VIRGINIA:

IN THE CIRCUIT COURT FOR TAZEWELL COUNTY

RYAN T. McDOUGLE, et al.,	)	
	)	
Plaintiffs,	)	
	)	**Case No. CL25-1582**
v.	)	
	)	
G. PAUL NARDO, et al.,	)	
	)	
Defendants.	)	
	)	

AMICI CURIAE BRIEF OF U.S. REPRESENTATIVES BEN CLINE, H. MORGAN GRIFFITH, JENNIFER A. KIGGANS, JOHN J. McGUIRE, AND ROBERT J. WITTMAN

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IDENTITY AND INTEREST OF AMICI CURIAE

Amici Curiae are U.S. Representatives from Virginia who are members of the Republican Party and former members of the Virginia General Assembly. Their past performance and future prospects as members of Congress should be determined by the voters in districts that elected them to office rather than by a partisan subset of legislators in Richmond. The Amici are therefore directly affected by the General Assembly's unconstitutional effort to replace independent redistricting with partisan gerrymandering. Further, as representatives of over four million Virginians, they have an interest in defending citizens' constitutional liberties and protections from drive-by and politically-manipulated changes to the Commonwealth's fundamental charter. For these reasons, Amici have valuable perspective to offer the Court concerning the highly irregular actions of the General Assembly challenged in this case.

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SUMMARY OF ARGUMENT

Virginia's congressional districts have for most of its history been established by the General Assembly. That framework enabled the party in power to "draw[] lines to their party's advantage." *Arizona State Legislature v. Arizona Indep. Redistricting Comm'n*, 576 U.S. 787, 822 (2015) (*AIRC*). Gerrymandering—the colloquial name for that practice—is "incompatible with democratic principles." *Id.* (cleaned up). But federal courts have no tools to police partisan gerrymandering because the Supreme Court has found no manageable standards that define fair districts.

Fed up with partisan gerrymandering, the people of Virginia decided to handle the problem in the right way. Proponents of redistricting reform advocated for years and submitted a measured response to partisan gerrymandering in two regular sessions of the General Assembly—separated by an intervening general election—and to a vote of the public in November of an even-numbered

year, when turnout was historically high. The Virginia Constitution established this arduous process to ensure that our foundational charter is not altered based on whims or manipulation. Because its dictates were strictly met in 2020, there is every indication the Virginia public genuinely desired this change. Independent redistricting won because the people wanted it.

Now, a bare partisan majority of the General Assembly is attempting to thwart popular will through the very machinations the people rejected in their Constitution. This is an assault on democracy in both its ends and means. No one seriously thinks independent redistricting failed in Virginia or that the public wants to reauthorize partisan gerrymandering. If that were the desire, the General Assembly could have proposed to reinstitute partisan gerrymandering in its 2024 or 2025 general sessions. Instead, legislative leaders concealed that plan from the public. Well after a million citizens cast ballots in the 2025 election, a partisan majority of the General Assembly called itself into session to propose an amendment overruling the people's will. Our Constitution was designed to prevent this. It calls for a deliberative process requiring multiple iterative votes of the General Assembly and the people—acting in their proper turn—to ensure that a proposal is genuinely desired across different political environments. The Virginia Supreme Court has demanded strict compliance with the amendment process, a flagrant violation is afoot, and the policy objectives codified in our charter are by consequence in grave danger of being overridden—at the people's expense. The Court should restore proper constitutional order and grant Plaintiffs' motion for a preliminary injunction.

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ARGUMENT

The intemperate rush by the General Assembly's bare partisan majority to amend the Constitution through norm-breaking procedures is unconstitutional. Aware of the temptation to sacrifice the long-term common good for quick partisan victories, the constitutional framers

established strict limits on amendments. Where federal elections are concerned, the U.S. Constitution directs states to adhere to their own prescriptions for lawmaking, and the Virginia Supreme Court has independently demanded that the amendment process be followed in the strictest possible sense. The guardrails exist for a reason. They ensure constitutional amendments reflect the genuine will of the people. In turn, they protect the people in voicing their will. And they empower the people to hold legislators accountable for improvident proposals. Because these restrictions have been violated, the Court should issue a preliminary injunction.

I. The Commonwealth's Constitution Protects the People's Lawmaking Power by Erecting Safeguards Against Intemperance, Deceit, and Manipulation.

A. The Federal Constitution Empowers the People of Each State to Regulate Congressional Elections Through Their Own Constitutional Processes.

