

IN THE
SUPREME COURT OF VIRGINIA

RECORD NO. 260127

DON SCOTT, in his official capacity as Speaker of the House of
Delegates, *et al.*,

Appellants,

v.

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

Appellees.

OPENING BRIEF OF THE COMMONWEALTH

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INTRODUCTION

This case arises from a political decision to amend the Constitution of Virginia through the process the Constitution itself prescribes. That process reflects a basic principle of constitutional government: when the people choose to exercise their sovereign authority, they may resolve even the most contested policy questions through amendment.

The Constitution does not withhold that authority; it prescribes the framework through which it is exercised. Article XII sets out a clear mechanism by which the General Assembly may propose amendments and the people of the Commonwealth may decide whether to adopt them. That design reflects a deliberate allocation of power that assigns proposal authority to the political branches and reserves final decisionmaking to the electorate. By the time this case is submitted, the People will have made their decision.

Courts play a defined but limited role within that framework. They may enforce the Constitution's requirements, but they may not revise them or impose new conditions the constitutional text does not contain.

The circuit court crossed that boundary. The General Assembly invoked Article XII to propose an amendment addressing congressional

redistricting, a subject of obvious political discord and consequence. Justices' views of the wisdom of that policy choice is not before the Court, nor can the Court's policy preferences be relevant if each part of government is to play its proper role. The question is whether the Constitution's amendment process was followed.

The sequence of events leaves no doubt that it was. The General Assembly approved the proposal, a general election of members of the House of Delegates intervened, and a newly constituted General Assembly approved the amendment a second time. And if this case is submitted to the Court, the People adopted the amendment. Those are the only steps Article XII requires, and each occurred.

The circuit court nevertheless declared that process invalid before it was even finished by imposing requirements the Constitution does not contain. It (1) presumed the Constitution means something other than it says with respect to what constitutes an election by treating statutory early voting procedures as constitutional benchmarks, (2) interpreted internal rules of the General Assembly as constitutional limits that courts should enforce, and (3) elevated a now-repealed statute that was

already a dead letter into a condition of constitutional validity. The circuit court did not enforce Article XII; it rewrote it.

The Constitution assigns the final decision on the *policy* to the people of the Commonwealth, not to the courts. Because the amendment process here complied with Article XII, the judgment below should be reversed.

STATEMENT OF THE CASE

A. The Constitutional Amendment Process.

Article XII, § 1 prescribes the process for amending the Constitution of Virginia. In simplified form, that process requires:

1. **First legislative approval.** A proposed amendment must be approved by a majority of the members elected to each house of the General Assembly.
2. **An intervening House of Delegates election.** The proposal must then be referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates.
3. **Second legislative approval.** The newly constituted General Assembly must approve the proposal again by a majority of the members elected to each house.
4. **Submission to the voters.** The proposal must then be submitted to the electorate, not sooner than ninety days after final passage.

See Va. Const. art. XII, § 1. In turn, Article IV, § 3 fixes the relevant election on the Tuesday following the first Monday in November, supplying the constitutional benchmark for the intervening-election requirement.

B. The Legislative Timeline of the Proposed Amendment.

On April 17, 2024, the General Assembly requested that the Governor convene a special session. H.J. Res. 428 (2024 Sess.). The special session began on May 13, 2024. H.J. Res. 6001 (2024 Spec. Sess. I). House Joint Resolution 6001 set forth the special session agenda and addressed how additional matters could be taken up with unanimous consent of the house in which the legislation was offered. *Id.*

In late October 2025, each house voted by majority to proceed with consideration of a proposed redistricting amendment during the Special Session. H.J. Res. 6006 (2024 Spec. Sess. I). The proposed amendment was introduced in the House of Delegates on October 28, 2025. H.J. Res. 6007 (2024 Spec. Sess. I). The proposal would amend Article II, § 6 of the Constitution to permit mid-decade redistricting by the General Assembly in response to similar actions taken in other states, with that authority limited to the period between January 1, 2025, and October 31, 2030. *Id.*

The General Assembly then proceeded through the sequence Article XII prescribes. A majority of the House of Delegates and the Senate approved House Joint Resolution 6007 on October 29, 2025, and October 31, 2025. 2024 Acts ch. 5 (Spec. Sess. I).

Days later, the constitutionally defined election intervened. The general election of the members of the House of Delegates occurred on November 4, 2025.

The next regular session of the General Assembly convened on January 14, 2026. The proposed amendment was introduced again. H.J. Res. 4 (2026 Sess.). A majority of the House of Delegates and the Senate approved House Joint Resolution 4 on January 14, 2026, and January 16, 2026. *Id.*

With the second approval secured, the process moved to the electorate. The General Assembly scheduled a referendum for April 21, 2026. H.B. 1384 (2026 Sess.). The Governor signed that legislation into law on February 6, 2026. 2026 Acts ch. 6.

