No. 25A1240

In the Supreme Court of the United States

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

Applicants,

v.

RYAN T. MCDOUGLE, VIRGINIA STATE SENATOR AND LEGISLATIVE COMMISSIONER FOR THE VIRGINIA REDISTRICTING COMMISSION, ET AL.,

Respondents.

PLAINTIFF-RESPONDENTS' OPPOSITION TO APPLICATION FOR STAY

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PARTIES TO THE PROCEEDING

Respondents provide these corrections to the Parties to the Proceedings noted in the Application:

Respondents are Ryan McDougle, William Stanley, Terry Kilgore, Virginia Trost-Thornton, Camilla Simon, and Faythe Silveira. Respondents were appellees before the Supreme Court of Virginia.

CORPORATE DISCLOSURE STATEMENT

In accordance with Supreme Court Rule 29, Respondents state that they do not have any parent entities and do not issue stock.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Constitutional Provisions

INTRODUCTION

Applicants' demand is extraordinary. They ask this Court to stay a state supreme court's judgment on a state constitutional issue governing the state constitutional amendment process, all so that they can redraw congressional districts weeks before early voting begins in the primary. But the application is even more extraordinary for what it omits: any mention of a deadline for relief, any discussion of the injunction in a separate case that renders the application meaningless, and any federal question providing this Court a basis for review.

Start with the deadline. The Court need not take Respondents' word that Applicants are out of time because Applicants said so themselves. When the Virginia Attorney General moved for an emergency stay in the Virginia Supreme Court in a related case, he represented that May 12 was the "point of no return" for any emergency relief, in reliance on the declaration of one of the defendants in this case. App'x 86a. Now, he and the other Applicants request emergency relief from this Court without even identifying a date by which they need a ruling. No surprise, since that date has passed. The Court can stop there, and deny the application.

Even if Applicants hadn't run out of time, they identify no emergency redressable by this Court. That's because a final judgment in a different case permanently enjoins state election officials from certifying the special election and from "taking any actions to give effect to the proposed constitutional amendment." *RNC v. Koski*, 2026 WL 1214668, at *1 (Va. Cir. Ct. Apr. 22). Applicants never even cite *Koski*, though it independently prevents election officials from changing Virginia's congressional districts under the proposed amendment. Even if Applicants could wish away

the *Koski* judgment, their demand in this case makes no sense. Here, the Virginia Supreme Court *affirmed* the trial court's final judgment invalidating the proposed amendment. So staying the "judgment and mandate of the Supreme Court of Virginia" wouldn't upset that still-binding final judgment. Appl. 24. This Court is not in the business of granting "[r]elief that does not remedy the injury." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 107 (1998).

Finally, even if the Court were to overlook all those vehicle problems, Applicants have no case on the merits. The record belies Applicants' assertion that they "specially set up and preserved" claims under the Elections Clause, the Supremacy Clause, and the federal election-day statutes. Appl. 4. Take the Elections Clause, which was cited—in all eleven briefs filed in the Virginia Supreme Court—exactly once. *Moore v. Harper* made no appearance at all. Applicants never raised those federal claims below. The lower courts never decided them. This Court should not consider them.

The Court should deny the application.

BACKGROUND

This case began when state legislators proposed an amendment to the state constitution in the middle of a state election. It ended when the state supreme court declared that the amendment process failed to comply with the state constitution. Everything in between concerns state courts applying state law to hold state actors accountable.

"To guard against hasty changes to the Commonwealth's organic law," Article XII of the Virginia Constitution "slow-walks the constitutional-amendment process."

App'x 10a. First, majorities in both houses of the Virginia General Assembly must vote in favor of the proposed amendment. If the amendment passes, it is "referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates," which occurs in the fall of odd-numbered years. Va. Const. art. XII, §1. In other words, "[t]he General Assembly must twice vote in favor of a proposed amendment at two separate legislative sessions with an intervening election of the House of Delegates." App'x 10a. The intervening-election requirement gives voters an early chance to register their approval or disapproval of lawmakers who vote on a proposed amendment in its first passage. If the proposed amendment clears all these hurdles, there is still another: the General Assembly must "submit such proposed amendment … to the voters … not sooner than ninety days after final passage by the General Assembly." Va. Const. art. XII, §1. Only if "a majority" of voters "vote in favor" of the amendment does it "become part of the Constitution." *Id.*

On September 19, 2025, Virginians began voting in the statewide general election for the Virginia House of Delegates. App'x 12a. As the election neared its conclusion, the General Assembly convened in special session to propose an amendment to the Virginia Constitution on redistricting. App'x 3a-4a. The amendment would strip the state's independent redistricting commission of its map-drawing prerogative for at least this federal election cycle, empowering the General Assembly to redraw congressional districts outside of the regular decennial-census process. App'x 3a-4a. By the time the General Assembly approved the proposed amendment for the first time

on October 31, more than 1.3 million voters had voted early—approximately 40% of the turnout for that election. App'x 12a.