1. This case concerns Virginia's congressional redistricting plan, which governs federal elections in the Commonwealth. "[T]he power to regulate the incidents of the federal system is not a reserved power of the States, but rather is delegated by the Constitution." *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 805 (1995). To that end, the Constitution's Elections Clause "delegated to the States the power to regulate the 'Times, Places and Manner of holding Elections for Senators and Representatives,' subject to a grant of authority to Congress to 'make or alter such Regulations.'" *Cook v. Gralike*, 531 U.S. 510, 522 (2001) (quoting U.S. Const. Art. I, § 4).

Although the Elections Clause vests power in "the Legislature" of each state, U.S. Const. Art. I, § 4, the Supreme Court has long understood this text to refer to "the method which the state has prescribed for legislative enactments." *Smiley v. Holm*, 285 U.S. 355, 367 (1932); *see also State of Ohio ex rel. Davis v. Hildebrant*, 241 U.S. 565, 569 (1916); *AIRC*, 576 U.S. at 808. Accordingly, a state "may not create congressional districts independently of requirements imposed by the state constitution with respect to the enactment of laws." *Moore v. Harper*, 600 U.S. 1, 26 (2023) (citation and quotation marks omitted).

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These requirements encompass the means by which the people of a State may amend its Constitution, including the ballot "initiative and the referendum." *AIRC*, 576 U.S. at 816. In this way the Elections Clause accommodates—and reinforces—"modes of legislation that place the lead rein in the people's hands." *Id.* Simply put, the Elections Clause forbids a state from regulating "federal elections in defiance of provisions of the State's constitution." *Id.* at 818. This enforces "the fundamental premise that all political power flows from the people." *Id.* at 824.

2. Under this doctrine, the people of a State may use their power to amend their Constitution "to provide for redistricting by independent commission." *Id.* at 805–09. In *AIRC*, the Supreme Court rejected the argument that the Elections Clause insulates state legislatures from constitutional constraints and, by extension, popular oversight. It is "[t]hrough the structure of its government," the Court explained, "and the character of those who exercise government authority, [that] a State defines itself as a sovereign." *Id.* at 817 (citation omitted). The Court countenanced that "Arizona engaged in definition of that kind" by reserving "the initiative power" to "its people" and vesting its "redistricting authority" in a commission. *Id.*

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In fact, the Supreme Court has identified such efforts as *the* proper way for electorates to address the problem of partisan gerrymandering "by which the majority in the legislature draws district lines to their party's advantage." *Id.* at 822. Partisan gerrymandering is "incompatible with democratic principles." *Id.* at 791 (cleaned up); *see also Rucho v. Common Cause*, 588 U.S. 684, 718 (2019). But federal courts lack the tools to police partisan gerrymandering because, as the Supreme Court held in *Rucho*, there is no "judicially manageable framework" for distinguishing "an 'acceptable' level of partisan gerrymandering from 'excessive' partisan gerrymandering.'" 588 U.S. at 715 (citation omitted). This holding did not "condemn complaints about districting to echo into a void." *Id.* at 719. The Supreme Court in *Rucho* explicitly reaffirmed that the people of a

state may amend their constitution to "provide standards and guidance for state courts to apply" or else "plac[e] power to draw electoral districts in the hands of independent commissions." *Id.* The operative principle governing these efforts is that redistricting must remain "subject to the ordinary constraints on lawmaking in the state constitution." *Moore*, 600 U.S. at 30.

B. The Virginia Constitution Sets Strict Requirements on Amendments to Ensure the Charter Is Not Subject to Manipulation Based on Passing Whims.

1. The Virginia Constitution specifies its amendment process in Article XII, Section 1. This article "makes the Constitution extremely difficult to amend, particularly when compared with amendment provisions in other constitutions." Doni Gewirtzman, *Our Founding Feelings: Emotion, Commitment, and Imagination in Constitutional Culture*, 43 U. Rich. L. Rev. 623, 646 (2009). The Constitution does this by "impos[ing] significant transaction costs and time delays," the purpose of which is to "allow ample time for sober second thoughts." *Id.* at 647.

This process serves objectives of "Legitimacy and Certainty." Adrian Vermeule, *Second Opinions and Institutional Design*, 97 Va. L. Rev. 1435, 1456 (2011). By drawing the decision-making process out, and imposing stages by which the public and General Assembly iteratively consider proposals, with check points along the way, the document implements a model of "second opinions as a technique for the design of lawmaking institutions." *Id.* at 1435. This process "implies that opinion givers are expressing judgments rather than preferences about the question at hand." *Id.* at 1444. Put differently, the amendment process "act[s] as [a] check[] on emotion's potentially dangerous impact on political behavior by establishing multiple fora for deliberation and slowing the legislative process to allow time for sober reflection." Gewirtzman, *supra*, at 647.

