IN THE COURT OF APPEALS OF VIRGINIA

CASE NO. CL25-1582
RECORD NO. PENDING

RYAN T. MCDOUGLE, WILLIAM M. STANLEY, JR., TERRY KILGORE, VIRGINIA TROST-THORNTON, CAMILLA SIMON, and FAYTHE SILVEIRA,

Plaintiffs/Appellees,

v.

G. PAUL NARDO, SUSAN CLARKE SCHAAR, and TARA PERKINSON,

Defendants/Appellants, and

DON SCOTT, IN HIS OFFICIAL CAPACITY AS SPEAKER OF THE VIRGINIA HOUSE OF DELEGATES,

Intervenor-Defendant/Appellant.

SPEAKER DON SCOTT'S EMERGENCY MOTION TO STAY CIRCUIT COURT ORDER PENDING APPEAL

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

* *Pro Hac Vice*
Counsel for Appellant Don Scott

January 28, 2026

EMERGENCY MOTION TO STAY ORDER PENDING APPEAL

Appellant Don Scott, by counsel, moves this Honorable Court to immediately Stay an Order from the Circuit Court of Tazewell County that disrupts the ongoing legislative process of the Commonwealth of Virginia. **This emergency warrants immediate action by this Court.** As such, Appellant requests that this Court waive the 10-day response period under Rule 5A:2(a)(2) and stay the Circuit Court's Order immediately.

Appellees oppose the motions and intend to file response briefs within the time set by Rule 5A:2(a), unless the court orders a different deadline. The Legislative Clerk Appellants consent to this Motion and have filed their own Emergency Motion to Stay. Appellant Scott adopts that Motion in full.

In support of this Motion, Appellant states:

INTRODUCTION

The Circuit Court, following briefing and a hearing on a preliminary injunction motion, entered a permanent injunction and declaratory judgment that directly interferes with the ongoing process of amending the Constitution of Virginia. Binding precedent of the Supreme Court of Virginia forbids this. That precedent makes unmistakable that courts do *not* have the power to enjoin or interfere with the legislative process, to enjoin or interfere with the holding of an election, or to attempt to preemptively nullify a proposed legislative enactment that has not yet been passed. Yet the Circuit Court's order does each of these things, and more. A stay is urgently needed to restore the constitutional separation of powers and ensure that the process of amending the Constitution proceeds unimpeded by improper interference while this Court adjudicates this appeal.

The Constitution sets forth three steps for its amendment. *First*, any amendment may be proposed in the Senate or House of Delegates, "and if the same shall be agreed to by a majority of the members elected to each of the two houses," the amendment 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. *Second*, "[i]f at such regular session . . . the proposed amendment . . . shall be agreed to by a majority of the members of each house," then, *third*, "it

shall be the duty of the General Assembly to submit such proposed amendment or amendments to the voters . . . in such manner as it shall prescribe." *Id.*

In October 2025, the General Assembly met in special session and completed the first of these steps by passing House Joint Resolution ("HJR") 6007, a proposed constitutional amendment related to redistricting. A general election was then held on November 4, 2025. In January 2026, the newly elected General Assembly completed the second step by once again voting to approve the proposed amendment. Legislation to effectuate the third step—submitting the proposed amendment to the voters in the "manner" the General Assembly "shall prescribe"—is currently pending in the General Assembly.

With that legislation pending, the Tazewell County Circuit Court issued an order that is contrary to binding precedent and injects unnecessary confusion and uncertainty into the ongoing constitutional process and upcoming election, which is currently planned for the Spring of 2026. The Court's Order violates the bedrock constitutional principle that neither "a court of equity, nor any tribunal of the judiciary department of government, is authorized to interfere with the process of legislation." *Scott v. James*, 114 Va. 297, 304 (1912). Only "*upon the completion of the proceedings*, [if] the validity of the amendment is assailed[] on the ground that the several provisions of the Constitution have not been complied with, *then* the

courts can pass upon the validity of the amendment." *Id.* (emphases added). The Court's Order should be immediately stayed on this ground alone.

But the Court did more than interfere with the election on the constitutional amendment. It purported to declare the amendment and all related actions "void ab initio"—or void from the start; it purported to redesignate actions of the legislature, recasting the 2026 Regular Session vote on the amendment as a first vote (despite the fact that the legislature had already previously voted on it); and it even attempted to adjudicate future laws being considered by the legislature to align Virginia statutes with the constitutional process. The description of these decisions alone evidences how out-of-bounds they clearly are.

But it gets even worse. The Court declared the amendment "void ab initio" despite the fact that *no party* had any pending motion for declaratory relief—or any relief beyond a preliminary injunction against the Defendant Tazewell County Circuit Court Clerk. And both the Legislative Clerk Appellants and Appellant Scott had filed demurrers that still remain pending. The Court should not have reached these issues in the first place.

Similarly, the Court's declaration that the General Assembly violated its own internal "Rules and Resolutions" when it added the proposed amendment to the special session agenda was not an argument ever raised by any party—and for good reason. It is a well-established principle of the separation of powers that courts

cannot invalidate a legislative act on the ground that the General Assembly purportedly failed to follow its own rules. The Constitution provides that "[e]ach house shall . . . settle its rules of procedure"—not the courts. Va. Const. art. IV, § 7.

The Court's declaration that the November 4, 2025, general election was not the "next general election" after the proposed amendment was first passed on October 31, 2025, reasoning that some Virginians had already availed themselves of early voting before that date, fares no better. The plain text of the Constitution clearly defines the general election as the "Tuesday succeeding the first Monday in November." *Id.* § 3. While voting began earlier, the "election" itself did not occur until November 4.