C. Procedural History.

The Complainants sued G. Paul Nardo, Clerk of the House of Delegates; Susan Clarke Schaar, Clerk of the Senate; Tara Perkinson,

Chief Deputy Clerk of the Senate; and Charity Hurst, Clerk of the Tazewell Circuit Court, in the Circuit Court of Tazewell County challenging the redistricting amendment. R. 125–27. The amended complaint sought a declaration that House Joint Resolution 6007 was void and did not comply with Article XII, § 1 and Code § 30-13, along with injunctive relief barring publication of the amendment by the General Assembly and requiring courthouse posting. R. 141–55. Speaker of the House of Delegates Don Scott intervened. R. 30–34, 349.

While the litigation was pending, the constitutional process continued. Before the preliminary injunction hearing, the General Assembly approved the amendment for a second time and the amendment was published. R. 581–82. At that point, the only requested injunctive relief that remained was an order directing the circuit court clerk to post the amendment. See R. 581–82.

The circuit court then ordered supplemental briefing by January 31, 2026. Tr. 1823 (Jan. 21, 2026). Before that deadline expired, however, the court entered a final order declaring the proposed amendment void ab initio and entering an injunction instructing the Tazewell Circuit Court Clerk to post the amendment on the courthouse

door at least 90 days before the 2027 election for the House of Delegates. R. 596–601.

The court first concluded that the continued convening of the 2024 Special Session was lawful, including the October 31, 2025 meeting, because there is no constitutional or statutory prohibition on continuing the special session. R. 596. It nonetheless held that the General Assembly’s consideration of House Joint Resolution 6007 was void because the legislature had failed to comply with its internal resolutions governing the session’s scope. R. 597–99.

The court also concluded that the intervening-election requirement was not satisfied. R. 599–600. Although Article IV, § 3 defines Election Day to mean “the Tuesday succeeding the first Monday in November,” the court reasoned that the “election” began when early voting opened on September 19, 2025, and continued through November 4, 2025. R. 599. On that view, because early voting began before October 31, 2025—the date of the first legislative approval—no qualifying intervening election occurred. R. 599.

Last, the court held that the second legislative approval was ineffective due to non-compliance with Code § 30-13. R. 600. That

statute governs the publication and posting of proposed amendments by legislative and circuit court clerks. In substance, the court treated that statutory publication directive as a condition of constitutional validity under Article XII. R. 600.

Speaker Scott appealed.¹ R. 622–23. The Commonwealth of Virginia moved to intervene under Rule 3:14A on the grounds that each of the circuit court’s three justifications for its ruling inflict damage on the structure of Virginia’s government, regardless of any policy views on the merits of the issue before the court. R. 1029–35. The Court of Appeals moved to certify the cases to this Court pursuant to Code § 17.1-409(B)(1). R. 965–66. This Court granted the motion to certify the cases due to their “imperative public importance” and granted the Commonwealth’s intervention motion. Order ¶¶ 1, 4, *Scott v. McDougle*, No. 260127 (Feb. 13, 2026).

ASSIGNMENTS OF ERROR

1. The circuit court erred in concluding that the proposed constitutional amendment failed to satisfy Article XII’s intervening-election

¹ The Legislative Clerks also filed a Notice of Appeal. R. 618–21. The circuit court subsequently granted their plea of immunity and dismissed them with prejudice, so they are no longer parties to this appeal. R. 1663–64.

requirement by re-defining the “general election of members of the House of Delegates” to include the period of early voting and by holding that no valid intervening election occurred.

2. The circuit court erred in holding that the General Assembly’s consideration of the proposed amendment during the 2024 Special Session violated internal legislative resolutions and in declaring the amendment void on that basis.
3. The circuit court erred in concluding that alleged non-compliance with Code § 30-13 rendered the proposed constitutional amendment invalid and barred its submission to the voters.

STANDARD OF REVIEW

Questions of constitutional and statutory interpretation present pure questions of law that this Court reviews de novo. *Gallagher v. Commonwealth*, 284 Va. 444, 449 (2012). A circuit court’s decision to grant injunctive relief is reviewed for abuse of discretion, and a court abuses its discretion when it makes an error of law or misapplies governing legal principles. *May v. R.A. Yancey Lumber Corp.*, 297 Va. 1, 18 (2019).

Because the rulings challenged here turn on the circuit court’s interpretation of Article XII of the Constitution of Virginia and related legal provisions, those determinations are reviewed without deference.

SUMMARY OF ARGUMENT

This case concerns straightforward questions of constitutional process. Article XII of the Constitution of Virginia establishes the exclusive method for proposing amendments. It requires that a proposed amendment receive legislative approval, be separated by the constitutionally defined election of members of the House of Delegates, and then be approved again before submission to the voters. Those requirements were satisfied here.

The circuit court nevertheless ruled the amendment invalid by imposing requirements found nowhere in the Constitution. It treated the statutory beginning of early voting as the constitutional “election,” relied on a statutory publication provision as though it were itself a constitutional condition, and undermined the General Assembly’s authority to act during a lawfully convened special session. Each ruling reflects the same error—replacing the Constitution’s text with extra-textual limitations.

