

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

JOHN J. MCGUIRE,
ROBERT J. WITTMAN, and
MELISSA JURK,

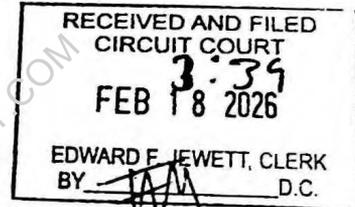
Plaintiffs,

v.

VIRGINIA STATE BOARD OF
ELECTIONS; VIRGINIA DEPARTMENT
OF ELECTIONS; JOHN O'BANNON, in
his official capacity as Chairman of the
Virginia State Board of Elections;
ROSALYN R. DANCE, in her official
capacity as Vice Chair of the Virginia State
Board of Elections; GEORGIA ALVIS-
LONG, in her official capacity as Secretary
of the Virginia State Board of Elections;
CHRISTOPHER P. STOLLE, in his official
capacity as Member of the Virginia State
Board of Elections; J. CHAPMAN
PETERSEN, in his official capacity as
Member of the Virginia State Board of
Elections; and STEVEN KOSKI, in his
official capacity as Commissioner of the
Virginia Department of Elections,

Defendants.

CL 20000938TTB



VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs John J. McGuire, Robert J. Wittman, and Melissa Jurk (collectively, "Plaintiffs"),
by and through undersigned counsel, bring this action seeking declaratory and injunctive relief
against Defendants Virginia State Board of Elections ("VSBE") and its members—John
O'Bannon, Rosalyn R. Dance, Georgia Alvis-Long, Christopher P. Stolle, and J. Chapman
Petersen—in their official capacities, as well as the Virginia Department of Elections ("VDOE")

and its head Steven Koski, in his official capacity as Commissioner of the Virginia Department of Elections (collectively, "Defendants") to prevent a referendum from being held on the question proposed by House Joint Resolution 4 (2026) (the "Gerrymandering Amendment") until the ballot language is corrected by the General Assembly to comply with (i) the Submission Clause of Article XII, § 1, of the Virginia Constitution, (ii) the neutrality and accuracy requirements of Va. Code § 30-19.9, (iii) the Free Elections Clause of Article I, § 6, of the Virginia Constitution, (iv) the Due Process Clause of Article I, § 11, of the Virginia Constitution, (v) the Free Speech Clause of Article I, § 12, of the Virginia Constitution, and (vi) the Free Speech Clause of the U.S. Constitution. In support of which, Plaintiffs say as follows:

INTRODUCTION

1. In 2020, the people of Virginia—people of all political affiliations—joined together to put an end to partisan gerrymandering. By constitutional amendment, they removed from the General Assembly the power to draw state and federal election districts and vested that power in a balanced, bipartisan commission (the "Commission"). Va. Const. art. II, § 6-A (the "Fair Redistricting Amendment").

2. The Fair Redistricting Amendment also provides a way to resolve stalemates. If the Commission cannot reach the necessary consensus, the authority to draw district lines passes to the Supreme Court of Virginia. *Id.* In 2021, the Supreme Court was called upon to exercise that authority, and it drew district lines for Virginia's 140 General Assembly seats and Virginia's eleven seats in the U.S. House of Representatives.

3. Those congressional districts—which are implicated by the instant case—are undeniably fair and reflect the fairness mandate written into state law: "A map of districts shall

not, when considered on a statewide basis, unduly favor or disfavor any political party." Va. Code § 24.2-304.04(8). For example:

- a. In 2022, the first time the court-drawn district lines were used, 52.09 percent of Virginia voters cast their ballots for the Democratic congressional candidate, while 47.47 percent voted for the Republican nominee, and the boundaries drawn by the Supreme Court produced results closely mirroring these percentages.¹ Out of Virginia's eleven seats, Virginians elected six Democratic representatives (54.5 percent) and five Republicans (45.5 percent).
- b. In 2024, the results were almost the same as in 2022. That year, 52.14 percent of Virginia voters cast their ballots for the Democratic congressional candidate, while 46.89 percent voted for the Republican nominee.² Again, Virginians elected six Democratic representatives (54.5 percent) and five Republicans (45.5 percent).
- c. In both 2022 and 2024, the allocation of seats between the two parties mirrored the statewide vote as closely as mathematically possible, given Virginia's eleven seats.

¹ These figures are based on reports of the Virginia Department of Elections, excluding write-ins and independent candidates, none of whom reached 2 percent of the vote in their districts. See 2022 November General: Official Results, Va. Dep't of Elections, <https://results.elections.virginia.gov/vaelections/2022%20November%20General/Site/Congress.html> (last visited Feb. 18, 2026).

² Again, these figures are based on reports of the Virginia Department of Elections and exclude write-ins and independent candidates, none of whom reached 3 percent of the vote in their districts. See 2024 November General: Official Results, Va. Dep't of Elections, <https://enr.elections.virginia.gov/results/public/Virginia/elections/2024NovemberGeneral> (last visited Feb. 18, 2026).