The process in turn fosters a high level of confidence that successful amendments genuinely reflect the will of "the people as the font of governmental power." *AIRC*, 576 U.S. at 819. Moreover, these procedures ensure the public has not "abandon[ed] previously held

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commitments based on impulse, whimsy, and without appropriate thought and consideration." Gewirtzman, *supra*, at 648.

2. The Constitution provides four decision-making steps that separately occur over four time periods. First, the proposal must "be agreed to by a majority of the members elected to each of the two houses," Va. Const. art. XII, § 1, which ordinarily occurs in a regular session in winter or early spring. Next, the people—acting with advance notice that the General Assembly is contemplating an amendment—vote in the "next general election" to decide which representatives to send to Richmond for the next session. *Id.* That accountability check point typically occurs eight to twenty months *after* the General Assembly first approves the proposal. Then, at the General Assembly's "first regular session," both chambers must again endorse the identical proposal. *Id.* Finally, after a wait of at least 90 days, the proposal goes to the public for a vote. *Id.* This, again, is typically at a November election. In fact, *every* proposed constitutional amendment under the 1971 Constitution was voted on in a November general election (almost always in an even year).[1]

This process assures citizens of "the opportunity to consider—in a calm, sober state—the implications and consequences of different options and decisions." Gewirtzman, *supra*, at 641. The process is not built around a momentary news cycle. Nor does it yield to heat-of-the-moment politics. Only those proposals enjoying sustained support—over a period measured in years—satisfy this process, a longstanding feature of Virginia's constitutional landscape. In favorably discussing the Commonwealth's amendment process, James Madison noted that frequent public debate over constitutional questions raises "[t]he danger of disturbing the public tranquility" and subjecting the people to "public passions." The Federalist No. 49, at 247 (Madison) (Jim Miller ed., 2014). When the "spirit of pre-existing" parties—and their short-term goals—control the

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[1] *See* List of Virginia Ballot Measures (available at https://ballotpedia.org/List_of_Virginia_ballot_measures).

amendment process, a proposal can "never be expected to turn on the true merits of the question" before the people. *Id.* at 249. "PASSIONS, therefore, not the REASON, of the public would sit in judgment." *Id.*

For the same reason, the Supreme Court of Virginia has required "strict compliance with" the amendment process so "that all proposed constitutional amendments shall receive the deliberate consideration and careful scrutiny that they deserve." *Coleman v. Pross*, 219 Va. 143, 154, 246 S.E.2d 613, 620 (1978). The Court struck down proposed amendments where successive General Assemblies had not agreed to "the same amendment[]." *Id.* at 622. And it explained that "[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, and approval, without change, by the requisite number of members of each house in two General Assemblies." *Id.* This ruling guaranteed the people the "right to [vote]" on amendments that have faced "careful analysis." *Id.*

This process protects the people from deceit and manipulation by imposing a lengthy period during which all possible perspectives may be aired and requiring legislators to face an electorate on notice of potential constitutional changes. This gives voters time to associate, organize, and make their voices heard—in both the "intervening election" and the referendum.[2]

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[2] In regulating "referendum committees" advocating for and against ballot measures, *see* Va. Code § 24.2-951 et seq., Virginia law contemplates extended periods of public discourse and advocacy surrounding referenda, including during years where the issues have not yet been placed on the ballot. *See* Va. Code § 24.2-951.4.

II. The General Assembly is Manipulating the Amendment Process in a Rushed Effort to Override the People's Recent Adoption of Independent Redistricting.

This case concerns not one constitutional amendment process, but two. After almost two decades of advocacy and debate, and motivated by a longstanding concern over partisan gerrymandering, the people spent two full years deliberating independent redistricting. The people ultimately adopted an independent commission by constitutional amendment. No one seriously thinks the people of Virginia have abruptly deemed independent redistricting "a high-minded experiment that has failed." *AIRC*, 576 U.S. at 820. But short-term political tensions are high based on national events. Redistricting has been in the news. And partisan actors in Richmond, subordinating Virginians' representative rights to national partisan whims, are using short-term fears and manipulations to short circuit the amendment process. This is exactly what the Constitution's "prescriptions for lawmaking," *Moore*, 600 U.S. at 25–26, were designed to prevent.

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A. The Commonwealth's Citizens and Their Representatives Adopted a Long-Term Solution to a Long-Term Problem After Years of Debate.

The amendment process that created independent redistricting strictly followed the Constitution. There is every reason to have confidence in the legitimacy of the outcome.