First, Article XII specifies only that an election of House members occur between two legislative approvals, and the Constitution itself fixes that election on Election Day. Statutes governing absentee voting (which

includes early voting) regulate how ballots are cast, not when the constitutional election occurs. Those votes do not count—and are not tallied or reported—until Election Day. The circuit court’s contrary interpretation collapses that distinction and makes the meaning of the Constitution dependent on statutory voting procedures. Under that approach, the timing and validity of constitutional amendments would vary with ordinary legislation, an outcome incompatible with the Constitution’s fixed meaning. Because the November 2025 election intervened between the General Assembly’s October 2025 and January 2026 approvals, Article XII’s intervening election requirement was met.

Second, the amendment was validly considered during the 2024 special session. The Constitution imposes no time limit on the duration of a special session and does not restrict the General Assembly’s authority based on internal scheduling decisions or evolving legislative priorities. The legislature retained authority to recess and reconvene, and it exercised that authority here. Internal resolutions governing the scope of business cannot be transformed into constitutional limitations, nor may courts enforce such internal rules as though they constrained the Constitution’s grant of authority to propose amendments.

Third, a statutory notice provision cannot alter Article XII's requirements. The Constitution specifies the steps necessary to propose and adopt an amendment, and those steps do not require compliance with Code § 30-13. A statute governing publication and posting cannot be elevated into a constitutional prerequisite that the Constitution itself omits. Treating such provisions as conditions of validity would allow ordinary legislation to modify the amendment process and displace the Constitution's control over its own revision. Section 30-13, moreover, is a vestige of an earlier constitutional regime that required publication of proposed amendments—a requirement deliberately removed from the 1971 Constitution. At most, the statute imposed administrative duties on public officials *until 1971*; it never determined an amendment's validity, and it certainly cannot do so now. Section 30-13's subsequent repeal confirms that understanding.

The circuit court's decision also reflects a deeper misallocation of authority. Article XII entrusts the people—not the judiciary—with the final decision whether to adopt a proposed amendment. When a court imposes extra-constitutional conditions that prevent a proposal from

proceeding under Article XII, it assumes the role that the Constitution reserves for the electorate.

The Constitution supplies a clear rule and a defined process for amendment. Because the General Assembly followed that process, the proposed amendment was validly advanced and should have been submitted to the voters. The judgment of the circuit court should be reversed.

ARGUMENT

- I. Article XII requires only that two legislative approvals of a proposed amendment be separated by the constitutionally defined election of members of the House of Delegates.**
 - A. The Constitution establishes a straightforward intervening-election requirement.**

The amendment process is set out in Article XII, and its specified procedures “must be strictly followed.” See Stephen R. McCullough, 1 *Virginia Constitutional Law* § 18.02[6] (2025 ed.). A proposed amendment must first be approved by a majority of the members elected to each house of the General Assembly. The proposal is then referred to the General Assembly at its first regular session held following “the next general election of members of the House of Delegates.” Va. Const. art. XII, § 1. If the newly constituted General Assembly again approves the

proposal by majority vote in each house, the amendment is submitted to the voters.

The intervening-election requirement serves a clear purpose. It ensures that the electorate has an *opportunity* to elect the House of Delegates that will participate in the second legislative vote on the proposed amendment. Article XII thus provides a democratic safeguard: constitutional amendments must pass through two successive legislatures with an intervening election of House members. See A. E. Dick Howard, *2 Commentaries on the Constitution of Virginia 1171-72* (1974). The electorate had that opportunity here, and individuals who voted early under the absentee voting statute did so with the obvious knowledge that they were foregoing any option of changing their votes based on *any* intervening events between casting a ballot, and the vote counting on November 4.

Complainants' theory, however, rests on the premise that the intervening election must occur only after voters have had notice of the proposed amendment or an opportunity to consider it before sending absentee ballots. See R. 284–85; Tr. 1693–94 (Jan. 21, 2026). But that premise finds no foothold in the constitutional text or when considering

the nature of absentee and early voting. The text demands an intervening election and no additional condition. The Constitution also does not require that the first approval occur a particular number of days before the election, that the amendment be proposed before voting procedures begin, or that voters be aware of the proposal before casting ballots. Nor may courts impose additional constitutional requirements by implication; a prohibition must appear “expressly,” not by “slight implication or inconclusive reasoning.” *Commonwealth v. Moore*, 66 Va. 951, 953 (1875).

The role of the intervening election follows from that structure. The intervening election does not function as a referendum on the proposed amendment itself; the amendment is not submitted to the voters until *after* the second legislative approval by design. The election instead identifies the House of Delegates that will cast the second vote—ensuring that final legislative approval comes from an Assembly chosen after the proposal’s first passage.

That is the full constitutional design. Two legislative approvals, separated by an intervening House election—and nothing more.

B. Article IV defines the relevant “election” referenced in Article XII, and that requirement was met here.

Article IV identifies the relevant election and fixes its date. Members of the House of Delegates are elected “on the Tuesday succeeding the first Monday in November.” Va. Const. art. IV, § 3. Article XII operates against that fixed point. Once Article IV sets the election, Article XII incorporates that same event as the dividing line between legislative approvals.