Respondents[1] filed suit in Virginia Circuit Court, alleging numerous violations of the Virginia Constitution. After the General Assembly again voted in favor of the amendment during its January 2026 session, HJR 4, Gen. Assemb., Reg. Sess. (Va. 2026), the circuit court entered final judgment in Respondents' favor, App'x 47a-52a. The circuit court held that the General Assembly failed to satisfy Article XII's intervening-election requirement when it approved the proposed amendment amidst early voting in the 2025 general election. App'x 50a-52a. It also held that the General Assembly exceeded the substantive scope of its special session by passing the proposed amendment, and that it violated a state law requiring a proposed amendment to be publicly posted three months before the next general election. App'x 47a-52a. The circuit court issued declaratory judgments in Respondents' favor, and an injunction requiring the circuit clerk to post the proposed amendment ahead of the 2027 general election in accordance with state law. App'x 52a. The Defendants appealed to the Court of Appeals, which asked the Virginia Supreme Court to take the case immediately. App'x 229a-230a. The Defendants also sought an emergency stay, which the Virginia Supreme Court denied. App'x 228a.

[1] Respondents—Plaintiffs below—are Ryan McDougle, the Republican Minority Leader of the Virginia State Senate; William Stanley Jr., a Virginia State Senator; Terry Kilgore, the Republican Minority Leader of the Virginia House of Delegates; Virginia Trost-Thornton, a Citizen Commissioner of the Virginia Redistricting Commission; and Camilla Simon and Faythe Silveira, two registered Virginia voters who voted early in the 2025 general statewide election.

Meanwhile, the General Assembly proceeded with its redistricting amendment. So a different set of plaintiffs filed a different case challenging the legislation that authorized a special election for the amendment. Finding at least four constitutional defects, the circuit court preliminarily enjoined state and local election officials from conducting a referendum election on the proposed amendment. *RNC v. Koski*, 2026 WL 496923, at *2 (Va. Cir. Ct. Feb. 19). The Virginia Supreme Court stayed that order, holding that equitable principles generally counsel against state courts enjoining "'the holding of an election.'" *Koski v. RNC*, 926 S.E.2d 289, 291 (Va. 2026) (quoting *Scott v. James*, 76 S.E. 283, 285 (Va. 1912)). But it assured the parties that it would consider "post-referendum injunctive remedies" if the referendum passed. *Koski v. RNC*, 926 S.E.2d 801, 803 & n.3 (Va. 2026).

So the election proceeded, beginning with early voting on March 6 and culminating on April 21. App'x 5a. By about a 3% margin, the referendum passed. App'x 5a. The next day, the circuit court held a hearing on the *Koski* plaintiffs' motion for a final judgment in that second case. Consistent with its earlier ruling, the circuit court issued a final judgment finding the same four constitutional violations, plus three more. 2026 WL 1214668, at *1 (Va. Cir. Ct. Apr. 22). Among those rulings, the court held that the ballot language asking voters whether the state constitution should be amended to "restore fairness" in the upcoming elections was "flagrantly misleading" and violated the Virginia Constitution's Submission Clause. *Id.* So the court enjoined the state and county election officials from certifying the election and from "taking any actions to give effect to the proposed constitutional amendment." The Virginia

Supreme Court denied the Attorney General's motion to stay the injunction pending appeal. *Koski v. RNC*, 2026 WL 1165756, at *1 (Va. Apr. 28). That appeal is currently before the Virginia Supreme Court, awaiting a briefing schedule.

On May 8, the Virginia Supreme Court issued its merits opinion in this case. It observed that the Virginia Constitution requires an intervening "general election of members of the House of Delegates" between the two required passages of a proposed amendment. Va. Const. art. XII, §1. Looking to the Virginia Constitution's text, context, and history, it reasoned that that the first passage of the proposed redistricting amendment occurred "after voters had begun casting ballots during the 2025 general election," which meant there had been no intervening general election. App'x 22a-23a. So it affirmed the circuit court's judgment. It did not reach the other two independent state-law grounds that the circuit court had relied on to declare the amendment invalid. *See* App'x 3a-4a n.6. Applicants filed this emergency stay request three days later.