1. Redistricting reform efforts did not arise in a vacuum. The Commonwealth saw its fair share of redistricting litigation over the decades, with varying outcomes. *See, e.g.*, *Bethune-Hill v. Virginia State Bd. of Elections*, 580 U.S. 178 (2017); *Bethune-Hill v. Virginia State Bd. of Elections*, 326 F. Supp. 3d 128 (E.D. Va. 2018); *Page v. Virginia State Bd. of Elections*, 2015 WL 3604029 (E.D. Va. June 5, 2015); *Wittman v. Personhuballah*, 578 U.S. 539 (2016); *Vesilind v. Virginia State Bd. of Elections*, 295 Va. 427, 813 S.E.2d 739 (2018); *Wilkins v. West*, 264 Va. 447, 571 S.E.2d 100 (2002); *Jamerson v. Womack*, 244 Va. 506, 423 S.E.2d 180 (1992). By the end of the 2010s, the Commonwealth's congressional and House of Delegates redistricting plans had been

substantially revised by court-appointed special masters. *Bethune-Hill v. Virginia State Bd. of Elections*, 368 F. Supp. 3d 872 (E.D. Va. 2019); *Personhuballah v. Alcorn*, 155 F. Supp. 3d 552, 562 (E.D. Va. 2016). Given this history, it should come as no surprise that redistricting reform was a prominent political topic in Virginia long before the formal amendment process began.

In 2018 and 2019, redistricting reform groups, including Fair Maps and OneVirginia2021, supported by Virginia's business community, began airing advertisements and pushing new laws that would curb partisan gerrymandering in the manner the Supreme Court approved in *AIRC*. Proponents of redistricting reform touted to the public that the change would "address redistricting abuses in the state" by the Legislature and "transform the troubled process for drawing the state's legislative and congressional maps" by reducing partisan and racial gerrymandering.[3]

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This advocacy ripened in 2019 into concurrent resolutions in the House and Senate. Senate sponsor George L. Barker (D-Alexandria) explained the amendment would take away the Legislature's "control in the process" that had enabled polarizing gerrymanders.[4] The proposal passed on February 23, 2019 with overwhelming bipartisan support in both chambers (House: 83-15; Senate: 40-0). Strictly complying with the Constitution, the General Assembly tabled the proposal until after the November 2019 general election.

When the new General Assembly convened in 2020, the amendment was reintroduced—with identical language—as Senate Joint Resolution 18.[5] Although political headwinds damped Democratic support to a degree, the proposal passed the second vote with 54 votes in the House

[3] E.g., Tim Lau, *A Bipartisan Win for Redistricting Reform in Virginia*, Brennan Center (Feb. 26, 2019), available at https://www.brennancenter.org/our-work/analysis-opinion/bipartisan-win-redistricting-reform-virginia).

[4] Daniel Berti, *Virginia redistricting amendment advances to the Senate*, Capital News Service (Jan. 25, 2019), available at https://www.whsv.com/content/news/Virginia-redistricting-amendment-advances-to-the-Senate-504884182.html.

[5] Virginia General Assembly, "SJR 18 (2020)," available at https://legacylis.virginia.gov/cgi-bin/legp604.exe?201+sum+SJ18.

and 38 in the Senate. *Id.* The requisite referendum was held on November 3, 2020, concurrent with a presidential election (with historically high turnout). Three referendum committees—two in support and one opposed—debated the merits of the proposal.[6] After 20 months of debate, the people overwhelmingly approved the amendment (65.69% voted Yes).[7]

2. The new provision assigns congressional districting to the Virginia Redistricting Commission (the Commission), composed of eight members of the General Assembly (four from each of the two largest political parties) and eight citizens. Va. Const. Art. II, § 6-A. The Commission must conduct all meetings in public and hold at least three public hearings in different regions. *Id.* The Commission is directed to submit congressional and state legislative plans to the General Assembly, which retains ultimate responsibility to adopt a plan (a feature that confirms the public settled on a compromise approach to redistricting reform). *Id.* § 6-A(f). If the Commission is unable to agree on a plan, or the General Assembly does not approve, the Supreme Court of Virginia becomes responsible for establishing the new plan. *Id.* § 6-A(f) and (g).

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Pursuant to that contingency process, the Virginia Supreme Court adopted congressional and legislative maps in December 2021. The maps received "praise" from groups pushing for bipartisan reform, though some incumbent legislators complained.[8] The maps governed elections from 2022 to 2025. In "[c]urb[ing]" partisan gerrymandering by creating an independent panel with citizen voting power and input, the people ensured that they were picking their legislators, "not the other way around." *AIRC*, 576 U.S. at 824; accord *Rucho*, 588 U.S. at 719. Because

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[6] *2020 - Statewide - Question 1*, Virginia Election Results, available at https://historical.elections.virginia.gov/ballot_questions/view/11598/.

