance.” *Id.* The Plaintiffs in this case have no less a right today. They are thus entitled to a preliminary injunction.

Finally, no bond is needed. “For any temporary ... injunction sought by, or awarded to, the Commonwealth, or any of its officers or agencies, no bond shall be required.” Code §8.01-631. Plaintiffs include four of the Commonwealth’s officers. *See* Am. Compl. ¶¶8-10. In any event, courts have discretion to waive the bond requirement “given the nature of the case and the grounds for the preliminary injunction.” *Lewis v. Lilly*, 114 Va. Cir. 136 (2024). So even if §8.01-631 didn’t apply, the equities warrant waiving the requirement here.

CONCLUSION

For these reasons, the Court should grant a preliminary injunction in Plaintiffs’ favor under Count 1 and Count 2 of the Verified Amended Complaint. Plaintiffs respectfully request a hearing and ruling on this motion before the next legislative session begins on January 14, 2026.

Respectfully submitted December 16, 2025

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