REASONS FOR DENYING THE APPLICATION

In seeking the "extraordinary relief" of a stay, Applicants bear a "heavy burden." *Winston-Salem/Forsyth Cnty. Bd. of Educ. v. Scott*, 404 U.S. 1221, 1231 (1971) (Burger, C.J., in chambers). They must show "(1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam).

What's more, "the applicants are asking this Court for extraordinary interim relief—namely, an order from this Court requiring [Virginia] to change its existing congressional election districts for the upcoming [2026] primary and general elections." *Cf. Moore v. Harper*, 142 S. Ct. 1089, 1089 (2022) (Kavanaugh, J., concurring in denial of application for stay). Even if the Applicants had reasonable grounds for their stay application, it is now "too late for the federal courts" to intervene. *Id.*; *see Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam). But they lack even reasonable grounds. Their request for relief is baseless for four separate reasons.

I. By the Attorney General's own admission, "the point of no return" for relief has passed.

Applicants don't ever mention when they need relief. But they did in earlier filings. When the circuit court enjoined certification of the special election in *Koski*, the Attorney General moved for an emergency stay pending appeal. In that motion, he explained that "the State Board must certify" the special election "no later than May 4." App'x 84a-85a. May 4 came and went, and the Board has not certified the election results. Even if the Board could somehow certify the election after the statute permits, the Attorney General "identifie[d] May 12 as the point of no return" for on-the-ground election preparations. App'x 86a. The Attorney General supported that date with a sworn declaration of the Virginia Commissioner of Elections, a defendant in that case. App'x 110a-111a. No party disputed those deadlines.

May 12 has come and gone, too. By the Attorney General's admission, a "later judgment vindicating the Commonwealth's position cannot restore a primary already disrupted, or reassure voters already confused by conflicting notices. The harm will

have occurred." App'x 86a. After May 12, whatever complaints Applicants had became "uncorrectable." App'x 86a. That's undoubtedly why the Governor assured Virginians this morning that "no matter the outcome" of this application, "we will be running our elections beginning next month with early voting on the current maps that we have." Scott Gelman, *Va. Governor Concerned Redistricting Battle Could Make Voters Reluctant to Cast Ballot This Fall*, WTOP News (May 14, 2026), perma.cc/J9ZZ-DV6A. In short, the Attorney General's representations to the Supreme Court of Virginia cannot be squared with Applicants' request to this Court. The Court can stop here, and deny the application.

II. The relief Applicants request would not redress their supposed injury.

Even if Applicants were not past "the point of no return," no action by this Court could have any effect on the "congressional districts to be used in the upcoming 2026 election" in Virginia. Appl. 3. That is so for two reasons.

First, Applicants seek the wrong relief. They demand that this Court stay the "judgment and mandate of the Supreme Court of Virginia." Appl. 24. But the Virginia Supreme Court *affirmed* the circuit court's final judgment. Staying the "judgment and mandate of the Supreme Court of Virginia" would have no effect on the underlying injunction. Appl. 24. It's black-letter law that "non-issuance of the mandate by the appellate court has no impact on the trial court's powers to enforce its unstayed judgment since the latter court has retained that power throughout the pend[e]ncy of the appeal." *Deering Milliken, Inc. v. FTC*, 647 F.2d 1124, 1129 (D.C. Cir. 1978); *accord Hovey v. McDonald*, 109 U.S. 150, 161 (1883). That's especially important here because the circuit court's judgment also rests on two other distinct state-law grounds

that the Virginia Supreme Court declined to address. *See* App'x 3a-4a n.6, 49a-52a. To free themselves from the underlying judgment, Applicants would thus need this Court to stay or vacate the *circuit court's* judgment on all three of those grounds—something they never request.

Second, even if Applicants had properly framed their request, it is futile for another reason: state election officials remain bound by an injunction in another case not before this Court. Applicants don't discuss *RNC v. Koski* even though they know about it. They include some of the *Koski* filings in their appendix, *see* App'x 57a, 219a, but do not even try to explain away the *Koski* injunction.