[7] The same year, the Assembly also passed a law dictating that "[a] map of districts shall not, when considered on a statewide basis, unduly favor or disfavor any political party." Va. Code § 24.2-304.04(8).

[8] Brad Kutner, *Virginia High Court Gives Final Approval to New Election Maps*, Courthouse News (Dec. 29, 2021), available at https://www.courthousenews.com/virginia-high-court-gives-final-approval-to-new-election-maps/.

advocates for redistricting reform satisfied each arduous step of the amendment process, there is every reason to recognize the legitimacy of the amendment.

B. The General Assembly Rushes to Reverse the Redistricting Reform Amendment Based on Short-Term Partisan Goals and Without Fair Notice to the Public.

The amendment process at issue in this case provides a study in sharp contrast with 2020's proper procedure. Because partisan gerrymandering is "incompatible with democratic principles," *Rucho*, 588 U.S. at 718 (citation omitted), it should be no surprise that efforts to *revive* partisan gerrymandering are also anti-democratic. Where the 2020 process was thoughtful and deliberate, the current process is thoughtless and expedient. And where the 2020 process reflected well-founded, bipartisan concerns, the current process seeks to vindicate short-term partisan objectives. Nothing about the process commends itself to "Legitimacy and Certainty." Vermeule, *supra*, at 1456.

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1. The General Assembly that began this manipulative amendment effort was elected in November 2023. It met for regular sessions in 2024 and 2025. But no member attempted to abolish the redistricting reform amendment at those times. The current congressional plan governed federal elections in 2022 and 2024. Anyone who thought redistricting reform was "a high-minded experiment that has failed," *AIRC*, 576 U.S. at 820, would have said so. No one did.

Instead, General Assembly leaders concealed their plans from the public. In a blatant violation of Va. Code § 30-13, they waited until *October 31, 2025*, to challenge the people's work by supposedly approving a proposed amendment (Resolution 6007). This choice had nothing to do with any concern—immediate or otherwise—facing Virginians. Instead, the General Assembly acted because, in August, Texas passed a congressional plan aiming to improve Republican

performance, which triggered responses and counter-responses across states.[9] On its face, the proposal bases its reauthorization for partisan gerrymandering by the General Assembly on events in another "State of the United States of America," Resolution 6007 ¶2, not on any need within, or benefit to, the Commonwealth. Democratic members thus admit they pursue national partisan goals with no concern for Virginia. Virginians thought they imposed the very opposite policy in 2020.

2. Only by defying "the ordinary constraints on lawmaking in the state constitution," *Moore*, 600 U.S. at 30, could the Legislature possibly achieve its short-term goals.

First, the General Assembly ***was not in session*** when its Democratic caucus exercised this "nuclear option." The General Assembly's sessions are set by the Constitution, and any session beyond regular order must be called by the Governor or extended by a two-thirds majority. Art. IV, § 6. Constitutional amendments have been proposed since 1971 in *general* sessions, not *special* sessions.[10] Whether or not that is constitutionally required, a special session must be validly called by the Governor. *See* Art. IV, § 6; *accord* Art. V, § 5. That process provides another check on legislative power that promotes integrity in the amendment process—especially where the people have selected a governor and legislative majorities from different parties.

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[9] See Markus Schmidt, *Va. Democrats roll out redistricting amendment to counter GOP map changes in other states*, Virginia Mercury (Oct. 28, 2025), available at https://virginiamercury.com/2025/10/28/va-democrats-roll-out-redistricting-amendment-to-counter-gop-map-changes-in-other-states/.

[10] The last time an amendment was introduced outside a regular session and set for a non-November referendum was 1956, when the Assembly passed a proposed amendment to facilitate school resegregation. *See The State Responds: Massive Resistance*, The Library of Virginia, available at https://old.lva.virginia.gov/exhibits/brown/resistance.htm. The resulting depressed turnout of 450,000 favored the amendment; at the November election the same year, desegregationist Republican Dwight Eisenhower won Virginia's popular vote. *See 1956 Statement of the Votes Cast*, Virginia Dept. of Elections, available at https://historical.elections.virginia.gov/ballot_questions/view/3540/; *1956 President General Election*, Virginia Dept. of Elections, available at https://historical.elections.virginia.gov/elections/view/79293/.