4. Now, an effort is underway to erase the congressional district lines fairly drawn by the Supreme Court and to replace them with the most extreme partisan gerrymandering that could be imagined. The vehicle for this drastic change is a proposed amendment to the Virginia Constitution, which Plaintiffs aptly describe as the "Gerrymandering Amendment." A copy is attached as **Exhibit A**.

5. The gerrymandering objective is no secret here. The publicly announced goal of the current partisan majority in the General Assembly is to eliminate all but one Republican-leaning congressional district, thus laying the groundwork to elect ten Democrats to Congress.³

6. The proposed new maps introduced in the General Assembly on February 6, 2026, demonstrate the extreme geographic contortions that the majority is prepared to impose to achieve their desired results.⁴

7. The purpose of the Gerrymandering Amendment is further confirmed by the Senate President Pro Tempore. In a public statement directed to Virginia's two U.S. Senators, she said: "[W]e do not need 'coaching' on redistricting coming from a cuck chair in the corner. How about you all stay focused on the fascist in the White House and let us handle **redistricting in Virginia**. 10-1."⁵

8. Copies of the current map drawn by the Supreme Court and the new map proposed by the leaders of the Gerrymandering Amendment are attached as **Exhibit B**.

³ See Brakkton Booker, *Virginia Inches Closer to Gutting GOP Seats Through Redistricting*, Politico, <https://www.politico.com/news/2026/01/16/virginia-redistricting-legislature-00733644> (Jan. 16, 2026) (emphasis added).

⁴ HB29 (Map of Proposed Congressional Districts), Va. Legis. Info. Sys. (last visited Feb. 18, 2026), available at: <https://lis.blob.core.windows.net/lisfiles/20261/Proposed%20VA%20Congressional%20Map%202026.pdf>.

⁵ L. Louise Lucas (@SenLouiseLucas), X, <https://x.com/SenLouiseLucas/status/2012285930229334235> (Jan. 16, 2026, at 17:08 ET) (emphasis added).

9. If the referendum goes forward as scheduled by the General Assembly, it would be held on April 21, 2026, and the people of Virginia will be asked whether they approve the *Gerrymandering Amendment*. See 2026 Va. Acts Ch. 6 (the "Referendum Bill"). But the legislation scheduling that referendum suffers from five independently fatal defects, all involving the language of the question to be placed on the ballot. That language must be corrected before the referendum can lawfully proceed.

10. As written by the Referendum Bill, the ballot question would read: **"Should the Constitution of Virginia be amended to allow the General Assembly to temporarily adopt new congressional districts to restore fairness in the upcoming elections, while ensuring Virginia's standard redistricting process resumes for all future redistricting after the 2030 census?"**

11. **First, Article XII, § 1, of the Virginia Constitution provides that, after the other constitutional required steps have been taken to amend the Constitution, "it shall be the duty of the General Assembly to submit such proposed amendment to the voters." (Emphasis added.)** If the ballot language does not fairly reflect the substance of the proposed amendment, then the voters are being asked to vote on something different from the proposed amendment. In the actual *Gerrymandering Amendment*, there is at least one material term not contained in the ballot question. Under the proposed *Gerrymandering Amendment*, the authority of the General Assembly to "modify" congressional districts would come into play only if another State conducts redistricting outside of the regular decennial redistricting. But the ballot question omits this important condition and fails to ask voters if they support granting the General Assembly the power to modify Virginia's congressional districts **in response to actions taken in other States.**

15. **Fifth**, even if the "restore fairness" language were not factually and legally false, but only a matter of opinion, the statute adopting that language would constitute viewpoint discrimination and, thus, violate the free speech protections of Article I, § 12, of the Virginia Constitution.

16. **Sixth**, for the same reasons that the statute violates the Free Elections Clause and free speech protections of the Virginia Constitution, the Referendum Bill violates the Free Speech Clause of the U.S. Constitution.

17. Plaintiffs do not seek by this action to halt the referendum on the Gerrymandering Amendment in perpetuity.⁶ Rather, Plaintiffs ask this Court to require that the General Assembly comply with Virginia law by presenting the voters with a ballot question that is neutral and accurate, as required by the Virginia Code and Constitution. The people of Virginia are entitled to decide the fate of a proposed constitutional amendment, and they are entitled to do so on the basis of truthful, unbiased information presented by their government.

JURISDICTION AND VENUE

18. This Court has jurisdiction over this action pursuant to Va. Code §§ 8.01-184 through 8.01-191. An actual controversy exists between the parties because Defendants are preparing for the administration of a referendum concerning the proposed Gerrymandering Amendment on April 21, 2026, and Plaintiffs' rights will be affected by the resolution of this action. See *Charlottesville Area Fitness Club Operators Ass'n v. Albemarle Cnty. Bd. of Supervisors*, 285 Va. 87, 98 (2013); *Lafferty v. Sch. Bd. of Fairfax Cnty.*, 293 Va. 354, 360-61

⁶ Plaintiffs reserve the right to file such other actions as may be needed to challenge other illegal aspects of the Gerrymandering Amendment and associated legislation.

(2017). This Court further has general jurisdiction to award injunctive relief to effectuate its declaratory judgments. See Va. Code § 8.01-620.