The ordinary meaning of the relevant terms points in the same direction. An “election” is “[t]he process of selecting a person to occupy an office.” *Election*, Black’s Law Dictionary (12th ed. 2024). And a “general election” is “[a]n election that occurs at a regular interval of time.” *Id.* Voting is “[t]he casting of votes for the purpose of deciding an issue,” and “early voting” is “[v]oting *before the day of an election.*” *Voting*, Black’s Law Dictionary (12th ed. 2024) (emphasis added). These definitions reflect a critical distinction: the election is the legally operative event that determines the officeholder, while voting describes the mechanisms by which ballots are cast. They are buttressed by the definition of “Election Day,” which is a “single day established by law for

voters to cast ballots by presenting themselves in person at a voting precinct.” *Election Day*, Black’s Law Dictionary (12th ed. 2024). The definition goes on to note that “[i]n jurisdictions that allow early in-person voting, election day is normally the last day on which voters may cast a ballot in a given election.” *Id.* It is therefore consistent with the ordinary meanings of the operative terms of election and voting for the Court to apply the Constitution’s definition of the election as a fixed legal event, rather than re-defining it, as the circuit court did, as an extended voting period based on statutory procedures.

Properly understood, the relevant election here occurred on November 4, 2025—the constitutionally prescribed Election Day. The General Assembly approved the proposed amendment on October 31, 2025, the electorate then selected members of the House of Delegates at the November 2025 general election, and the newly constituted General Assembly approved the amendment again during the 2026 legislative session.

That sequence mirrors the structure required by Article XII: legislative approval, an intervening election of House members, and renewed legislative approval by the newly constituted General Assembly.

Here, that sequence did exactly what the Constitution was designed to do—it ensured that the second vote was cast by a House elected after the proposal’s initial passage. The election serves to select the legislature that will decide whether the proposal proceeds to the electorate; it is not itself a referendum on the amendment. Once that sequence occurred, the constitutional requirement was satisfied.

C. The circuit court erred by treating the beginning of early voting as the constitutional election.

Contrary to the constitutional sequence set out in Articles XII and IV, the circuit court concluded that Article XII’s intervening-election requirement had not been satisfied because early voting for the November 2025 election had begun before the General Assembly’s first legislative approval of the amendment. While the circuit court acknowledged that Article IV specifies the date of the election of House members, it accepted Complainants’ view that an “election” is not a fixed constitutional event but rather an extended period during which votes are cast. From that incorrect premise, the court reasoned that the “election” effectively took place when voters started casting ballots. And because the General Assembly’s first approval occurred on October 31,

2025, after early voting had begun, the court concluded that no constitutionally valid intervening election could still occur.

That reasoning collapses the distinction the Constitution itself draws. In effect, the court treated the statutory beginning of early voting as the constitutional date of the election itself. But statutes regulate how voters cast ballots, and the Constitution defines when the election occurs. Voting—including early or absentee voting—is simply a means of participating in an election, not the election itself.

The constitutional hierarchy is straightforward. Article XII refers to “the general election of members of the House of Delegates,” and Article IV defines when that election occurs. Once the Constitution supplies that definition, statutory voting procedures cannot displace it. Statutes enacted by the General Assembly may regulate how ballots are cast, but they cannot alter the meaning of constitutional text. See *Harrison v. Day*, 200 Va. 439, 448 (1959) (courts “are limited to the language of the section itself and are not at liberty to search for meaning, intent or purpose beyond the instrument”). Early voting exists solely as a statutory voting procedure—a way of participating in the election on November 4 without having to show up to the polls on November 4. Those

provisions regulate how voters may cast ballots before an election, but they cannot re-define when the constitutional election occurs, nor do they purport to do so. Even when ballots are cast before Election Day, those ballots are cast in the Election Day election, which is the constitutionally designated event that determines the outcome of the contest.

The circuit court's mix of purposivism and consequentialism—eliding sound basis in the text—misunderstands the purposes and consequences of early and absentee voting. As is discussed above, the purpose of early and absentee voting is not to move Election Day, but rather to allow people who cannot or choose not to physically go to the polling place on Election Day to cast a ballot for that day nonetheless. The consequences of early and absentee balloting are known to the voter: the voter commits to the early vote regardless of what happens between casting the ballot and Election Day. That is true for any fresh policy statement, death or withdrawal of a candidate, “October Surprise,” or in this case, re-convened session to pass a constitutional amendment. In none of those circumstances does the election become invalid because voters engaged in an early selection and intervening events may have changed their votes. Nor do they get to re-cast a ballot with a different

vote. The voter inherently has baked in the recognition that his or her vote will be counted on Election Day based on the earlier ballot regardless of intervening events.

This Court's decision in *Moore v. Pullem*, 150 Va. 174 (1928), confirms that understanding. Ballots cast before Election Day remain part of the Election Day election, not a separate or earlier election. In *Pullem*, the Court upheld an absentee-voting system that allowed voters to submit ballots before election day, and it treated those ballots as part of the election conducted on the constitutionally designated day. *Id.* at 184. Registrars delivered absentee ballots to election officials, who on election day verified eligibility and deposited those ballots into the regular ballot box to be counted with all the others. *Id.* at 182–83. The Court thus understood absentee voting as a procedural mechanism facilitating participation in the election on Election Day—not as altering when the election date legally occurs. That understanding reflects the broader constitutional allocation of authority. The General Assembly may prescribe the manner of conducting elections, but it cannot alter the constitutional definition of the election. See *id.*; Va. Const. art. II, § 4.