The Court next concluded that the proposed amendment is "void" because it was not posted by the Circuit Court Clerks at least ninety days before the November 2025 general election. But there is no such requirement in the Constitution of Virginia. The Court relied instead on Section 30-13 of the Virginia Code—a *statutory* requirement that has no bearing on the *constitutional* validity of the proposed amendment. The legislative power is plenary and "restricted only by *the Constitution of Virginia*." *Old Dominion Comm. for Fair Util. Rates v. State Corp. Comm'n*, 294 Va. 168, 177 (2017) (emphases added) (quoting *Gallagher v. Commonwealth*, 284 Va. 444, 452 (2012)). Even by its own terms, Section 30-13 does not purport to restrict the General Assembly's power to amend the Constitution—it is merely a

statutory directive to the Clerk of the House and the Circuit Court Clerks that in no way suggests its requirements are a prerequisite to amending the constitution. *See Bland-Henderson v. Commonwealth*, 303 Va. 211, 220 (2024) ("A statute that directs the mode of proceeding by public officers is to be deemed directory, and a precise compliance is not to be deemed essential to the validity of the proceedings, unless the statute says otherwise." (citation modified)).

Finally, the Circuit Court went out of its way to attempt to preemptively declare "null and void" pending legislation that would (1) repeal Section 30-13, consistent with the bipartisan recommendation of the Virginia Code Commission, and (2) govern the venue for challenges to constitutional amendments. That bill has not yet become law, and no party has challenged either provision. Each of these facts by itself requires vacating the Court's Order. The Court's cursory constitutional analysis of these provisions, however, also warrants reversal. The bill is part of a "general appropriation law," and is thus explicitly excluded from the effective date provision of Article IV, § 13. And the venue provision is not a "local, private, or special law," Va. Const. art. IV, § 14, because "it operates alike on all who measure up to its requirements." *Bray v. Cnty. Bd.*, 195 Va. 31, 36 (1953).

BACKGROUND[1]

On April 17, 2024, the General Assembly unanimously passed House Joint Resolution 428, which demanded the Governor call the legislature into special session to address budgetary issues and other "such matters as are provided for in the procedural resolution adopted to govern the conduct of [the] business coming before [the] Special Session." H.D.J. Res. 428, 2024 Reg. Sess. (Va. 2024), Ex. 3. The Governor did so later that day, setting the first meeting for May 13, 2024. At that first meeting, the General Assembly unanimously adopted HJR 6001, which set its agenda for the special session to include various budgetary and nonbudgetary matters and provided the agenda would expand upon unanimous consent. H.D.J. Res. 6001, 2024 Spec. Sess. I (Va. 2024), Ex. 4. After additional meetings over the course of the year, the General Assembly met again in the special session in February 2025 and passed HJR 6004 unanimously in the Senate and by simple majority in the House of Delegates, which "notwithstanding the limitations established by [HJR] 6001," expanded the session's scope to include legislation to address federal layoffs. H.D.J. Res. 6004, 2024 Spec. Sess. I (Va. 2025), Ex. 5. Later that year, on October 23, 2025, the General Assembly passed, by simple majority in both chambers, HJR 6006, which placed a constitutional redistricting amendment on the special session

[1] Appellants filed a Notice of Appeal with the Tazewell County Circuit Court on January 28, 2026, Ex. 1, appealing the Circuit Court's Order. Order Granting Prelim. Inj., Ex. 2 ("Order").

agenda, again "notwithstanding" HJR 6001. H.D.J. Res. 6006, 2024 Spec. Sess. I (Va. 2025), Ex. 6.

On October 28, 2025, before any proposed constitutional amendment was even approved by the legislature, Appellees sought to temporarily restrain and preliminarily enjoin the clerks of the House and Senate ("Legislative Clerks") from performing their legislative duties to effectuate its passage, which, in turn, would have halted the entire legislative process. The Circuit Court denied that request orally at a hearing on October 29. On October 31, 2025, the General Assembly passed for the first time the proposed constitutional redistricting amendment, HJR 6007. H.D.J. Res. 6007, 2024 Spec. Sess. I (Va. 2025), Ex. 7. Appellees later withdrew their motion for preliminary injunction and cancelled a November 5, 2025, hearing on that matter. The next general election for the House of Delegates was held on November 4, 2025—the first Tuesday after the first Monday in November—as required by Va. Const. art. IV, § 3.

Six weeks later, on December 16, 2025, Appellees filed a motion seeking to preliminarily enjoin the Legislative Clerks from "transmitting" and "posting" the proposed amendment before the start of the General Assembly's 2026 regular session on January 14, 2026, alongside an amended complaint. Am. Compl., Ex. 8. Appellees filed a second motion for TRO on January 6, 2026, which the Circuit Court denied on January 13, 2026, holding that intervening in the legislative process

would violate the separation of powers and transgress the Legislative Clerks' legislative immunity. Order Den. Pls.' Mot. for TRO, Ex. 9. A hearing was set for January 21, 2026, to consider the remaining relief requested in the motion. In the interim, the General Assembly passed the proposed constitutional amendment for a second time—on January 16, 2026—HJR 4. H.D.J. Res. 4, 2026 Reg. Sess. (Va. 2026), Ex. 10.

Because the General Assembly had already voted a second time on the proposed amendment, Appellees at the hearing informed the Circuit Court that the only remaining relief sought in their motion was an injunction against Defendant Charity Hurst—the clerk of the Tazewell County Circuit Court—that would require her to post the proposed amendment at least three months before the November 2027 general election for the House of Delegates. Tr. of Jan. 21, 2026, Hr'g, Ex. 11, at 10–11, 21 ("We now focus our Preliminary Injunction Motion and then requested injunctive relief on the circuit clerk."). At the hearing, the Circuit Court ordered the parties to file supplemental briefs on this matter by January 31, 2026, and indicated that it planned to issue a ruling no later than February 12. *Id.* at 118–19, 146.