19. Pursuant to the Supremacy Clause of the U.S. Constitution and applicable state law, this Court has jurisdiction to hear the federal law claim (Count VI), which is brought under 42 U.S.C. §§ 1983 and 1988.

20. Venue is proper in this Court pursuant to Va. Code § 8.01-261(2) as this action is against public officials in their official capacities, with their official offices in the City of Richmond, and against a state board that performs its official duties in Richmond.

PARTIES

21. Plaintiff John J. McGuire represents Virginia's 5th congressional district in the U.S. House of Representatives and is a candidate for re-election to that office in 2026. He is a qualified Virginia voter.

22. Plaintiff Robert J. Wittman represents Virginia's 1st congressional district in the U.S. House of Representatives and is a candidate for re-election to that office in 2026. He is a qualified Virginia voter.

23. Defendants' conduct, as alleged herein, directly affects the two candidate Plaintiffs identified above as **candidates** because the ballot question's false assertion that the current congressional districts are unfair impugns the legitimacy of the districts in which these candidates are now seeking re-election, and because district boundaries and nomination calendars determine the lawful field in which they must compete.

24. The two candidate Plaintiffs also have "an obvious personal stake" in the integrity of Virginia's administration of elections. *Bost v. Illinois Bd. of Elections*, 146 S. Ct. 513, 520 (2026). Moreover, because of the unlawful, false, and misleading wording on the ballot, the

candidate Plaintiffs will be forced to divert additional campaign resources to respond to, or participate in, the referendum in an effort to inform voters of the true nature and intent of the proposed amendment.

25. The two candidate Plaintiffs are joined by a citizen-voter, Dr. Melissa Jurk of Bristow, Virginia. The two Congressmen and Dr. Jurk intend to vote in the referendum and to cast their votes against the Gerrymandering Amendment. They have a direct interest as voters in ensuring that the Gerrymandering Amendment is worded so as to accurately and neutrally describe the amendment's purpose and effect, so that all Virginia voters may cast an informed vote at the referendum, and so that Plaintiffs' votes will not be offset or diluted by voters who vote for the Gerrymandering Amendment because they are misled by the ballot language.

26. Defendants' conduct, as alleged herein, directly harms all Plaintiffs as voters because the ballot question, as worded, would carry the campaign for adoption of the Gerrymandering Amendment into the voting booth and (i) unfairly interfere with Plaintiffs' ability to campaign against adoption, and (ii) cause Plaintiffs' votes to be diluted by the votes of citizens who were misled by the ballot language into voting for an amendment that they otherwise would have opposed. Plaintiffs, therefore, have "a personal stake in the outcome of [this] controversy." *McClary v. Jenkins*, 299 Va. 216, 222 (2020) (quoting *Goldman v. Landsidle*, 262 Va. 364, 371 (2001)); *Howell v. McAuliffe*, 292 Va. 320, 333 (2016) (finding standing where "petitioners have alleged that they will be directly affected in a statewide general election by respondents' alleged failure to comply with the Constitution of Virginia.").

27. Defendant Virginia State Board of Elections ("VSBE") is the Commonwealth's principal election-policy body, charged with general supervision of elections and statewide election administration as provided by Virginia law. VSBE acts through its members.

28. Defendants John O'Bannon, Rosalyn R. Dance, Georgia Alvis-Long, Christopher P. Stolle, and J. Chapman Petersen are members of VSBE and are sued in their official capacities only.

29. Virginia Department of Elections ("VDOE") is the agency of the Commonwealth that administers elections as provided by Virginia law.

30. Defendant Steven Koski is the Commissioner of the VDOE and, acting in that capacity, oversees the administration of statewide elections throughout the Commonwealth. Commissioner Koski is being sued only in his official capacity.

31. Collectively, Defendants administer Virginia's statewide referenda and have been directed by the General Assembly to administer a referendum on the Gerrymandering Amendment on April 21, 2026, said direction being found in the Referendum Bill.

STATEMENT OF FACTS

The Fair Redistricting Amendment and the Court-Drawn Congressional Districts

32. In 2020, the people of Virginia approved a constitutional amendment establishing the Commission to draw legislative and congressional district maps, removing that authority from the General Assembly. Va. Const. art. II, § 6-4.

33. In 2021, when the Commission was unable to reach a consensus, the Supreme Court of Virginia exercised its constitutional authority under the Fair Redistricting Amendment to draw Virginia's congressional district lines. See Redistricting Final Order and Approved Maps, *In re: Decennial Redistricting Pursuant to The Constitution of Virginia, art. II, §§ 6 to 6-A, and Virginia Code § 30-399* (Va. S. Ct. Dec. 28, 2021).

34. The Supreme Court's congressional map complies with the fairness mandate of Virginia Code § 24.2-304.04(8) that "[a] map of districts shall not, when considered on a statewide basis, unduly favor or disfavor any political party."

35. The results of the two congressional elections held under these court-drawn districts confirm their fairness. In both 2022 and 2024, the allocation of seats between the two parties mirrored the statewide vote as closely as mathematically possible, given Virginia's eleven seats. *See supra* ¶ 3.