Modern early- and absentee-voting statutes follow the same model as the system upheld in *Pullem*—they provide additional methods for casting ballots in the Election Day election, not alternative election dates. See Code § 24.2-701.1(A) (early voting begins “on the forty-fifth day prior to any election”). Although ballots may be cast in advance, the statutory scheme treats those ballots as part of the Election Day election itself. Officials may not generate vote totals until after the polls close, Code §§ 24.2-709.1(B); 24.2-712(D)–(E), and certain ballots may be counted even if received after Election Day so long as they are postmarked on or before that day, Code § 24.2-709(B). These provisions confirm that early and absentee voting facilitate participation in the election and do not re-define when the election occurs.

The U.S. Supreme Court has articulated the same understanding. In *Foster v. Love*, the Supreme Court explained that the “election” refers to the legally operative act that determines the officeholder, and that a system violates federal law only when the result is “concluded as a matter of law before the federal election day,” leaving “no act in law or in fact to be performed” that day. 522 U.S. 67, 72 (1997). Systems that allow ballots to be cast beforehand but do not legally consummate the election

until the designated day therefore remain consistent with the concept of Election Day. *Id.*

For decades, Virginia's amendment process has operated on the understanding that Article XII requires only that two legislative approvals be separated by the constitutionally defined election of members of the House of Delegates. Neither the General Assembly nor the courts have treated the beginning of early voting as the constitutional election. The circuit court's contrary interpretation departs from that settled understanding and introduces uncertainty into the operation of the constitutional amendment process.

Taken seriously, that rule would allow ordinary legislation to reshape the Constitution itself. Extending the early voting period would shrink the window in which amendments could be proposed; shortening it would expand that window. The Constitution's meaning would thus fluctuate with statutory change, which is no constitutional rule at all.

The Constitution provides a fixed answer. The November 2025 election intervened between the two legislative approvals. That is all Article XII requires.

II. The proposed amendment was validly considered during the 2024 Special Session.

A. The Special Session remained lawfully in existence when the amendment was introduced.

The Constitution does not impose a time limit on the duration of a special session. Article IV, § 6 prescribes time limits for regular and reconvened sessions but contains no durational limitation on a special session once convened. Nothing in the constitutional text provides that a special session automatically expires upon the convening of a regular session or the completion of any particular legislative objective.

That structure is deliberate. Special sessions are defined by how they are convened, not by any fixed duration. Once convened, the Constitution does not impose an expiration mechanism; instead, the General Assembly retains authority to conduct its business unless and until it chooses to conclude the session. Indeed, Article IV “sets no limit on the subject matter of the special session,” and the legislature’s authority in such a session “is as broad as its powers in its regular sessions.” 1982 Op. Va. Att’y Gen. 188 (citation omitted).²

² “[A]n Opinion of the Attorney General is ‘entitled to due consideration.’” *Beck v. Shelton*, 267 Va. 482, 492 (2004) (quoting *Twietmeyer v. City of Hampton*, 255 Va. 387, 393 (1998)).

The legislative record confirms that understanding. House Joint Resolution 428 expressly authorized the 2024 Special Session, once convened, to “stand in recess from time to time until reconvened” by joint call of the presiding officers. The General Assembly later reconvened the same session in October 2025 and considered additional business, including the proposed constitutional amendment. See, *e.g.*, H.J. Res. 6004, 6006, 6007 (2024 Spec. Sess. I).

The circuit court correctly acknowledged the absence of any such limitation. It found that Complainants “were unable to show [c]onstitutional or [s]tatutory prohibition of continuing the Special Session” and concluded that “the continued reconvening of the Special Session was valid up to and including the October 31, 2025 meeting of said Special Session.” R. 596.

Complainants’ contrary theories—that the session expired upon the convening of the 2025 regular session or upon completion of budget legislation—find no support in the Constitution. Article IV, § 6 does not tie the duration of a special session to any external event or legislative objective. As the circuit court itself recognized, no constitutional or statutory provision imposes such a limitation.

Because the Special Session remained lawfully in existence, legislative action taken during that session, including approval of the proposed amendment, was constitutionally authorized.

B. The circuit court erred in treating the legislative agenda resolutions as constitutional limitations.

Having correctly concluded that the Special Session remained lawfully in existence, the circuit court nevertheless declared the amendment invalid on the ground that the General Assembly failed to comply with its own internal procedural resolutions governing the scope of the session's business. R. 597–99. That ruling cannot be reconciled with the Constitution.