However, on January 27, 2026, days before the deadline for the requested supplemental briefs and well before its previously announced timeline for ruling, the Circuit Court entered an Order granting a "TEMPORARY and PERMANENT INJUNCTION" requiring Defendant Hurst to post the proposed constitutional

amendment at least ninety days before the next ensuing election of the members of the House of Delegates. Order at 6. The Court further "ORDER[ED] that any action taken on HJR 6007 at the special session in October 2025 is "void, ab initio," *id.* at 4, "DECLARE[D] that any and all matter motions, actions and votes regarding House Joint Resolution 6007 was in violation of [General Assembly's Rules and Resolutions] as are ORDERED to be VOID AB INITIO," *id.* at 5, and declared two pieces of related legislation pending in the General Assembly to be "NULL and VOID," *id.* at 6. No party had requested that relief—or any relief beyond a preliminary injunction against the Tazewell County Circuit Court Clerk, requiring her to post the proposed amendment. And both the Legislative Clerk Appellants and Appellant Scott had filed demurrers that remain pending. Nonetheless, the Court entered what purports to be a final order adjudicating all claims raised in this case—and some that have never been raised in any pleading.[2] This Court therefore has jurisdiction under Va. Code § 17.1-405(A)(3) and, alternatively, § 17.1-405(A)(5)(ii). On January 28, 2026, Appellants filed their Notices of Appeal in the Circuit Court and filed this Motion.

[2] The Court addressed only the merits of these claims, without addressing any of the remaining requirements for a preliminary injunction under Va. S. Ct. R. 3:26(c), (d).

LEGAL STANDARD

When deciding whether to grant a stay of judgment in a civil matter, courts consider four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Jeffrey v. Commonwealth*, 77 Va. App. 1, 13 (2023) (quoting *Nken v. Holder*, 556 U.S. 418, 434 (2009)).[3]

ARGUMENT

I. The Circuit Court impermissibly and prematurely interfered with the legislative process.

Over 100 years ago, in a case virtually indistinguishable from this one, the Supreme Court of Virginia unambiguously held that neither "a court of equity, nor any tribunal of the judiciary department of government, is authorized to interfere with the process of legislation." *Scott v. James*, 114 Va. 297, 304 (1912). The plaintiff in that case, Virginia citizen J.A. Scott, sought to enjoin the Secretary of the Commonwealth from transmitting to circuit court clerks a proposed constitutional amendment that had been twice passed by the General Assembly. *Id.* at 298. Like

[3] Upon the filing of the notice of appeal, this Court's jurisdiction is "concurrent" with that of the Circuit Court. Va. Sup. Ct. R. 1:1B(a)(1). This Court therefore has jurisdiction to enter the requested stay.

Plaintiffs here, Scott alleged that the General Assembly passed the proposed amendment through an unconstitutional procedure. *Id.* at 298, 302. But the Supreme Court refused to "interfere" in the "legislative process" as Scott had requested, holding that to do so would "manifestly be an unwarranted interference by the courts with the constitutional processes of the legislative department." *Id.* at 304. It further held that courts may not "enjoin the holding of an election, or interfere, by its process of injunction, with the holding of an election." *Id.* at 305. The Court was unequivocal: "[A]mending . . . 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.* at 304 (emphases added). Only "*upon the completion of the proceedings*, [if] the validity of the amendment is assailed[] on the ground that the several provisions of the Constitution have not been complied with, *then* the courts can pass upon the validity of the amendment." *Id.* (emphases added). The lesson is clear: Courts may not preemptively invalidate a proposed constitutional amendment before it has been passed by the voters. *See id.* ("If the amendment is not adopted, of course, no question will ever come before the court.").

The Circuit Court flouted this bedrock constitutional principle, which is rooted in the separation of powers. Its order purports to declare that HJR 6007—a General Assembly resolution approving a constitutional amendment and referring it

to a second vote in the next General Assembly—is "VOID AB INITIO." Order at 5. As a result, the Court continues, the constitutionally-required *second* vote of the General Assembly on the proposed amendment "SHALL BE and IS construed as a FIRST vote under Article XII, Section 1 of the Virginia Constitution." *Id.* at 6.

The Court's declaration has sown immediate chaos. A proposed constitutional amendment may be submitted to the voters only after it has been twice voted upon by the General Assembly. Va. Const. art. XII, § 1. With a stroke of the pen, the Circuit Court has attempted to erase legislative action by the people's duly elected representatives and declared that only *one* such vote has occurred. Legislation appropriating funds for the Board of Elections to conduct an election on the proposed amendment has already passed in the House of Delegates and is currently pending in the Senate for final consideration this week. The Court's Order says that the General Assembly's purported failure to "comply with Section 30-13 of the Code of Virginia" "PROHIBITS the proposed amendment from being submitted to the voters for their consideration," causing substantial and unnecessary confusion and uncertainty regarding the ongoing constitutional process and upcoming election. The Court has thus unquestionably "interfere[d] . . . with the holding of an election." *Scott*, 114 Va. at 305.

Later cases applying *Scott* demonstrate that its prohibition on judicial interference covers *all* aspects of the legislative process and applies with *equal*

measure to injunctive and declaratory relief. *See, e.g.*, *Marshall v. Warner*, No. CH04-504-3, 2004 WL 963528, at *3 (Va. Cir. Ct. Apr. 29, 2004) (refusing to enjoin or issue a declaratory judgment declaring illegal the transmission of bills between the legislative chambers because doing so would violate the separation of powers); *McEachin v. Bolling*, No. CL11-5456, 2011 WL 10909615, at *2–3 (Va. Cir. Ct. Dec. 16, 2011) (refusing to enjoin or issue a declaratory judgment declaring illegal the Lieutenant Governor casting a tie-breaking vote in the Senate because doing so would violate the separation of powers); Order at 2, *Jett v. Nardo*, No. CL25-5352 (Va. Cir. Ct. Oct. 31, 2025) (refusing to grant an injunction and TRO sought by *circuit court clerks* to stop Appellant Nardo from distributing the proposed amendment because to do so would violate the separation of powers and because they lacked standing since their obligations under Section 30-13 had not yet triggered without Nardo's distribution), Ex. 12.