36. By all objective measures, Virginia's current congressional districts are "fair" as recognized by numerous analyses. *See, e.g.*:

- *Gerrymandering Project: Redistricting Report Card - Virginia*, Princeton Univ. (giving Virginia's current congressional map an "A" on "Partisan Fairness")⁷;
- Alex Keena, *2021 Redistricting in Virginia: Evaluating the Effectiveness of Reforms*, 26 Richmond Pub. Int. L. Rev. 85, 104–06 (2022) (noting that the resulting maps approved by the Supreme Court of Virginia "were free of extreme partisan bias").

37. Therefore, it is false to state or imply that the current districts are unfair or that the Gerrymandering Amendment would "restore fairness" in Virginia elections.

38. It is also false to imply that the Gerrymandering Amendment would only affect the "upcoming elections" because (i) the common understanding of that term is that it refers to the elections to be held this coming November (*i.e.*, the 2026 mid-term elections), and (ii) the

⁷ Available at: <https://gerrymander.princeton.edu/redistricting-report-card/?planId=reckLcUNOowVXI78C> (last visited Feb. 18, 2026).

Gerrymandering Amendment would also empower the General Assembly to draw and/or re-draw district lines for the elections to be held in 2028 and 2030.

The Gerrymandering Amendment and Its Intended Partisan Effect

39. The Gerrymandering Amendment is a proposed constitutional amendment that would authorize the General Assembly to modify Virginia's congressional districts outside the decennial redistricting cycle if another State does so between January 1, 2025, and October 30, 2030. *See Ex. A.*

40. This condition has been met. Texas and California modified their congressional district lines in 2025.

41. The proponents of the Gerrymandering Amendment have made no secret of its intended effect. The publicly stated goal of the current partisan majority in the General Assembly is to redraw Virginia's congressional map to produce a 10-to-1 partisan advantage—eliminating all but one Republican congressional district and creating the conditions to elect ten Democrats to Congress.

42. The one Republican congressional district that would remain under the planned gerrymandering is the Ninth District, located in the Southwest corner of Virginia, where its geographic location—rather than any sense of restraint on the part of the gerrymanderers—provides protection.

43. Thus, the Gerrymandering Amendment, if adopted and implemented as its sponsors intend, would not “restore fairness” but would instead replace fair, court-drawn districts that closely mirror the statewide popular vote with an extreme partisan gerrymander designed to produce a patently **unfair** lopsided 10-to-1 delegation favoring one political party.

The Referendum Bill and the Ballot Question

44. In January 2026, the General Assembly enacted the Referendum Bill, directing Defendants to conduct a referendum on the Gerrymandering Amendment on April 21, 2026. Governor Abigail Spanberger signed the Referendum Bill on February 6, 2026.

45. The Referendum Bill mandates that the ballot question at this referendum appear as follows: "Should the Constitution of Virginia be amended to allow the General Assembly to temporarily adopt new congressional districts *to restore fairness in the upcoming elections*, while ensuring Virginia's standard redistricting process resumes for all future redistricting after the 2030 census." (*emphasis added*).

46. The ballot question prescribed by the Referendum Bill violates § 30-19.9's neutrality requirement in at least three respects:

- a. **The phrase "restore fairness" is not neutral.** The assertion that the Gerrymandering Amendment would "restore fairness in the upcoming elections" presupposes that Virginia's current congressional districts are unfair. They are not. Virginia's current congressional districts were drawn by the Supreme Court of Virginia—after extensive consideration of public comments and consultation with two special masters—and have produced election results that mirror the statewide popular vote as closely as possible. The phrase "restore fairness" is a false argument in favor of the amendment, not a neutral (or accurate) description of it.
- b. **The phrase "restore fairness" conceals the amendment's true purpose and effect.** Far from restoring fairness, the Gerrymandering Amendment is designed to empower the General Assembly to draw congressional districts that would create a 10-to-1 partisan advantage for one political party, replacing fair, court-drawn

districts with a patently unfair partisan gerrymander that effectively disenfranchises nearly half of all Virginians. A ballot question that describes this outcome as “restor[ing] fairness” is objectively false and intentionally misleading.

- c. **The phrase “upcoming elections” is misleading.** The ballot question states that the amendment would “restore fairness in the upcoming elections,” but it does not identify which elections would be affected. The Gerrymandering Amendment would authorize the General Assembly to redraw—and, even redraw again—congressional districts that would govern the 2026, 2028, and 2030 elections, not merely the “upcoming” 2026 election. The use of the phrase “upcoming elections” misleads voters about the scope and duration of the amendment’s impact.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Va. Const. Art. XII, § 1

The General Assembly Has Failed to Submit the Amendment to the People of Virginia Through the Referendum Bill.

47. Plaintiffs incorporate by reference the allegations contained in the foregoing paragraphs as if fully set forth herein.

48. Article XII, §1, of the Virginia Constitution describes the process by which amendments are submitted to the people for consideration after twice being approved by the General Assembly.