The Constitution assigns to each house of the General Assembly the authority to determine its own rules of procedure. Va. Const. art. IV, § 7 (“Each house shall select its officers and settle its rules of procedure.”). Those rules govern the legislature's internal operations; they do not create independent constitutional limitations or provide a basis for judicial invalidation of legislative action. Absent a violation of an express constitutional requirement, alleged non-compliance with internal legislative rules presents no justiciable basis for judicial relief.

That limitation is well-settled, as “[c]ourts may not review the propriety or validity of the General Assembly’s internal rules and procedures” to determine whether a law has been properly enacted. McCullough, *Virginia Constitutional Law* § 10.07[3]. This Court has long held that it may not “invade a co-ordinate and independent department” by second-guessing legislative procedure, *Wise v. Bigger*, 79 Va. 269, 281 (1884), or “overthrow legislative determination[s]” regarding compliance with procedural conditions, *Albemarle Oil & Gas Co. v. Morris*, 138 Va. 1, 11 (1924). The U.S. Supreme Court has also recognized this rule, explaining in *Marshall Field & Co. v. Clark* that an enrolled bill, authenticated by the legislative and executive branches, is “complete and unimpeachable,” and that courts may not look behind it to examine journals, committee reports, or other internal records of the legislative process. 143 U.S. 649, 672 (1892). That understanding reflects the allocation of authority and respect owed among co-equal branches and forecloses judicial second-guessing of internal legislative procedure.

Even when judicial review is available, that review is tightly constrained. Courts may invalidate legislative action *only* upon a clear and unmistakable constitutional violation; an act of the General

Assembly must be upheld unless it plainly and palpably violates the Constitution, and courts may not rely on “slight implication or inconclusive reasoning” to set aside legislative action. *Moore*, 66 Va. at 953. That limited role of judicial review underscores that courts do not police legislative policy choices or second-guess those judgments but consider only whether those choices exceed constitutional limits. *E.g.*, *Elizabeth River Crossings OpCo, LLC v. Meeks*, 286 Va. 286, 309 (2013) (courts have “no authority to override” policy decisions made within constitutional boundaries). That framework reflects the fundamental presumption that the legislature has acted within its constitutional authority.

The circuit court’s reasoning cannot be squared with these principles. It treated compliance with internal agenda resolutions and voting thresholds as a constitutional prerequisite to valid legislative action. But whether the legislature adhered to its own procedural rules is a matter committed exclusively to the legislature itself—not a basis for judicial invalidation of an otherwise valid enactment.

This conclusion is reinforced by the nature of legislative rules themselves, which remain subject to legislative control at every stage.

Each chamber adopts its own rules pursuant to Article IV, § 7 and retains authority to amend or suspend those rules under procedures it has itself established. See Rules of the House of Delegates, Rule 81 (2024); Rules of the Senate of Virginia, Rules 49, 56 (2024). As a result, those rules are not fixed constitutional constraints but continuing expressions of legislative will. And a legislature cannot bind itself through ordinary rules or procedures—it can only do so through the constitutional amendment process. See 1 W. Blackstone, *Commentaries on the Laws of England* 90 (1765) (“Acts of parliament derogatory from the power of subsequent parliaments bind not.”). Even where the General Assembly did not strictly adhere to a previously adopted procedural limitation, no constitutional defect would follow, because the legislature retains authority to revise or dispense with such rules in accordance with its own procedures. A rule that exists solely by virtue of legislative adoption—and remains subject to legislative revision—cannot be transformed into a constitutional command by judicial decree.

Virginia precedent likewise reflects the limited role of courts in reviewing non-constitutional procedural matters. Courts may not substitute their judgment for that of the legislature in matters committed

to legislative discretion, see *Bd. of Sup'rs of Fairfax Cnty. v. Allman*, 215 Va. 434, 445–46 (1975), and should not interfere with the amendment process while it remains ongoing, reserving review for compliance with constitutional requirements themselves, see *Scott v. James*, 114 Va. 297, 303 (1912).

Nor may internal procedural rules restrict the General Assembly's constitutional authority to propose amendments. Article XII grants that authority directly to the legislature (notably, it requires that the *second vote* occur after referral in “regular session,” but not the first), and Virginia law emphasizes that compliance with constitutional amendment procedures turns on the Constitution itself—not on internal legislative arrangements left to each house's control. See *Coleman v. Pross*, 219 Va. 143, 154 (1978) (constitutional amendment procedures are mandatory and must be strictly followed). That limitation reflects a core separation-of-powers principle that the Constitution assigns distinct functions to each branch, and “no one branch may exercise the functions or powers of another except as specifically authorized.” *Taylor v. Worrell Enters., Inc.*, 242 Va. 219, 221 (1991).

The circuit court's approach does exactly what these principles foreclose: it elevates internal procedural resolutions into constitutional conditions and uses them to nullify legislative action that otherwise satisfied Article XII. Because the Constitution imposes no such limitations, that reasoning cannot be sustained.

III. Statutory notice provisions do not alter Article XII's requirements.

A. Article XII itself supplies the rule of decision.

Article XII, not the Virginia Code, determines whether a proposed amendment has validly advanced through the constitutional process. The question here is not whether public officials complied with every statutory publication directive, but whether the requirements set out in Article XII were satisfied. Va. Const. art. XII, § 1; see also *Coleman*, 219 Va. at 154 (requiring strict compliance with Article XII's specified prerequisites).