When the Circuit Court denied Plaintiffs' motion for a temporary restraining order just two weeks ago, it acknowledged *Scott*'s rule, concluding that "the Court's role in these situations is limited to scrutinizing the Constitutionality of any action of the Legislature . . . at the conclusion of the act, not in the process thereof." Ex. 9 at 2. The Court appears to believe that the "process" has concluded now that the General Assembly has voted twice on the amendment. Not so. *Scott* makes clear that the "process" of amending the Constitution is not complete until the *voters* approve

or reject the amendment. *Id.* at 304. Indeed, in *Scott* itself the Court refused to grant relief until *after* the General Assembly had voted twice on the proposed amendment.

Coleman v. Pross, 219 Va. 143 (1978), which the Appellees relied on in the Circuit Court (but is not cited in the Court's Order), is not to the contrary. *Coleman* never once mentions *Scott*, let alone abrogates it. *See Commonwealth v. Watson*, 297 Va. 355, 358 (2019) ("Under stare decisis, a circuit court lacks power to rule that [the Supreme] Court [of Virginia] has overruled its earlier precedent by implication."). And *Coleman* was brought under a specific statutory grant of jurisdiction that allows the Attorney General to directly petition the Supreme Court of Virginia for a writ of mandamus whenever the Comptroller provides written notice that he "entertain[s] . . . doubt . . . respecting the constitutionality" of "any act of the General Assembly which appropriates or directs the payment of money out of the treasury of the Commonwealth." Va. Code Ann. § 8.01-653. Appellees here are not the Attorney General and this action is not brought under Section 8.01-653 (nor could it be). *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 plaintiffs' similar reliance on *Coleman* was "misplaced" because in *Coleman* "the [Supreme Court of Virginia] was specifically vested with jurisdiction to grant mandamus relief when it [was] requested by either the Comptroller of the Commonwealth or the Attorney General" (citations omitted)).

II. The Circuit Court lacked jurisdiction to rule on the General Assembly's compliance with its own rules.

The Circuit Court had no authority to enter judgment for Appellees based on the General Assembly's purported failure to follow its own internal rules. As an initial matter, Appellees did not argue that HJR 6007 was invalid for having failed to comply with a "unanimity" requirement in HJR 6001, forfeiting any such claim. "Our adversary system is designed around the premise that the parties know what is best for them, and are responsible for advancing the facts and arguments entitling them to relief." *Bista v. Commonwealth*, 76 Va. App. 184, 221 n.23 (2022) (quoting *Greenlaw v. United States*, 554 U.S. 237, 243 (2008)), *on reh'g*, 78 Va. App. 391 (2023), *aff'd*, 303 Va. 354 (2024). Recognizing its proper role, this Court vowed that it "will not, nor should [it], address issues *sua sponte* that were never argued." *Epps v. Commonwealth*, 46 Va. App. 161, 177 n.3 (2005), *aff'd on reh'g en banc*, 47 Va. App. 687 (2006), *aff'd*, 273 Va. 410 (2007). To do otherwise "would impermissibly place [courts] in the role of advocate—far outside the boundaries of our traditional adjudicative duties." *Johnson v. Commonwealth*, 45 Va. App. 113, 116 (2005). The Circuit Court's adjudication of an issue that was never raised by Appellees was error.

In any event, the General Assembly's compliance with its own rules is nonjusticiable. The Legislative, Executive, and Judicial Branches are "separate and distinct" under the Constitution of Virginia. Va. Const. art. I, § 5; *id.* art. III, § 1. This

directive "prevents one branch from engaging in the functions of another." *Taylor v. Worrell Enters., Inc.,* 242 Va. 219, 221 (1991). And the Constitution specifically provides that "[e]ach house shall . . . settle its rules of procedure." Va. Const. art. IV, § 7. That power thus lies squarely within the legislative branch—the judicial branch may not police the General Assembly's determinations as to its own rules. "While the courts can pass upon the constitutionality of legislative enactments, they cannot overthrow legislative determination of the existence of conditions *with respect to its own procedure*." *Albemarle Oil & Gas Co. v. Morris*, 138 Va. 1, 11 (1924) (emphasis added).

A corollary to this fundamental principle is the enrolled bill doctrine, which prevents courts from examining whether a legislature complied with its internal rules when enacting legislation. *Cf.* Fed. Prac. & Proc. Juris. § 3534.1 (3d ed.) (Wright & Miller) (recognizing "courts should seldom if ever undertake to determine whether Congress has abided by its rules in adopting legislation"); 73 Am. Jur. 2d Statutes § 37 (recognizing application of enrolled bill doctrine in state courts across the country). As the U.S. Supreme Court explained, "the respect due to coequal and independent departments requires the judicial department" to treat authentication by the legislature's presiding officers and the executive's signature as "complete and unimpeachable" evidence of a bill's valid enactment. *Marshall Field & Co. v. Clark*, 143 U.S. 649, 672 (1892); *see also Pub. Citizen v. U.S. Dist. Ct. for D.C.*, 486 F.3d

1342, 1350 (D.C. Cir. 2007) (applying doctrine); *OneSimpleLoan v. U.S. Sec'y of Educ.*, 496 F.3d 197, 203 (2d Cir. 2007) (recognizing the enrolled bill rule as a "threshold ground for dismissal" of claim). The enrolled bill doctrine specifically precludes claims that a bill did not satisfy a chamber's internal vote threshold for passage. *See, e.g.*, *Mapp v. Lawaetz*, 882 F.2d 49, 55 (3d Cir. 1989) (rejecting as nonjusticiable claim that internal rule required two-thirds supermajority vote).