They don't explain it because they can't. In *RNC v. Koski*, the circuit court held the redistricting amendment void under at least seven different state-law rationales. 2026 WL 1214668, at *1. And it enjoined the Virginia Department of Elections, the State Board of Elections, and several state and county election officials not only from certifying the referendum election, but also from "taking any actions to give effect to the proposed constitutional amendment." *Id.* at *1-2. The Virginia Supreme Court denied the Attorney General's motion to stay that injunction pending appeal. 2026 WL 1165756, at *1. That appeal is currently before the Virginia Supreme Court, awaiting a briefing schedule. The *Koski* injunction rests not only on the intervening-election issue resolved in Respondents' favor here, but also on six other independent state-law grounds, including the "flagrantly misleading … ballot language." 2026 WL 1214668, at *1. Whatever action this Court takes in this case would have no effect on the *Koski* injunction, and thus no effect on the "congressional districts to be used in

the upcoming 2026 election." Appl. 3. Even if Applicants were to obtain a stay in this case, any attempts to certify the special election or implement the proposed amendment would thus subject the *Koski* Defendants to contempt proceedings.

These pitfalls aside, the Governor just shut the door on last-minute changes. Applicants demand emergency action to assure "certainty over the congressional maps" for Virginia's upcoming primary election. Appl. 23. But the Governor has already given them that certainty: "no matter the outcome" of their application, "we will be running our elections beginning next month with early voting on the current maps that we have." Gelman, *supra*. The Court has nothing to do here.

III. Applicants did not raise a federal issue until their application to this Court.

Applicants' jurisdictional statement is misleading at best. They did not "set up and preserve[] federal claims." *Contra* Appl. 4. Much less did "the Supreme Court of Virginia adjudicate[] those claims." *Contra* Appl. 4. Applicants say they preserved three federal issues under the Elections Clause, the Supremacy Clause, and the federal election-day statutes. But as the appendix reveals, the record contains virtually no citations to those federal sources—let alone arguments and decisions on those issues. That barren record alone suffices to deny the application, since "the Court will not decide federal constitutional issues raised here for the first time on review of state court decisions." *Cardinale v. Louisiana*, 394 U.S. 437, 438 (1969).

Start with the Elections Clause, which is cited on two pages of the 238-page appendix. One of those citations is in the dissenting opinion. App'x 39a (Powell, C.J., dissenting). The other is in the Scott Appellants' opening brief, merely to note that

their view of "Virginia law" accords with their view of "[f]ederal law." App'x 153a. The Attorney General never cited the Elections Clause in any brief in this case. And the passing citation in Scott's brief does not preserve an Elections Clause claim. Any doubt on that score is put to rest by reading the application, which chiefly relies on *Moore v. Harper*, 600 U.S. 1 (2023). *See* Appl. 17-22. That's the first appearance *Moore* has made in any party's briefing.[2] No party cited *Moore* in their circuit court briefs. No party cited *Moore* in their Virginia Supreme Court briefs. No Justice cited *Moore* in either the majority or dissent. Indeed, the other two Elections Clause cases that Applicants cite in Section I.B of their application also make their first appearance in this case in that application. *See* Appl. 17-22 (citing *Bush v. Gore*, 531 U.S. 98 (2000); *CFPB v. Cmty. Fin. Servs. Ass'n of Am.*, 601 U.S. 416 (2024)). That's forfeiture, not preservation.

Applicants' Supremacy Clause claim is even more elusive. Applicants never mentioned the Supremacy Clause in their Virginia Supreme Court briefs or their lower court briefs. Silence doesn't "specially set up" a claim. *Contra* Appl. 4. Indeed, the only apparent mention of the Supremacy Clause in the entire record is the majority's observation that the dissent might be making an "implied" argument about the Supremacy Clause. App'x 28a. But a dissent's oblique reference does not preserve a federal claim for this Court's review.

[2] In the circuit court, an amicus brief supporting Plaintiffs—the Respondents here—cited *Moore v. Harper*, arguing that the Virginia General Assembly must comply with the Virginia Constitution when it draws electoral maps. But otherwise no party even so much as mentioned the case in the months of briefing up and down the state courts.