That constitutional sequence matters here because the circuit court treated a statutory publication directive as if it were itself part of Article XII. But Article XII contains no publication requirement. It does not say that compliance with Code § 30-13, or any other statute for that matter, is one of those constitutional preconditions. See Va. Const. art. XII, § 1;

see also 2026 Op. Va. Att’y Gen. 3 (describing Article XII’s requirements without incorporating statutory publication provisions as conditions of validity).

This is also not simply a dispute over implementation details. It is a dispute over which source of law controls. The Constitution derives its authority directly from the people of Virginia, and the ultimate power to amend it resides with them, not in the legislature. *Staples v. Gilmer*, 183 Va. 613, 620–21 (1945). The procedures set out in Article XII are therefore the means by which that sovereign authority is exercised and “must be followed” if a valid amendment is to result. *Id.*; see also *Coleman*, 219 Va. at 154.

That framework leaves no room for legislative supplementation. If the General Assembly could add to or alter the requirements set out in Article XII—and invalidate proposals for failing to satisfy those additional conditions—the constitutional procedure would no longer control. It would operate only at the sufferance of statute. A constitutional guarantee subject to legislative revision is no guarantee at all; it would be a “dead letter.” *Black v. Trower*, 79 Va. 123, 125 (1884). And authority defined by higher law cannot be altered or relinquished

through statute or otherwise. See *Evans v. Smyth-Wythe Airport Comm'n*, 255 Va. 69, 72–73 (1998).

Complainants' theory would treat Code § 30-13 as though it supplied an additional constitutional step between first approval and second passage. The dispute therefore turns on a straightforward proposition: Article XII fully specifies the requirements for constitutional amendment, and a statute cannot be used to invalidate a proposed amendment that otherwise satisfies the Constitution.

B. The circuit court erred in treating a statutory directive as a constitutional condition.

The circuit court held that Code § 30-13 prescribed steps that needed to occur before the second legislative vote and that the absence of those steps rendered the 2026 passage ineffective under Article XII. R. 600. That reasoning treated the statute not as background law, but as another constitutional condition on the amendment process.

That conclusion cannot be reconciled with the constitutional structure governing amendments in Virginia. Article XII defines the conditions under which the Constitution may be altered, and nothing in that framework permits additional requirements to be supplied by statute or judicial fiat. Section 30-13 does not appear in Article XII, is

not incorporated by Article XII, and cannot be elevated into a constitutional requirement that the Constitution itself omits. See Va. Const. art. XII, § 1; 2026 Op. Va. Att’y Gen. 3. Virginia courts have long rejected efforts to “superadd” statutory requirements where the Constitution itself defines the governing rule. *City of Richmond v. Lynch*, 106 Va. 324, 325–26 (1907); accord *Bray v. Brown*, 258 Va. 618, 622 (1999) (rejecting statutory disqualification not grounded in the Constitution).

The circuit court’s contrary approach would permit ordinary legislation to alter the amendment process established by the Constitution. If a statute can invalidate a proposal that satisfies Article XII, then the Constitution no longer governs its own amendment. The process would instead depend on whatever additional statutory procedures the General Assembly or a court might impose. Virginia law does not permit that inversion. See *Black*, 79 Va. at 125; *Old Dominion Comm. for Fair Util. Rates v. State Corp. Comm’n*, 294 Va. 168, 177 (2017) (legislative power is plenary but “restricted only by the Constitution of Virginia”).

Nor does the text of Code § 30-13 support what the circuit court did with it. The statute directed the Clerk of the House of Delegates to publish proposed amendments and directed circuit court clerks to post copies on courthouse doors and make copies available for inspection. It also required the Clerk of the House of Delegates to report to the next regular session what action had been taken and what printing and distribution costs had been incurred. That is administrative machinery—duties associated with implementing and facilitating the election process, not conditions on constitutional validity. Cf. *Scott*, 114 Va. at 305–06 (describing statutory duties such as sending and posting copies of proposed amendments as “preliminary to, and in aid of, the election”).

Woodard underscores the point. In construing statutes that required the Clerk of the House of Delegates to prepare tables of circuit-court terms under Code § 30-13, this Court explained that those tables “are not themselves legislative enactments” but are “merely lists containing information, furnished by clerical personnel for the use and benefit of the public.” *Woodard v. Commonwealth*, 214 Va. 495, 498 (1974) (citation omitted). That description is telling here. Section 30-13

has always been a statute about publication and information, not a source of substantive constitutional conditions.

The circuit court's own remedy underscores the problem with its reasoning. Although the court ultimately concluded that non-compliance with Code § 30-13 invalidated the amendment process, it also ordered the Tazewell County Clerk to post the amendment on the courthouse door ninety days before the next House election. That order makes sense only if Code § 30-13 governs ministerial publication duties imposed on local officials. But that cannot be squared with the court's separate conclusion that the same statute imposes a constitutional prerequisite whose violation nullifies the amendment process itself.