III. The Circuit Court incorrectly determined that the November 2025 election was not the "next general election" after HJR 6007 was approved.

Article XII, § 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). If a majority again passes the proposed amendment at that "regular session or any subsequent special session," then 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" and "entered on their journals." *Id.*; *see also* Va. Code Ann. § 30-19 ("[W]hen so agreed to by both houses, [the proposed

amendment] shall be enrolled as provided by law and signed by the President of the Senate and Speaker of the House of Delegates. Such amendment or amendments shall thereupon stand referred to the General Assembly at its first regular session held after the next general election.").

The Circuit Court wrongly concluded that, because early voting had begun by the time the General Assembly first passed HJR 6007 on October 31, 2025, the November 4, 2025, general election was not the "next general election" for purposes of Article XII, § 1, and, instead, that "next" election will not occur until November 2027. Order at 4–5. That is wrong as a matter of law.

Under the plain text of the Constitution of Virginia and Virginia statutes, the "next general election" after October 31, 2025, was the one that occurred "*on*" Tuesday, November 4, 2025. *See* Va. Const. art. IV, § 3 (providing that Delegates "shall be *elected* . . . *on* the Tuesday succeeding the first Monday in November" (emphasis added)); *id.* § 2 (same, for Senators); Va. Code Ann. § 24.2-101 (defining "General election" to mean "an election held in the Commonwealth *on* the Tuesday after the first Monday in November" (emphasis added)); *see also id.* § 24.2-215 (stating that Delegates shall be elected at the "general election" every odd-numbered year).[4] "When constitutional language is clear and unambiguous, a court *must* give

[4] The Attorney General of Virginia agrees. 2026 Va. Op. Att'y Gen. 3, 2026 WL 200232 (2026), Ex. 13 ("It would violate the basic canons of constitutional construction to interpret the 'general election of members of the House of Delegates'

the language its plain meaning and is *not allowed* to resort to legislative history or other extrinsic evidence." *Scott v. Commonwealth*, 247 Va. 379, 384 (1994) (emphases added). The Court ignored that plain text by considering other policy considerations to reach its contrary conclusion.

Even Virginia's early voting statutes explicitly recognize that early ballots are cast *prior to* the "election." They provide: "[a]bsentee voting in person shall be available on the forty-fifth day *prior to any election*," Va. Code Ann. § 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(A) (emphasis added). While *voting* began earlier, the "*election*" itself did not occur until November 4, 2025. *See, e.g.*, *Millsaps v. Thomas*, 259 F.3d 535, 545–46 (6th Cir. 2001) (rejecting the argument that early voting causes an "election" to be held before the federal election day). To adopt the Circuit Court's view would not only supplant the plain text of the Constitution, but it would also mean that the General Assembly, by expanding or contracting the period of early voting provided by statute, could alter the constitutional definition of "general election" whenever it so chooses. That is not the law.

---

language used in Article XII, § 1 without giving due consideration to all the related provisions in the Constitution of Virginia.").

IV. The Circuit Court incorrectly held that the Amendment is invalid because it was not posted by the Circuit Court Clerk prior to the 2025 election.

The Circuit Court further erred when it held that HJR 6007 is invalid because it was not posted at the front door of every courthouse "not later than three months prior to the next ensuing general election of members of the House of Delegates." Order at 5. As an initial matter, there is no *constitutional* requirement that a proposed amendment be published for any period of time before the "intervening election." When the Constitution of Virginia was revised in 1971, the drafters purposely "omit[ted] the requirement . . . that the first General Assembly to approve an amendment must publish it ninety days before the next election for the House of Delegates." *Proceedings and debates of the House of Delegates pertaining to amendment of the Constitution, extra session 1969, regular session 1970*, at 496 (1971), Ex. 14. The current constitutional text reflects the drafters' decision to adopt an alternative to publication: there must be a 90-day period between the final approval of the proposed amendment by the second General Assembly and its submission 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. Ex. 14, at 496. Thus, as an author of the 1969 Constitutional Revision Commission Report has explained: "Since section I does not require publication, an amendment cannot be challenged on the ground that publication was insufficient." A.E. Dick Howard, *Commentaries on the Constitution of Virginia* 1175 (1974).

Section 30-13, which the Circuit Court relied on for this point, is not a constitutional requirement—it is a *statutory* directive, requiring the Clerk of the House and the Circuit Court Clerks to make proposed amendments publicly available. Indeed, the Circuit Court expressly recognized this during oral argument. *See* Ex. 11 at 65 ("[I]t's not constitutional. [The Court] agree[s]."). A *statute* can have no bearing on the *constitutional* validity of the proposed amendment. Virginia courts are guided by the "fundamental principle that 'all actions of the General Assembly are presumed to be constitutional.'" *Old Dominion Comm. for Fair Util. Rates v. State Corp. Comm'n*, 294 Va. 168, 177 (2017) (citation omitted). The legislative power is plenary and "restricted only by *the Constitution of Virginia*" when done so in "*express* terms or *strong* implication." *Id.* (emphases added) (quoting *Gallagher v. Commonwealth*, 284 Va. 444, 452 (2012)). "A statute that is constitutional may not be made unconstitutional by some other separate act of the legislature." *Rudacille v. State Comm'n on Conserv. & Dev.*, 155 Va. 808, 819 (1931). "It is unquestionably true, that one Legislature cannot, by an act of ordinary legislation, bind or control, in any manner, subsequent Legislatures." *Antoni v. Wright*, 63 Va. 833, 848 (1872); *see also Hudson v. Commonwealth*, 39 Va. App. 240, 245 (2002) ("It is well settled that a violation of a statutory right does not implicate violation of a constitutional right."); *State ex rel. One Person One Vote v. LaRose*, 243 N.E.3d 1, 9 (Ohio 2023) ("The General Assembly's valid exercise of its constitutional power

. . . overrides any election statute that would otherwise prohibit the special election called for in the General Assembly's joint resolution proposing a constitutional amendment for submission to the state's electors.").