49. Once the General Assembly approves a proposed amendment for the second time, it must “submit such proposed amendment . . . to the voters qualified to vote in elections by the people.” Va. Const. art. XII, § 1.

50. "Submit" means "to present (something) to a person for criticism, consideration, approval, action, etc." *Submit* (sense 117), *Oxford English Dictionary*, https://www.oed.com/dictionary/submit_v?tab=meaning_and_use#20080478 (last visited Feb. 18, 2026).

51. "Such" means something "previously described or specified, the (person or thing) before mentioned." *Such* (sense 15), *Oxford English Dictionary*, https://www.oed.com/dictionary/such_adj?tab=meaning_and_use#19820597 (last visited Feb. 18, 2026).

52. Therefore, Article XII, § 1, requires the General Assembly to present Virginians with the same amendment it has twice approved, so that the people can consider whether to approve or reject the amendment.

53. This means that "the Legislature cannot propose one question and submit to the voters another." A.E. Dick Howard, 2 *Commentaries on the Constitution of Virginia* 1174 n.13 (1974) (quoting 1949–50 Ops. Va. Att’y Gen 66) "[A]nd the question presented should not be such as would mislead the voters." *Id.*

54. Indeed, "[a] palpably deceptive or misleading ballot . . . invite[s] challenge." *Id.*

55. The proposed text of the Gerrymandering Amendment "authorize[s] [the General Assembly] to modify one or more congressional districts at any point following the adoption of a decennial reapportionment law, but prior to the next decennial census, in the event that any State . . . conducts a redistricting of such state’s congressional districts for any purpose" other than completing the decennial redistricting or as ordered by a court. *See Ex. A.*

56. The ballot question, by contrast, asks: "Should the Constitution of Virginia be amended to allow the General Assembly to temporarily adopt new congressional districts to restore

fairness in the upcoming elections, while ensuring Virginia's standard redistricting process resumes for all future redistricting after the 2030 census?" *Id*

57. The ballot question prescribed by the Referendum Bill asks a different question than the one proposed by the General Assembly in the Gerrymandering Amendment. The Gerrymandering Amendment authorizes the modification of Virginia's congressional districts in response to actions taken by other States. It says nothing about fairness, nor does it explain to the people the actual authority they would be granting to the General Assembly if they choose to adopt the amendment.

58. Far from being asked whether they wish to empower the General Assembly to "restore fairness in the upcoming elections," the people will, in reality, be asked on April 21 whether they support dismantling decades of bipartisan progress in favor of aggrandizing considerable redistricting authority in the General Assembly to all but ensure the dominance of a single political party for the remainder of the decade.

59. Because the ballot question prescribed by the Referendum Bill submits to the people of Virginia a question different from the one upon which they will vote, it is "palpably deceptive or misleading." 2 A.E. Howard, *supra*, at p. 1174.

60. Independently, the Referendum Bill's ballot question violates Article XII, § 1's submission clause because it fails to inform Virginians that the Gerrymandering Amendment will affect their right to a nonpartisan redistricting process. *See Armstrong v. Harris*, 773 So. 2d 7, 17 (Fla. 2000) ("[W]here a proposed constitutional revision results in the loss or restriction of an independent fundamental state right, the loss must be made known to each participating voter at the time of the general election."); Va. Const. art. II, § 6-A.

61. Plaintiffs, as qualified Virginia voters, seek to vote on a proposed constitutional amendment concerning redistricting without "[d]efects and errors." *Coleman v. Pross*, 219 Va. 143, 158 (1978).

62. Plaintiffs' legal rights and duties depend upon resolving whether the Referendum Bill properly "submit[s]" the Gerrymandering Amendment to the people. Va. Const. art. XII, § 1.

63. Plaintiffs have no adequate remedy at law should the April 21 referendum proceed using the current ballot language.

64. The public interest strongly favors ensuring that the referendum ballot accurately reflects the amendment submitted to the people.

65. Plaintiffs are, therefore, entitled to a declaration that the ballot question prescribed by the Referendum Bill violates the submission clause of Va. Const. art. XII, § 1.

66. Plaintiffs are further entitled to injunctive relief requiring that Defendants not conduct any referendum on the Gerrymandering Amendment until a ballot question that accurately reflects the effect of the Gerrymandering Amendment has been enacted by the General Assembly or ordered by this Court.

COUNT TWO

Violation of Va. Code § 30-19.9

The Explanation of the Question to be Presented to Virginia Voters Is Patently False and Biased.

67. Plaintiffs incorporate by reference the allegations contained in the foregoing paragraphs as if fully set forth herein.

68. Virginia Code § 30-19.9 states that the explanation of a proposed constitutional amendment presented to voters "shall be limited to a neutral explanation" and "shall not include arguments submitted by either proponents or opponents of the proposal."

69. The Referendum Bill prescribes a ballot question that violates these requirements by asserting that the Gerrymandering Amendment would "restore fairness in the upcoming elections."

70. The phrase "restore fairness" is an argumentative statement in favor of the amendment, not a neutral description. It presupposes that Virginia's current congressional districts are unfair, an assertion that is both legally and factually inaccurate.