But rather than respect constitutional constraints, the General Assembly on October 24, 2025, purported to reconvene a special session the Governor had called in April *2024*—18 months earlier—for a totally different purpose. HJR 6006. Governor Youngkin called that special session for the purpose of completing the budget process.[11] The General Assembly did that in spring 2024. Nevertheless, and after sitting for a full regular session in 2025, the Speaker reconvened the special session and, by a narrow partisan vote, the General Assembly adopted HJR 6004 purporting to expand its scope. Then, in late October 2025, the Speaker reconvened the special session yet again. Over the course of a week, from October 23 to 31, the scope was again expanded by a narrow partisan vote to include adoption of a constitutional amendment, HJR 6006. The Governor objected to this usurpation. *Governor Glenn Youngkin Issues Statement on Passage of HJ6007 Resolution to Attempt to Undo Independent Redistricting*.[12] But the Speaker ignored the Governor's position and rammed the gerrymandering amendment through. This abnormal process was choreographed partisan expediency, not constitutional statesmanship.

Second, by the time the General Assembly called itself—unconstitutionally—into session, *voting was well underway* in the 2025 election. Nearly a million votes had already been cast.[13] As explained, the Constitution requires an "intervening general election," *Coleman*, 246 S.E.2d at 620, and that was no slip of the pen. If General Assembly members support an amendment proposal invidious to the public interest, the voters—after notice and ample time to hear competing views—may oust them. Here members acted to insulate themselves from the electorate through a thief-in-the-night vote *after* a million Virginians had already cast ballots. This was unlawful.

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[11] Proclamation available at https://www.governor.virginia.gov/newsroom/proclamations/proclamation-list/special-session.html.

[12] Statement available at https://www.governor.virginia.gov/newsroom/news-releases/2025/october/name-1070455-en.html

[13] *Early Voting in Virgina, 2025 November General*, VPAP, available at https://www.vpap.org/elections/early-voting/2025-november-general-election/.

III. The General Assembly Violated Multiple Constitutional Directives Designed to Protect the People from Legislative Overreach.

Because they flout all relevant constitutional policies, the General Assembly's machinations unsurprisingly contravene constitutional text. That text creates a "right" of voters "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, and approval, without change, by the requisite number of members of each house in two General Assemblies." *Coleman*, 246 S.E.2d at 622. "Strict compliance" is required. *Id.* at 620. But the General Assembly has blatantly contradicted the plain text. The outcome—in addition to infringement of the people's rights—will be an election nightmare in 2026.

A. The General Assembly Has Violated the Virginia Constitution and Possibly the U.S. Constitution.

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The General Assembly has violated at least two cornerstone constitutional dictates in the plainest of ways. Its affronts are so apparent that they raise serious questions of federal law—a collision that can be prevented through principled enforcement of the Virginia Constitution.

1. The General Assembly violated the Constitution by calling itself into a special session. The Constitution protects the people from an overzealous legislature by strictly limiting the *time* of regular sessions and *who* may call special sessions. *See* 1 A. E. Dick Howard, *Commentaries on the Constitution of Virginia* 492 (1974) ("the Commission was concerned that annual sessions might tend to more frequent changes in the laws, hence an instability in the law"). First, Article IV, Section 6 limits regular sessions of the General Assembly to sixty days during even-numbered years and thirty days in odd-numbered years. This may be extended for up to thirty additional days, but only "with the concurrence of two-thirds of the members elected to each house." Second, the Constitution vests the power to call special sessions solely in the Governor, who is separately accountable to all Virginia voters. Only 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." Art. IV, § 6 (emphasis added); *accord* Art. V, § 5.

Here, however, the Speaker and the party in power purported to "reconvene" the 2024 special session in October 2025 and to expand its scope beyond the limited purpose for which it was called, well after that work was complete, and far beyond the Governor's opinion of required need. This action violates the Constitution in two respects.

First, the Constitution limits the special session to the purpose that in the Governor's "opinion … require[s]" this extraordinary measure. Art. IV, § 6. That is textually explicit indicia that the General Assembly may not repurpose a special session to pursue objectives beyond those the Governor identified as necessary. Second, the Constitution is clear that only the "Governor may convene a special session." *Id.* This leaves no room for the General Assembly to claim to have "reconvene[d]" a completed special session. If the General Assembly's majority were right in claiming this prerogative, nothing would prevent it from recalling itself into special session *every day of every year* by claiming to reopen special sessions called decades ago. The Constitution plainly forbids this. As A. E. Dick Howard explains, the time limitation imposed on regular sessions is a substantive protection of the people against over-legislation that first appeared in the 1800s and was carried forward in the 1971 Constitution. Howard, *supra*, at 491–92. Special sessions cannot supplant or eclipse regular sessions without violating the right of the people to be free of a permanent legislature. This right overrides any legislative effort to countermand those restrictions by unilaterally convening itself in an open-ended, permanent special session. Here, by claiming to make multiple extensions of a fully completed special session, legislating on-and-off

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throughout, and finally proposing an unanticipated constitutional amendment, the General Assembly seeks to defy the limitations on regular sessions.

