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Via VACES

February 4, 2026

Muriel-Theresa Pitney
Office of the Clerk
Supreme Court of Virginia
100 N. 9th Street
Richmond, Virginia 23219

**RE: *McDougle v. Nardo*, Court of Appeals Nos. 0189-26 & 0190-26
Notice regarding motion by Court of Appeals**

Dear Ms. Pitney:

I represent the Plaintiffs in *McDougle v. Nardo*, which is currently before the Court of Appeals as case Nos. 0189-26 and 0190-26. Yesterday, the Court of Appeals moved in the Supreme Court to certify these cases for review under Code §17.1-409(B)(1). I am writing to inform the Court of Plaintiffs' position regarding the motion and provide updates on recent developments in this case.

With respect to the Court of Appeals' motion, Plaintiffs do not oppose certification under Code §17.1-409(B)(1). The motion advises the Court that these appeals present questions of "imperative public importance" that "justify the deviation from normal appellate practice" and warrant this Court's immediate attention. Mot. for Cert. at 2 (quoting Code §17.1-409(B)(1)). Plaintiffs agree. The Circuit Court found that the amendment process at issue in this case violated the Constitution's limits on legislative sessions, violated the Constitution's intervening-election requirement for amendments, and violated Virginia Code §30-13's requirement that voters receive notice of proposed amendments three months prior to that intervening election. The Court ordered declaratory and injunctive relief to remedy those violations. These important issues warrant the Court's review.

In addition, earlier this week the Attorney General moved to intervene in the appeals on behalf of the Commonwealth. Last month, the Attorney General filed an amicus brief in support of Plaintiffs' preliminary injunction motion in the Circuit Court, with consent from all parties. Plaintiffs likewise do not object to the Attorney General's participation in this appeal. And as the Attorney General notes, this case "implicate[s] the Virginia Constitution, the structure of

state government, and the legitimacy of the constitutional amendment and redistricting processes.” Att’y Gen. Mot. to Interv. at 2 (enclosed).

Finally, the Circuit Court held a hearing on several outstanding issues yesterday. This morning, the Court issued an order resolving those issues. *See* Order of Feb. 5, 2026 (enclosed). The Court denied the two motions to stay filed by both the Legislative Clerk Defendants and the Intervenor Defendant. The Court also denied the Plaintiffs’ Motion for Final Judgment, clarifying that the Court “already rendered Final Judgment in its January 27, 2026, Order.” Finally, the Court sustained the Legislative Clerk Defendants’ Plea of Immunity and dismissed them from the case with prejudice (Appellants in case No. 0189-26).

Given these developments, if the Court is inclined to take the case, Plaintiffs would respectfully request a full briefing and hearing on the merits of the appeal. The important issues in this appeal warrant fulsome briefing—not rushed papers in an emergency stay posture. But if the Court is inclined to resolve this case on emergency motions to stay, Plaintiffs would request the opportunity to brief the issues in this Court, to provide more complete argument and an explanation of recent developments.

Plaintiffs are prepared to brief and argue this case on whatever schedule the Court decides.

Dated: February 5, 2026

Respectfully submitted,

/s/ Thomas R. McCarthy

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Enclosures:

Circuit Court’s Order of February 5, 2026

Attorney General’s Motion to Intervene in the Court of Appeals

VIRGINIA:

IN THE CIRCUIT COURT FOR TAZEWELL COUNTY

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

)
)
) Case No. CL25-1582
)
)

Plaintiffs,

v.

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

Defendants,

And

DON SCOTT, in his official capacity
as Speaker of the Virginia House of
Delegates,

Intervenor-Defendant.

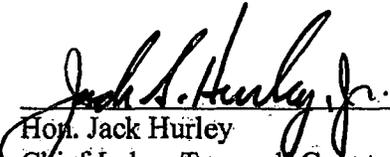
ORDER

This matter came before the Court for a hearing on February 4, 2026, on Defendants' Emergency Motion to Stay the Court's January 27, 2026, Order, Intervenor-Defendant's Emergency Motion to Stay the Court's January 27, 2026, Order Pending Appeal, and Plaintiffs' Motion for Final Judgment. For the reasons set forth on the record during the February 4, 2026, hearing, the Court hereby **DENIES** Defendants' Motion to Stay, **DENIES** Intervenor's Motion to Stay, and **DENIES** Plaintiffs' Motion for Final Judgment, the Court having already rendered Final Judgment in its January 27, 2026, Order, as stated by the Court on the record.