71. Virginia's current congressional districts are fair as a matter of law because they were drawn by the Supreme Court of Virginia, and because they achieve fairness as defined by Virginia Code § 24.2-304.04(8). The ballot language is false as a matter of law.

72. Virginia's current congressional districts are fair as a matter of fact because they have repeatedly produced delegations that closely mirror the statewide popular vote.

73. The phrase "restore fairness" further misleads voters by concealing the true intended effect of the Gerrymandering Amendment. The amendment's proponents have publicly declared their intention to use the power granted by the amendment to draw congressional districts that would produce a 10-to-1 partisan advantage, replacing fair, court-drawn districts with an extreme partisan gerrymander.

74. The phrase "upcoming elections" is independently misleading because it fails to identify which elections will be affected by the amendment and obscures the fact that new districts drawn under the amendment's authority would govern the 2026, 2028, and 2030 congressional elections, not merely the "upcoming" (*i.e.*, November 2026) election cycle.

75. The ballot question, as written, constitutes an argument "submitted by . . . proponents" of the Gerrymandering Amendment within the meaning of Va. Code § 30-19.9 and fails to provide the "neutral explanation" that the statute mandates.

76. The ballot question, as written, is intended to lie to voters and induce them to vote for the Gerrymandering Amendment by leading them to believe it will have a beneficial effect of promoting fairness, when its effect will be exactly the opposite.

77. Plaintiffs have no adequate remedy at law.

78. The public interest strongly favors ensuring that Virginia voters receive accurate and neutral information when voting on proposed amendments to their fundamental charter.

79. Plaintiffs are, therefore, entitled to a declaration that the ballot question prescribed by the Referendum Bill violates Va. Code § 30-19.9's requirement of a neutral and accurate explanation.

80. Plaintiffs are further entitled to injunctive relief requiring that Defendants not conduct any referendum on the Gerrymandering Amendment until a ballot question that complies with Va. Code § 30-19.9 has been enacted by the General Assembly or ordered by this Court.

COUNT THREE

Violation of Va. Const. Art. I, § 6's Guarantee of Free Elections

The Explanation of the Question to be Presented to Virginia Voters Is Patently False, Biased, and Denies Voters Their Right of Informed "Assent[]" and Effective "Suffrage."

81. Plaintiffs incorporate by reference the allegations contained in the foregoing paragraphs as if fully set forth herein.

82. Article I, § 6, of the Virginia Constitution's Bill of Rights guarantees that Virginia elections shall be "free," that citizens have a right of "suffrage," and that voters must give their "assent[]" in elections.

83. The rights of "suffrage" and "assent[]" in Article I, § 6, must be premised on truthful and accurate information on the ballot to have any meaning at all, and no election can be "free" when the state misleads its people as to the election's subject and the consequences of their votes.

84. The Referendum Bill prescribes a ballot question that violates these fundamental rights by falsely informing voters that the Gerrymandering Amendment would "restore fairness in the upcoming elections."

85. The phrase "restore fairness" is a false statement about the amendment, not a truthful description. It presupposes that Virginia's current congressional districts are unfair, an assertion that is both legally and factually inaccurate.

86. Virginia's current congressional districts are fair as a matter of law because they were drawn by the Supreme Court of Virginia, and because they achieve fairness as defined by Virginia Code § 24.2-304.04(8). The ballot language is false as a matter of law.

87. Virginia's current congressional districts are fair as a matter of fact because they have repeatedly produced delegations that closely mirror the statewide popular vote.

88. The phrase "restore fairness" further misleads voters by concealing the true intended effect of the Gerrymandering Amendment. The amendment's proponents have publicly declared their intention to use the power granted by the amendment to draw congressional districts that would produce an unfair 10-to-1 partisan advantage, replacing fair, court-drawn districts with an extreme and unfair partisan gerrymander.

89. Indeed, because Virginia's current congressional districts were drawn by the Supreme Court of Virginia, and because they achieve fairness as defined by Virginia Code § 24.2-304.04(8), the current districts are fair as a matter of law, and the ballot language is false as a matter of law.

90. The phrase "upcoming elections" is independently misleading because it fails to identify which elections will be affected by the amendment and obscures the fact that new districts

drawn under the amendment's authority would govern the 2026, 2028, and 2030 congressional elections, not merely the "upcoming" (*i.e.*, November 2026) election cycle

91. Under the Referendum Bill, the government will falsely describe the proposed amendment in order to deny voters the effective exercise of their right to vote.

92. The ballot question, as written, is intended to lie to voters and induce them to vote for the Gerrymandering Amendment by leading them to believe it will have a beneficial effect of promoting fairness, when its effect will be exactly the opposite.

93. Even if the "restore fairness" language were not factually and legally false, but only a matter of opinion, it would still violate Article 1, § 6, of the Virginia Constitution because the statute enacting that language allows proponents of the measure to carry their advocacy campaign into the voting booth and on the very ballot, while opponents of the measure have no such opportunity but must remain 40 feet from the entrance to the polls on pain of criminal penalties. *See Va. Code § 24.2-604.*

94. No one would doubt that legislative majorities cannot constitutionally enact a statute writing into the ballot their views supporting a particular candidate. Such a law would violate, among other things, "the fundamental duty of the sovereign to govern impartially." *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 462 (2006) (Scalia, J., concurring). By the same token, legislative majorities cannot constitutionally enact a statute writing into the ballot their views in support of a proposed referendum.