Moreover, by its plain terms, Section 30-13 imposes no obligations on the General Assembly, does not purport to alter or restrict its power to amend the Constitution, and in no way suggests that posting by the circuit court clerks is a prerequisite for the amendment to be valid. "'[S]hall' commands addressed to public officers are typically deemed directory instead of mandatory, unless otherwise provided by the statute." *Bland-Henderson v. Commonwealth*, 303 Va. 211, 220 (2024). Thus, "a statute that directs the mode of proceeding by public officers is to be deemed directory, and a precise compliance is not to be deemed essential to the validity of the proceedings, unless the statute says otherwise." *Id.* (quoting *Nelms v. Vaughan*, 84 Va. 696, 699–700 (1888)). This statute does not say otherwise.[5]

The Circuit Court attempted to constitutionalize the requirements of Section 30-13 by claiming it is part of the "manner" of submitting the amendment to the voters under Article XII, § 1. Not so. Article XII prescribes a specific sequence: If a

[5] *Coleman*, which Appellees relied on below, is again inapposite because its holding that "strict compliance with these mandatory provisions is required in order that all proposed constitutional amendments shall receive the deliberate consideration and careful scrutiny they deserve" addressed only the *constitutional* requirements of Article XII, § 1. 219 Va. at 154.

proposed amendment is agreed to by a majority of the members elected to each house, the proposed amendment "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." *Id.* "*If* at such regular session . . . the proposed amendment . . . shall be agreed to by a majority of all the members elected to each house, *then* it shall be the duty of the General Assembly to submit such proposed amendment . . . to the voters . . . *in such manner as it shall prescribe*." *Id.* (emphases added). The "manner" referenced in Article XII plainly describes the procedure for submission to the voters *after* the amendment has been twice approved by the General Assembly: it is triggered only "if" the amendment is approved a second time. It does not, as the Circuit Court believed, encompass procedures to be followed before that point. Moreover, the General Assembly may alter that "manner" as it sees fit.

In any event, Section 30-13 *has* been complied with. Under the statute's plain text, "the end of the session of the General Assembly" in which the amendment was proposed triggers 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.*; *see also id.* § 30-14 ("As soon as practicable after the adjournment of the General Assembly," the House Clerk "shall superintend the publication of such . . . joint resolutions . . . ."); Va. H.D. R. 3 (adopted Jan. 10, 2024), https://perma.cc/M34Q-7VVR (noting that the House journal is not finalized,

approved, and signed until the last day of the relevant legislative session). 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).[6]

As the Circuit Court recognized, the special session did not end until January 13, 2026—the last day before the 2026 General Assembly was sworn in. Order at 5. The "next ensuing general election" after the end of the special session—and after the Clerk of the House completes his obligations to transmit the proposed amendment to the Circuit Court Clerks—will be the November 2027 general election. For this reason, the Court's Order enjoining Defendant Hurst to post the proposed amendment under Section 30-13 is entirely premature. Before that can

[6] For example, when the General Assembly adopted a collection of proposed constitutional amendments during the 2019 Regular Session, which adjourned *sine die* in February 2019, the House Clerk distributed the proposed amendments to the circuit court clerks on April 9, 2019. *See* Letter from G. Paul Nardo, Clerk of the Va. House of Delegates, to Clerks of the Virginia Circuit Courts (Apr. 9, 2019), Ex. 15; *Virginia Lawmakers Amend Bi-Annual State Budget During Extended General Assembly Session*, CBS 6 News Richmond (Feb. 24, 2019, 9:41 PM ET), https://perma.cc/YP7L-3NXX. Similarly, when the General Assembly adopted a collection of amendments during a 2021 special session, which adjourned *sine die* in February 2021, the House Clerk distributed the proposed amendments to the circuit court clerks on July 28, 2021. *See* Letter from Suzette Denslow, Deputy Clerk of the Va. House of Delegates, to Clerks of the Virginia Circuit Courts (July 28, 2021), Ex. 16; Dep't of Legis. Servs., *Virginia General Assembly Session Calendar*, https://perma.cc/2JH3-B55L.

happen, Appellant Nardo must "publish" and distribute the proposed amendment to the circuit court clerks. Va. Code Ann. § 30-13.

The Circuit Court rejected this plain text reading because it could lead to the required posting under Section 30-13 taking place only after the proposed amendment is put to the voters in Spring 2026. Order at 5. But there is a reason for that: when Section 30-13 was originally enacted, the Constitution *required* a 90-day publication period. In 1971, the constitutional amendment process was revised to remove that requirement, thus giving rise to scenarios like this one. Recognizing this, on October 22, 2025, before HJR 6006 was introduced and before Appellees had even filed their case, the Virginia Code Commission, as part of an effort to remove outdated provisions throughout title 30, voted unanimously to repeal Section 30-13 because the provision is outdated and "not reflective of the modern constitutional amendment process" as explicitly prescribed in Article XII, § 1.[7] Appellee McDougle, a member of that Commission, voted for that recommendation. *Id.* And the General Assembly has now taken up that recommendation and introduced a bill to repeal Section 30-13—which even Appellees acknowledge it is

[7] *See* Va. Code Commission Meeting Materials, Text of Proposed Title 30.1, subtit. II, ch. 3, art. 1, at 4 (Oct. 22, 2025), Ex. 17; *see also* Virginia Code Commission, *Meeting of October 22, 2025*, at 11:23:18–24:35, https://sg001-harmony.sliq.net/00304/harmony/en/PowerBrowser/PowerBrowserV2/20251022/-1/21047?startposition=20251022112318&mediaEndTime=20251022112435&viewMode=2&globalStreamId=4.

empowered to do. *See* Pls.' Prelim. Inj. Reply Br. at 11 ("*Unless the General Assembly amends or abolishes Section 30-13*, it continues to bind the clerks, no matter what the Code Commission says." (emphasis added)).