Second, special sessions may not run concurrently with regular sessions. The constitutional text takes as given that special and general sessions are distinct and not concurrent. *E.g.*, Art. XII, § 1 (stating that any "special session" must be "subsequent" to the "first regular session held after" the election). This doctrine follows the ordinary meaning of a "special session" as a sitting "confined to particular purpose" and "distinguished" from a "regular session." *See Special Session*, Black's Law Dictionary (4th ed. 1968). A "special" session marks an exception, not a substitute, to a "regular" session. Nor could circumstances "require" a special session when the General Assembly sits and can conduct all necessary legislative business in its regular session. This clear meaning of the text leaves no room for the General Assembly to continue the 2024 special session while it met for months in the 2025 regular session. The possibility is equally foreclosed by the common understanding that a special session is "called by the executive [and] meets outside its regular term to consider a specific issue or to reduce backlog." *Special Session*, Black's Law Dictionary (12th ed. 2024).

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2. The General Assembly violated the Constitution a second time by approving a proposal after voting began in the 2025 election—when the public had already begun the process of deciding whom to send to Richmond in 2026. Article XII, Section 1 contemplates that any amendment must be proposed first in one session and then again "after the next general election of members of the House of Delegates." Binding precedent refers to this as an "intervening general election." *Coleman*, 219 Va. at 154. A popular referendum occurs if—and only if—the proposal is approved both before and after that election. Only "strict compliance" can ensure that proposals "receive the deliberate consideration and careful scrutiny that they deserve." *Id.*

Here, however, the General Assembly's majority proposed a constitutional amendment *during* the 2025 election. By consequence, the 2025 election is not "the next general election." Today, "next" means—as it did in 1971 and the early 1800s—"immediately adjacent" as in "immediately preceding" something. See *Next*, Webster's Dictionary (1828); Webster's Third New International Dictionary 1525 (3d ed. 1993) (similar); *Next*, Merriam-Webster Online[14] (similar). There can be "no object intervening between it and some other." *Next*, Webster's Dictionary (1828). This "sense in which [the term "next" is] popularly employed," ***Blount v. Clarke***, 291 Va. 198, 205, 782 S.E.2d 152, 155 (2016), demands that no regular general election come between the "general election" and the initial passage of the proposal. A voter who leaves the polling place during the 2025 election and asks an official "when is the next election" would not be told "right now." The next general election at that point is in 2027. Put simply, once voting has begun, the General Assembly cannot propose new constitutional amendments (at least if it intends to act on them the following year).

This is not hyper-technical nitpicking. The whole point of Article XII is to prevent ambushes like this one. The people are entitled to give a true "second opinion," Vermeule, *supra*, at 1435, and can only do so if they are on notice of a proposed amendment before the intervening election. Here, a partisan majority has attempted to insulate itself from accountability by seeking election, obtaining an untold number of votes, and only then announcing a highly controversial measure.[15] If this is permissible, nothing would prevent a future General Assembly's majority from calling a special session on election day at 3 pm, voting out a new constitutional amendment at 6

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[14] Available at https://www.merriam-webster.com/dictionary/next.

[15] VPAP estimates, based on government data, that about 1.2 million Virginians voted *before* the Assembly passed the proposed amendment. *Early Voting in Virgina, 2025 November General*, VPAP, available at https://www.vpap.org/elections/early-voting/2025-november-general-election/. That's more than a third of the total number of Virginians who voted for Governor in the election.

pm, and claiming to have beat the Constitution because voting did not end until the close of polls at 7 pm. Plainly, it is the *beginning* of voting, not its end, that marks the temporally necessary meaning of "next" under Article XII.

As *Coleman* explained, voters have a right to an informed vote on a proposal. 246 S.E.2d at 622; *accord Wilkins v. Davis*, 205 Va. 803, 809, 139 S.E.2d 849, 853 (1965) (Virginia recognizes a "right of suffrage and of power in elections of the representatives in Congress."). That is only possible if *all* voters receive an opportunity to consider and vote with knowledge of a proposed amendment. This requirement respects not only the text of Article XII but also the Constitution's guarantee of free elections, Art. I, § 6, and recognition that the source of lawmaking power lies in the people, not the Assembly. Art. I, § 2.