95. Outside of the polls, those who support the Gerrymandering Amendment may give full vent to their views. But they must not require that their views be printed on the ballots that voters will take with them into the voting booth.

96. An election cannot be considered free when the government gives such a marked advantage to one side of the contest. Thus, the statute adopting the ballot language violates Article I, § 6, of Virginia's Constitution.

97. Plaintiffs have no adequate remedy at law.

98. The public interest strongly favors ensuring that Virginia voters receive accurate and neutral information when voting on proposed amendments to their fundamental charter.

99. Plaintiffs are, therefore, entitled to a declaration that the ballot question prescribed by the Referendum Bill violates the people's right to a free election guaranteed by Article I, § 6.

100. Plaintiffs are further entitled to injunctive relief requiring that Defendants not conduct any referendum on the Gerrymandering Amendment until a ballot question that complies with the people's right to a free election guaranteed by Article I, § 6, has been enacted by the General Assembly or ordered by this Court.

COUNT FOUR

Violation of Va. Const. Art. I, § 11's Guarantee of Substantive Due Process

The Explanation of the Question to be Presented to Virginia Voters Is Patently False, Biased, and Denies Voters Their Effective Right to Vote.

101. Plaintiffs incorporate by reference the allegations contained in the foregoing paragraphs as if fully set forth herein.

102. Article I, § 11, of the Virginia Constitution's Bill of Rights guarantees voters that "no person shall be deprived of his life, liberty, or property without due process of law."

103. The Due Process Clause of the Virginia Bill of Rights protects the substantive liberty interest in exercising the right to vote effectively.

104. The Referendum Bill prescribes a ballot question that violates these requirements by asserting that the Gerrymandering Amendment would "restore fairness in the upcoming elections."

105. The phrase "restore fairness" is a false argument intended to mislead voters and lead them to vote unknowingly for the opposite outcome. It presupposes that Virginia's current congressional districts are unfair, an assertion that is both legally and factually inaccurate.

106. Virginia's current congressional districts are fair as a matter of law because they were drawn by the Supreme Court of Virginia and meet the fairness standard set by Va. Code § 24.2-304.04(8). The ballot language is false as a matter of law.

107. Virginia's current congressional districts are fair as a matter of fact because they have repeatedly produced delegations that closely mirror the statewide popular vote.

108. The phrase "restore fairness" further misleads voters by concealing the true intended effect of the Gerrymandering Amendment. The amendment's proponents have publicly declared their intention to use the power granted by the amendment to draw congressional districts that would produce a 10-to-1 partisan advantage, replacing fair, court-drawn districts with an extreme partisan gerrymander.

109. The phrase "upcoming elections" is independently misleading because it fails to identify which elections will be affected by the amendment and obscures the fact that new districts drawn under the amendment's authority would govern the 2026, 2028, and 2030 congressional elections, not merely the next "upcoming" election cycle.

110. The ballot question, as written, is intended to lie to voters and induce them to vote for the Gerrymandering Amendment by leading them to believe it will have a beneficial effect of promoting fairness, when its effect will be exactly the opposite.

111. Plaintiffs have no adequate remedy at law.

112. The public interest strongly favors ensuring that Virginia voters receive accurate and neutral information when voting on proposed amendments to their fundamental charter.

113. Plaintiffs are, therefore, entitled to a declaration that the ballot question prescribed by the Referendum Bill violates the people's right to substantive due process guaranteed by Article I, § 11.

114. Plaintiffs are further entitled to injunctive relief requiring that Defendants not conduct any referendum on the Gerrymandering Amendment until a ballot question that complies with the people's right to substantive due process guaranteed by Article I, § 11, has been enacted by the General Assembly or ordered by this Court.

COUNT FIVE

Violation of Va. Const. Art. I, § 12's Guarantee of Free Speech

115. Plaintiffs incorporate by reference the allegations contained in the foregoing paragraphs as if fully set forth herein.

116. Article I, § 12, of the Virginia Constitution's Bill of Rights guarantees freedom of speech. Under its provisions, "any citizen may freely speak, write, and publish his sentiments on all subjects... [and] the General Assembly shall not pass any law abridging the freedom of speech."

117. Even if the "restore fairness" language were not factually and legally false, but only a matter of opinion, it would still violate Article I, § 12 of the Virginia Constitution because it allows proponents of the measure to carry their advocacy campaign into the voting booth and on the very ballot, while opponents of the measure have no such opportunity but must remain 40 feet from the entrance to the polls, on pain of criminal penalties. *See* Va. Code § 24.2-604.

118. The statute adopting the ballot language at issue discriminates between speakers based on their viewpoints, and that is unconstitutional.