Nor did Applicants preserve a claim under the federal election-day statutes. As even the dissent observed, the "election at issue in this case was the general election of members of the House of Delegates" that occurred in November 2025. App'x 39a n.8 (Powell, C.J., dissenting). That was a state election. So the federal statutes, which govern elections for "Congress" in "even numbered year[s]," were not at issue. 2 U.S.C. §7; *see also id.* §1. The parties briefly cited cases applying the federal election-day statutes paralleling their respective interpretations of the phrase "the next general election of members of the House of Delegates" in Article XII of the Virginia Constitution. *E.g.*, App'x 153a-154a. But those analogies did not put the federal statutes *at issue* in this case. Applicants' assertion that they "specially" preserved a federal claim under the federal election-day statutes is false.

This Court is "a court of review, not of first view." *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005). Applicants never raised federal claims below. The Virginia Supreme Court didn't decide any. This Court shouldn't consider them for the first time.

IV. The Supreme Court of Virginia's decision rests on pure state-law grounds.

There's a simple reason Applicants did not preserve any federal issues in this case: not one exists. From the outset, this case has concerned only state-law claims and state-law defenses. It is, after all, about the procedure for amending the Virginia Constitution. And this Court "held early on" that it has "no jurisdiction unless a federal question had been both raised and decided in the state court below." *Illinois v. Gates*, 462 U.S. 213, 218 (1983).

Applicants attempt to conjure a federal issue from the Virginia Supreme Court's discussion of the federal election-day statutes. They invoke this Court's precedents on the "adequate and independent state grounds" doctrine, relying on out-of-context quotes about state law being "interwoven" with a federal question. *See* Appl. 12-17. But a state issue can't be "interwoven" with a nonexistent federal issue; the doctrine "does not apply" when a case "was disposed of" on pure state-law grounds. *Fox Film Corp. v. Muller*, 296 U.S. 207, 210-11 (1935).

Under Applicants' novel theory, merely citing a federal case raises a federal issue, even if state law supplies the sole ground for the judgment. Adopting their theory would upend this Court's precedents on the "adequate and independent state ground" doctrine. That doctrine applies only when two independent sources of law—one state and one federal—constrain the same conduct, and the state high court has invoked both. *See Michigan v. Long*, 463 U.S. 1032 (1983). Every case Applicants rely on applies that understanding. *See Florida v. Powell*, 559 U.S. 50, 57-58 (2010); *Fitzgerald v. Racing Ass'n of Cent. Iowa*, 539 U.S. 103, 105-06 (2003); *Pennsylvania v. Muniz*, 496 U.S. 582, 588 n.4 (1990); *Three Affiliated Tribes of Fort Berthold Rsrv. v. Wold Eng'g*, 467 U.S. 138, 154 (1984). Those cases generally present a clear federal issue accompanied by an unclear state issue. Compare that to the proceedings giving rise to this application; they raise only a clear state issue in search of a federal question.

And the Court won't find a federal issue, since the federal election-day statutes can't constrain the process for amending the Virginia Constitution. Article XII of the

Virginia Constitution requires the Virginia General Assembly to pass a proposed constitutional amendment twice. The second passage must occur "after the next general election of members of the House of Delegates" following the first passage. Va. Const. art. XII, §1. The Supreme Court of Virginia's thoroughly reasoned opinion explains that the phrase "general election" in Article XII "describes the combined actions of voters casting ballots and officers of election receiving those votes," which means that a second passage of a proposed amendment could not have occurred "after voters had begun casting ballots during the 2025 general election." App'x 22a-23a. The court supported that conclusion with state constitutional text, context, state history, state convention debates, Virginia commentary, treatises, and dictionaries. *See* App'x 9a-19a. After all that work, the court consulted this Court's precedents interpreting a similar phrase in the federal election-day statutes. *See* App'x 19a-20a. It concluded that federal courts and state courts agreed on the unremarkable proposition that "Election Day is the boundary marker for the last act constituting an election." App'x 20a. Applicants' contrary view found "no support from the text of Article XII, Section 1," and was "wholly unprecedented in Virginia's history." App'x 13a-14a.

Nothing about the Virginia Supreme Court's reasoning "rested materially on its understanding of federal election law." *Contra* Appl. 13. Congress could repeal the federal election-day statutes tomorrow, and nothing in the majority's reasoning would change. The term "general election" in Article XII of Virginia's Constitution would still encompass both early voting and election-day voting. That state-law ground is not just adequate and independent—it's to the exclusion of any federal-law

ground. In any event, the final judgment in this case rests on two other independent state-law grounds that the Virginia Supreme Court did not address, and that Applicants do not challenge. *See supra* Section II. No federal issue is present.

CONCLUSION

The Court should deny the application.

Respectfully submitted,

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