V. The Circuit Court purported to impermissibly nullify statutes that have not yet been passed and that have not been challenged.

The Circuit Court far exceeded the bounds of its authority by attempting to preemptively invalidate pending legislation that (1) has not even passed the General Assembly and (2) has not been challenged by any party. The Circuit Court's Order declares "NULL and VOID" "any attempt to repeal Section 30-13 which does not comply with [Article IV, § 13]." Order at 6. It further concluded that "the attempt within the House Joint Resolution to have this pending case transferred to the Circuit Court of the City of Richmond is in direct violation of Article IV, Section 14(2) of the Constitution of Virginia." *Id.* Those conclusions are likely to be reversed.

First, the Court reached these conclusions unprompted, without any briefing or indeed even a complaint challenging these proposed statutes. That is reversible error. "The issues in a case are made by the pleadings, and the judicial tribunals, in determining the respective rights of litigants, can not go beyond the issues thus made." *Potts v. Mathieson Alkali Works*, 165 Va. 196, 223 (1935).

Second, it was reversible error for the Court to preemptively invalidate *pending* legislation. Indeed, the Supreme Court in 1912 found this obvious. *See Scott*, 114 Va. at 304 ("If a bill is passed by both houses of the General Assembly,

and is about to be transmitted to the Governor for his veto or signature, it is *very clear* that the judiciary department of the government could not enjoin the transmission of the enacted bill to the Governor, on the ground that it was unconstitutional, as such a proceeding would manifestly be an unwarranted interference by the courts with the constitutional processes of the legislative department." (emphasis added)). Preemptively nullifying such legislation through what appears to be a declaratory judgment is no less a usurpation of the legislative power.

In any event, the Court's conclusions are wrong. *First*, Article IV, Section 13 provides that laws enacted at a regular session, "*excluding a general appropriation law*," shall take effect on the first day of July. Va. Const. art. IV, § 13 (emphasis added). HB 1384, § 15, which will repeal Section 30-13 in line with the recommendations of the Virginia Code Commission, is such a general appropriation law. H.D. Bill 1384, at 1 (Jan. 23, 2026), Ex. 18.

Second, HB 1384, § 17, which provides that challenges to constitutional amendments must be venued in Richmond, is not a "local, special, or private law," Order at 6 (quoting Va. Const. art. IV, § 14), it is a *general* law that applies to an entire class of disputes. "A law is general though it may immediately affect a small number of persons, places or things, provided, under named conditions or circumstances, it operates alike on all who measure up to its requirements." *Bray v.*

Cnty. Bd., 195 Va. 31, 36 (1953). "By contrast, a law is 'special' in a constitutional sense when it contains an inherent limitation that arbitrarily separates some persons, places, or things from those on which, without such separation, it would also operate." *W.S. Carnes, Inc. v. Bd. of Supervisors of Chesterfield Cnty.*, 252 Va. 377, 384 (1996). HB 1384, § 17 is clearly the former. It generally applies to all disputes "related to any resolution concerning a constitutional amendment, any election related to a constitutional amendment, any enacted constitutional amendment, or any related statute, including any claim related to the process, efficacy, implementation, or interpretation thereof."[8]

VI. The equities overwhelmingly favor an immediate stay.

Equitable relief requires an analysis of the equities, *see* Va. Sup. Ct. R. 3:26(c)–(d); *D'Ambrosio v. D'Ambrosio*, 45 Va. App. 323, 341–42 (2005), but the Circuit Court failed to provide *any* such analysis before entering the Temporary and Permanent Injunction. That alone will warrant reversal and weighs in favor of a stay here.

Unlike the injunction entered below, a stay of that order would be highly equitable. A stay is necessary to prevent irreparable harm, will not substantially injure other parties in the interim, and will serve the public interest. *See Jeffrey*, 77

[8] Subject matter-based venue provisions just like this one are common throughout the Virginia Code. *E.g.*, Va. Code Ann. § 24.2-801.1; *id.* § 22.1-174; *id.* § 2.2-2277; *id.* § 55.1-2427.

Va. App. at 13. The harm to the constitutional separation of powers from judicial interference in the lawmaking process far outweighs any harm claimed by Appellees. "Respect for the separation of the powers of the legislative and judicial branches of government is an essential element of our constitutional system." *Advanced Towing Co., LLC v. Fairfax Cnty. Bd. of Supervisors*, 280 Va. 187, 191 (2010); *see Edwards v. Vesilind*, 292 Va. 510, 524 (2016) (emphasizing the importance of "promoting, not eroding, the separation of powers principles integral to the sound government of this Commonwealth"). Given the tight timeline required to ensure a smooth referendum in April, permitting the Order to stand pending appeal could thwart critical legislative prerogatives in a manner that would irreparably deprive Virginians of the opportunity to vote on a constitutional amendment that will decide the congressional districts for upcoming elections. And granting a stay would do nothing to harm Appellees: they face no prospect of irreparable harm from simply allowing the legislative process to proceed while this appeal is adjudicated. *See Scott*, 114 Va. at 304 ("If, upon completion of the proceedings, the validity of the amendment is assailed, on the ground that the several provisions of the Constitution have not been complied with, then the courts can pass upon the validity of the amendment.").