119. It is well established that, under federal law, "the State cannot advance some points of view by burdening the expression of others." *Pac. Gas & Elec. Co. v. Pub. Utils. Comm'n of Cal.*, 475 U.S. 1, 20 (1986) (citing cases).

120. This same fundamental principle applies under the Virginia Constitution. *See, e.g., Loudoun Cnty. Sch. Bd. v. Cross*, No. 210584, 2021 WL 9276274 at *6 (Va. S. Ct. Aug. 30, 2021) ("Although we have not had occasion to map the precise contours of the rights protected by this Clause, we have generally described Art. I, § 12 of Virginia's Constitution as 'coextensive with the free speech provisions of the federal First Amendment.'" (quoting *Elliott v. Commonwealth*, 267 Va. 464, 473–74 (2004))).

121. It makes no difference whether the discrimination is achieved by imposing special burdens on the viewpoints the government dislikes, or whether (as here) it affords special benefits to the viewpoints the government favors. The result is the same. The government has engaged in viewpoint discrimination, and the Virginia Constitution has been violated.

122. No one would doubt that legislative majorities cannot constitutionally enact a statute writing into the ballot their views supporting a particular **candidate**. Such a law would violate, among other things, "the fundamental duty of the sovereign to govern impartially." *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 462 (2006) (Scalia, J., concurring). By the same token, legislative majorities cannot constitutionally enact a statute writing into the ballot their views in support of a proposed **referendum**.

123. Outside of the polls, those who support the Gerrymandering Amendment may give full vent to their views. But they must not require that their views be printed on the ballots voters will take into the voting booth. If they do, they violate Article I, § 12 of Virginia's Constitution.

124. Plaintiffs have no adequate remedy at law.

125. The public interest strongly favors the enforcement of constitutional requirements and ensuring that Virginia's government officials perform their duties as required by the Virginia Constitution.

126. Plaintiffs are, therefore, entitled to a declaration that the ballot language is unconstitutional.

127. Plaintiffs are further entitled to injunctive relief requiring that Defendants not conduct any referendum on the Gerrymandering Amendment until a ballot question that complies with the people's right to free speech guaranteed by Article I, § 12, has been enacted by the General Assembly or ordered by this Court.

COUNT SIX

42 U.S.C. § 1983 - Violation of U.S. Const. Amend. I

128. Plaintiffs incorporate by reference the allegations in the foregoing paragraphs as if fully set forth herein.

129. For the same reasons set forth in Counts Three and Five, the ballot language violates the Free Speech Clause of the First Amendment of the U.S. Constitution.

130. By administering a referendum in violation of the First Amendment, Defendants are violating and/or will violate 42 U.S.C. § 1983 in that they are subjecting and/or will subject Plaintiffs to the deprivation of rights secured by the Constitution of the United States.

131. Plaintiffs have no adequate remedy at law.

132. The public interest strongly favors the enforcement of constitutional requirements and ensuring that Virginia's government officials perform their duties as required by the U.S. Constitution.

133. Plaintiffs are, therefore, entitled to a declaration that the ballot language is unconstitutional in violation of the First Amendment.

134. Plaintiffs are further entitled to injunctive relief requiring that Defendants not conduct any referendum on the Gerrymandering Amendment until a ballot question that complies with the First Amendment has been enacted by the General Assembly or ordered by this Court.

135. In addition, Plaintiffs are entitled to nominal damages.

REQUESTED RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- (1) Declare that the General Assembly has failed to "submit" the Gerrymandering Amendment to the people of Virginia in violation of Va. Const. art. XII, § 1;
- (2) Declare that the ballot language at issue ("restore fairness in the upcoming elections") is non-neutral as well as legally and factually false and misleading in violation of Virginia Code § 30-19.9, and the Virginia Constitution, Article I, § 6 (free elections), and Article I, § 11 (due process);
- (3) In the alternative, if the Court concludes that the ballot language at issue (stating that the proposed amendment would "restore fairness in the upcoming elections") is a statement of opinion, declare that the placement of such language on the ballot violates the Virginia Constitution, Article I, § 6 (free elections), and Article I, § 12 (free speech), as well the First Amendment of the U.S. Constitution;

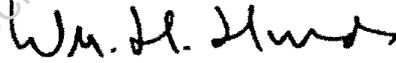
- (4) Preliminarily and permanently enjoin Defendants from conducting a referendum on the Gerrymandering Amendment using the ballot language at issue ("restore fairness in the upcoming elections") or any subset or variation thereof;
- (5) Preliminarily and permanently enjoin Defendants from conducting a referendum on the Gerrymandering Amendment unless and until a ballot question that is lawful in all respects has been enacted by the General Assembly or ordered by this Court;
- (6) Award Plaintiffs nominal damages, their costs pursuant to Va. Code § 8.01-190 and, to the extent permitted by law (including 42 U.S.C. § 1988), reasonable attorneys' fees;
- (7) Grant Plaintiffs other such relief indicated by the circumstances set forth in this Complaint and that the Court deems just and proper.

Dated: February 18, 2026

Respectfully submitted,

JOHN J. MCGUIRE, ROBERT J.
WITTMAN, and MELISSA JURK

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