Separately, and pursuant to its retained jurisdiction under Rule 1:1B(a)(2), the Court **SUSTAINS** Defendants Nardo, Schaar, and Perkinson's ("Legislative Clerk Defendants") Plea of Immunity, and the Legislative Clerk Defendants are hereby **DISMISSED WITH PREJUDICE**.

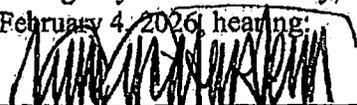
Upon entry, the Clerk shall provide attested copies of this **ORDER** to counsel of record and shall then strike this matter from the Court's active docket.

ENTERED: February 5, 2026.

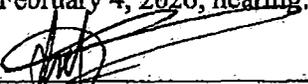


Hon. Jack Hurley
Chief Judge, Tazewell County Circuit Court

SEEN and OBJECTED to in part as to the denial of Defendants Nardo, Schaar, and Perkinson's Emergency Motion to Stay the Court's January 27, 2026, Order, for those reasons set forth in their January 29, 2026, Emergency Motion to Stay, in their February 2, 2026, Renewed Emergency Motion to Stay, and on the record during the February 4, 2026, hearing:


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SEEN and OBJECTED to in part as to the denial of Intervenor Scott's Emergency Motion to Stay the Court's January 27, 2026, Order, for those reasons set forth in his January 29, 2026, Emergency Motion to Stay, in his February 2, 2026, Renewed Emergency Motion to Stay, and on the record during the February 4, 2026, hearing:


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SEEN and OBJECTED to in part as to the order sustaining the Legislative Clerk Defendants' Plea of Immunity and dismissing the Legislative Clerk Defendants with prejudice, for the reasons set forth in the Plaintiffs' briefing in support of their December 16, 2025 Preliminary Injunction Motion and January 6, 2026 Motion for Temporary Restraining Order and on the record during the February 4, 2026, hearing:

/s/ Thomas R. McCarthy

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2. At the time of filing, the Commonwealth of Virginia was not designated a party-defendant by the Plaintiffs, and the undersigned is unaware of any notice given to the Office of the Attorney General pursuant to Rule 3:14A(b).

3. The Attorney General is the chief legal officer of the Commonwealth and is statutorily charged with representing the Commonwealth of Virginia's interests in constitutional litigation and defends the legality of the actions taken by the General Assembly. *See* Code § 2.2-507.

4. Plaintiffs' claims directly implicate the Virginia Constitution, the structure of state government, and the legitimacy of the constitutional amendment and redistricting processes, thereby triggering the Commonwealth's sovereign interests.

5. Moreover, the Attorney General of Virginia defends and interprets laws of the Commonwealth, which includes the laws governing how constitutional amendments make their way to referendum and that govern how districts are drawn. *See* Code § 2.2-507(B); *See also Marshall v. Northern Virginia Transportation*

Authority, 275 Va. 419, 435 (2008).

6. The Attorney General is entitled to intervene by right on behalf of the Commonwealth in matters involving a provision of the Constitution of Virginia. Rule 3:14A(a).

7. At the time Plaintiffs initiated this litigation, the Commonwealth was represented by the former Attorney General. On January 17, 2026, Jay Jones assumed office as Attorney General. By statute, the Attorney General controls the litigation strategy of the Commonwealth, *See* Code § 2.2-510, and the transition in constitutional office independently establishes the Commonwealth's right and necessity to intervene to assert and preserve its institutional legal position.

8. On January 27, 2026, the circuit court entered a final Order in this matter, granting the Plaintiffs' requests for a temporary and permanent injunction and making certain other rulings.

9. On January 28, 2026, Defendants G. Paul Nardo, Susan Clark Schaar and Tara Ferguson, as well as Intervenor-Defendant Don Scott timely filed a notice of appeal.

10. The Commonwealth seeks to protect its interests and represent those interests on appeal.

11. Because the circuit court's order has taken immediate effect, and because the Commonwealth has the absolute right, pursuant to Rule 3:14A, to intervene in this matter, the Commonwealth requests that this motion and notice be granted on the pleading on an emergency basis without the need for a hearing.

12. No party will be prejudiced by the Commonwealth's intervention.

WHEREFORE, for the foregoing reasons, the Attorney General respectfully requests that the Court enter an order granting the Attorney General's motion to intervene of right on behalf of the Commonwealth and requiring the Attorney General to file with this Court a brief addressing the constitutional question within 30 days of this Court's order granting the motion to intervene.

THE COMMONWEALTH OF VIRGINIA

By: /s/ Mikaela A. Phillips
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CERTIFICATE OF SERVICE

On February 2, 2026 this document was electronically filed with the
Court via VACES and transmitted by email to:

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