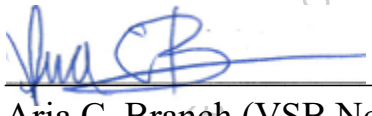
The public interest is best served when each branch of government stays within its constitutionally prescribed role. *See McEachin*, 2011 WL 10909615, at *4 ("[T]here are numerous cases throughout Virginia's jurisprudence in which the

Supreme Court has refrained from enjoining the process of legislation."). Here, that means allowing the legislative process to move forward without judicial encumbrance.

CONCLUSION

Appellant respectfully requests that this Court waive the 10-day response period under Rule 5A:2(a) and immediately stay the Circuit Court's Order pending appeal.

Respectfully submitted,



Aria C. Branch (VSB No. 83682)
Dated: January 28, 2026

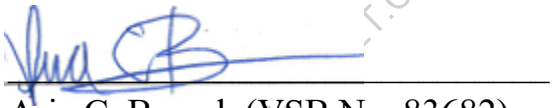
Aria C. Branch (VSB No. 83682)
Richard A. Medina*
Derek A. Zeigler*
ELIAS LAW GROUP LLP
250 Massachusetts Ave NW, Suite 400
Washington, DC 20001
Tel.: (202) 968-4490
abranch@elias.law
rmedina@elias.law
dzeigler@elias.law

* *Pro Hac Vice*
Counsel for Appellant Don Scott

RULE 5A:2(a) CERTIFICATION

In accordance with Rule 5A:2(a), I contacted counsel for the opposing parties before filing this Emergency Motion. Counsel opposes the Motion to Stay and intends to file a response brief within the time set by Rule 5A:2(a), unless the Court orders a different deadline. Counsel for the Legislative Clerk Appellants consent to the granting of the Motion to Stay and intend to file their own Motion to Stay.

Respectfully submitted,



Aria C. Branch (VSB No. 83682)
Dated: January 28, 2026

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

* *Pro Hac Vice*
Counsel for Appellant Don Scott

CERTIFICATE OF SERVICE

I certify that on January 28, 2026, I

☐ mailed | ☒ emailed

a copy of this document to:

1) Party Name: Ryan T. McDougle
   Attorney Name: Michael Thomas
   Address: Gillespie, Hart, Pyott & Thomas, P.C., 179 Main St., Tazewell, VA 24651
   Email Address: mthomas@ghartlaw.com
   Attorney Name: Tom McCarthy; Conor Woodfin
   Address: Consovoy McCarthy PLLC, 1600 Wilson Blvd., Ste. 700, Arlington, VA 22209
   Email Address: tom@consovoymccarthy.com; conor@consovoy.mccarthy.com

2) Party Name: William M. Stanley, Jr.
   Attorney Name: Michael Thomas
   Address: Gillespie, Hart, Pyott & Thomas, P.C., 179 Main St., Tazewell, VA 24651
   Email Address: mthomas@ghartlaw.com
   Attorney Name: Tom McCarthy; Conor Woodfin
   Address: Consovoy McCarthy PLLC, 1600 Wilson Blvd., Ste. 700, Arlington, VA 22209
   Email Address: tom@consovoymccarthy.com; conor@consovoy.mccarthy.com

3) Party Name: Terry Kilgore
   Attorney Name: Michael Thomas
   Address: Gillespie, Hart, Pyott & Thomas, P.C., 179 Main St., Tazewell, VA 24651
   Email Address: mthomas@ghartlaw.com

Attorney Name: Tom McCarthy; Conor Woodfin
Address: Consovoy McCarthy PLLC, 1600 Wilson Blvd., Ste. 700, Arlington, VA 22209
Email Address: tom@consovoymccarthy.com; conor@consovoy.mccarthy.com

4) Party Name: Virginia Trost-Thornton
Attorney Name: Michael Thomas
Address: Gillespie, Hart, Pyott & Thomas, P.C., 179 Main St., Tazewell, VA 24651
Email Address: mthomas@ghartlaw.com
Attorney Name: Tom McCarthy; Conor Woodfin
Address: Consovoy McCarthy PLLC, 1600 Wilson Blvd., Ste. 700, Arlington, VA 22209
Email Address: tom@consovoymccarthy.com; conor@consovoy.mccarthy.com

5) Party Name: Camilla Simon
Attorney Name: Michael Thomas
Address: Gillespie, Hart, Pyott & Thomas, P.C., 179 Main St., Tazewell, VA 24651
Email Address: mthomas@ghartlaw.com
Attorney Name: Tom McCarthy; Conor Woodfin
Address: Consovoy McCarthy PLLC, 1600 Wilson Blvd., Ste. 700, Arlington, VA 22209
Email Address: tom@consovoymccarthy.com; conor@consovoy.mccarthy.com

6) Party Name: Faythe Silveira
Attorney Name: Michael Thomas
Address: Gillespie, Hart, Pyott & Thomas, P.C., 179 Main St., Tazewell, VA 24651
Email Address: mthomas@ghartlaw.com
Attorney Name: Tom McCarthy; Conor Woodfin

Address: Consovoy McCarthy PLLC, 1600 Wilson Blvd., Ste. 700, Arlington, VA 22209
Email Address: tom@consovoymccarthy.com; conor@consovoy.mccarthy.com

Respectfully submitted,

Aria C. Branch (VSB No. 83682)
Dated: January 28, 2026

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

* *Pro Hac Vice*
Counsel for Appellant Don Scott