3. The Assembly's machinations are so plainly incompatible with constitutional text and design that its effort raises serious questions under the federal Constitution. As explained above (§ I.A.1), a state's federal election laws must be promulgated according to "requirements imposed by the state constitution with respect to the enactment of laws." *Moore*, 600 U.S. at 26 (citation and quotation marks omitted). Accordingly, the Supreme Court has located within the Elections Clause "an obligation to ensure that state court interpretations of that law do not evade federal law." *Id.* at 34. Here, the people assigned the Commission (or Virginia Supreme Court as a failsafe) the role of "legislature" for purposes of Virginia's congressional plans. *AIRC*, 576 U.S. at 808. While the people may revoke that power and relocate it elsewhere, that must occur through Virginia's "prescriptions for lawmaking." *Id.* at 808. In policing that process, state courts must not "read state law in such a manner as to circumvent federal constitutional provisions," as occurs where a court "transcends the limits of reasonable … interpretation to the point of supplanting the" legal provision. *Moore*, 600 U.S. at 35–36 (cleaned up). Here, where no reasonable interpretation

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of Virginia law supports the General Assembly's power-grab, the Elections Clause insists that Virginia law be properly enforced.

B. The Assembly's Actions, If Left Unchecked, Would Throw the 2026 Elections into Confusion and Possibly Chaos.

An immediate injunction is warranted because the invalidly proposed amendment portends disaster for the Commonwealth's federal elections in 2026. Due to the General Assembly's abrupt and belated decision to seek a constitutional amendment, a referendum would not be possible until at least April 2026. It will at that point be too late to configure and implement a new congressional redistricting plan to govern the 2026 election. The primary election is scheduled for June 16, 2026, Va Code. § 24.2-515, and the federal candidate qualifying period—by which the candidate must qualify for the ballot—opens in January and ends April 2, 2026, *id.* § 24.2-522. A complete revision in the Commonwealth's election process is unworkable on this timeline. Candidates cannot qualify for races only to find out later what the districts are. By that point, further qualification processes will not be legally permissible.

It will also not be legally possible for the General Assembly to resolve this problem by further legislation, such as an alteration of the primary or qualification deadlines. The Constitution prevents laws from taking immediate effect unless four fifths (80%) of the Assembly agree that an emergency warrants this. Art. IV, § 13. Otherwise, a regular session law becomes effective on July 1 following that session, and any law adopted at a special session takes place four months after it is enacted. This delay affords the people "a fair opportunity to acquaint themselves with the provisions of the statutes enacted at a given session, in order that they might institute and prosecute appropriate proceedings for the enforcement of any claims affected thereby." *Bank of Chatham v. Waldron*, 188 Va. 68, 71, 49 S.E.2d 277, 278 (1948). It is implausible that the partisan power grab afoot here could generate support from four fifths of the General Assembly (since Republican

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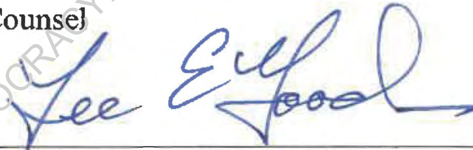
members can block that effort and already have expressed opposition). The majority—if it has any interest in preventing an election disaster—would need to resort to *additional* constitutional offenses to address these problems of its own making. This Court should avoid those constitutional problems here and now by faithfully enforcing the Virginia Constitution to restore order and integrity to the legislative process.

CONCLUSION

For the foregoing reasons, the preliminary injunction should be granted.

PROPOSED AMICI U.S. REPRESENTATIVES CLINE, GRIFFITH, KIGGANS, McGUIRE, AND WITTMAN

By Counsel



December 17, 2025

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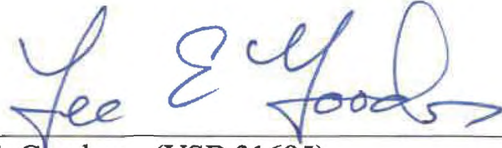
CERTIFICATION PURSUANT TO RULES 4:15 AND 5:30

I hereby certify that a reasonable effort was made to confer with the parties and seek consent in advance of filing this Motion as required by Rules 4:15 and 5:30 of the Rules of the Supreme Court of Virginia.



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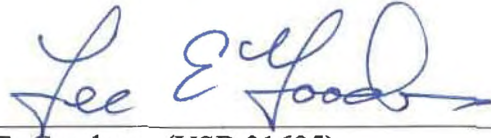
<u>CERTIFICATE OF SERVICE</u>

I hereby certify that, on the 17th day of December, 2025, I caused a true and correct copy of Proposed Amici's Motion for Leave to File and Attached Brief to be served on all parties.



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