C. Section 30-13 does not govern the constitutional validity of a proposed amendment.

The history and structure of Code § 30-13 show that it was never intended to determine the constitutional validity of a proposed amendment—and certainly not in 2026.

First, Code § 30-13 is a vestige of an earlier constitutional regime. The predecessor to current Article XII in the Constitution of 1902 required that, after first approval by the General Assembly, a proposed amendment “shall be published for three months previous to the time of

such election.” Va. Const. § 196 (1902). The early version of Code § 30-13 was enacted in 1927 to implement that constitutional publication requirement.

But that constitutional requirement did not survive the adoption of the 1971 Constitution. During the revision process, the Commission on Constitutional Revision recommended retaining the three-month publication language, but the House of Delegates rejected that approach and instead adopted the 90-day delay before submission to the voters now found in Article XII. See Commission on Constitutional Revision, *Report of the Commission on Constitutional Revision* 75, 324–25, 450 (1969).

As Delegate D. French Slaughter explained during the 1969 debates, the House omitted the former publication requirement because the point was to ensure public awareness, and that purpose would be served by requiring “at least ninety days’ time between the final action of the General Assembly and the submission of the proposal to the people.” Del. D. French Slaughter, Jr., *Proceedings and Debates of the House of Delegates Pertaining to Amendment of the Constitution* 496 (1969) (reproduced at R. 2228).

Professor Howard—the principal architect of the 1971 Constitution—then drew the doctrinal consequence: “[s]ection 1 does not require publication of amendments, only a delay of ninety days,” and because publication was omitted, “an amendment cannot be challenged on the ground that publication was insufficient.” Howard, *Commentaries on the Constitution of Virginia* at 1175.

That history explains why the circuit court’s reasoning cannot be correct. Although the Constitution once contained a publication requirement, it no longer does. Once that requirement was removed, it could not be resurrected through statute. A court cannot put that requirement back into Article XII by invoking an implementing statute that outlived the constitutional provision it was enacted to serve.

Second, the text and operation of Code § 30-13 show that it regulates official duties, not constitutional validity. The statute requires the Clerk of the House of Delegates to publish and distribute amendments, requires circuit court clerks to post them and certify the posting, and requires a report back to the General Assembly at its next regular session. These provisions govern how public officials carry out

assigned responsibilities; they do not condition the validity of a constitutional amendment.

Nothing in the statute says that failure to comply voids the proposal, nullifies legislative votes, or prevents submission to the voters. That distinction matters because Virginia law has long distinguished between statutory requirements that go to the “essence of the thing to be done,” which are mandatory, and those that regulate only the manner or timing of official action. *Redd v. Supervisors of Henry Cnty.*, 72 Va. 695, 700–01 (1879). Modern doctrine reflects the same principle. Statutes directing the mode of proceeding by public officers are ordinarily treated as directory absent clear legislative intent to the contrary. See *Bland-Henderson v. Commonwealth*, 303 Va. 211, 220 (2024).

The same distinction has been applied in the election context. In *Gregory v. Hubbard*, for example, this Court treated a statutory timing requirement as “only directory” and declined to let it invalidate the election at issue. 123 Va. 510, 512–13 (1918). Courts therefore do not treat timing or procedural directives as limiting authority absent clear consequences, *Huffman v. Kite*, 198 Va. 196, 199 (1956), and the General

Assembly knows how to impose such consequences when it intends to, *Nelms v. Vaughan*, 84 Va. 696, 699 (1888).

Third, Code § 30-13 has now been repealed. The 2026 legislation providing for submission of the amendment to the voters expressly repealed the statute. See 2026 Acts ch. 6. That repeal confirms what the constitutional history already shows. Code § 30-13 was never the source of a constitutional prerequisite. If the validity of a proposed amendment truly depended on Code § 30-13, the General Assembly could not remove that statute without amending Article XII itself.

The circuit court tried to avoid that problem by reasoning that Code § 30-13 had been amended several times after 1971 and therefore remained enforceable. But continued statutory amendment cannot supply constitutional force where the Constitution itself no longer contains the requirement. And crediting these statutory amendments while treating a dead-letter statute as operative reflects selective adherence. There is no reason to consider the repeal invalid if other amendments somehow elevate the statute to constitutional status.

The court's Code § 30-13 ruling ultimately rests on a category error. Article XII governs constitutional validity. Section 30-13 governed

publication by clerks. The 1902 Constitution required publication; the 1971 Constitution replaced that requirement with a ninety-day waiting period. Because Article XII no longer requires publication, a proposed amendment cannot be invalidated on the ground that publication was insufficient—the remedy for a violation of Code § 30-13 could only be directing publication, not invalidating the amendment. In any event, the statute has now been repealed. Against that backdrop, the circuit court’s conclusion that non-compliance with Code § 30-13 could nullify the 2026 vote or prevent submission of the proposal to the voters is erroneous.

CONCLUSION

For the foregoing reasons, the judgment of the circuit court should be reversed.

Respectfully submitted,

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CERTIFICATE OF TRANSMISSION AND SERVICE

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