

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

CHRISTALYN M. JETT, in her capacity as
Clerk of the Spotsylvania County Circuit
Court,

GORDON F. ERBY, in his capacity as Clerk
of the Lunenburg County Circuit Court,

and,

HEIDI S. BARSHINGER, in her capacity as
Clerk of the Henrico County Circuit Court.

Plaintiffs,

v.

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

SUSAN CLARKE SCHAAR, in her capacity
as the Clerk of the Senate of Virginia,

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

and,

WINSOME EARLE-SEARS, in her capacity
as Lieutenant Governor of Virginia and
President of the Senate of Virginia,

Defendants.

Civil Action No. CL25-5352

**DEFENDANT DON SCOTT'S RESPONSE IN
OPPOSITION TO PLAINTIFFS' PETITION FOR PRELIMINARY INJUNCTION**

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Defendant Don Scott, in his capacity as Speaker of the Virginia House of Delegates, respectfully submits this Response in Opposition to Plaintiffs’ Petition for Preliminary Injunctive Relief.¹ The Court should deny Plaintiffs’ Petition for Preliminary Injunction. First, the Court lacks jurisdiction to hear the matter under binding Virginia Supreme Court precedent applying the principle of separation of powers, and because plaintiffs lack standing. But even if the Court could adjudicate their request, Plaintiffs have failed to establish that they are entitled to the extraordinary relief they seek. They fail to show that they are likely to succeed on the merits (indeed, the relief they seek cannot be squared with the plain text and history of the Constitution), fail to show that they will suffer irreparable harm absent an injunction (which, on its own, requires the Court to deny relief), and fail to show that either the balance of equities or the public interest weighs in their favor. To the contrary, Plaintiffs seek unprecedented relief that would directly impede core legislative functions of the General Assembly and would, in the process usurp the power of the people to vote on any constitutional amendment proposed by their duly elected representatives.

BACKGROUND

On October 23, 2025, Speaker Scott informed members of the House that he was continuing a special legislative session, which was called by the Governor in 2024 but never adjourned *sine die*. See Compl. ¶¶ 23, 26. On October 27, Speaker Scott introduced, and the House passed, House Joint Resolution (“HJR”) 6006, which placed legislative items on the agenda for the special session, including a “joint resolution proposing an amendment to the Constitution of Virginia related to reapportionment or redistricting.” Compl. Ex. D. This is the second time that

¹ On October 31, 2025, Plaintiffs filed a Verified Complaint and Petition for Temporary Restraining Order and Preliminary and Permanent Injunction. On the same day, the Court denied the petition for an *ex parte* temporary restraining order. A hearing is set for Monday, November 3, 2025, at 9am.

the 2024 special session was continued to address legislative priorities. Earlier this year, the General Assembly met in a continuation of the 2024 special session and passed a similar joint resolution expanding the scope of items to be addressed.² *See* Compl. ¶ 25 (recognizing the 2024 special session was reconvened in February 2025 and its scope expanded to address the impact of the new presidential administration). Fifty-nine members of the House and every member of the Senate voted for that joint resolution.³

On October 29, the House of Delegates passed HJR 6007 by a vote of 50-42, proposing a constitutional amendment related to the Commonwealth’s congressional redistricting in light of developments around the country. *See id.* ¶ 29; Compl. Ex. E. The Senate likewise approved the proposed amendment on October 31 by a 21-16 vote. *See* Compl. ¶ 30.⁴ That same day, Plaintiffs—the Circuit Court Clerks of Spotsylvania County, Lunenburg County, and Henrico County—initiated this lawsuit, seeking to short-circuit the legislative process. They erroneously allege that the recent actions taken by the General Assembly are *ultra vires* and void because they were taken during the ongoing 2024 special session, which they argue has already concluded or is substantively limited to other policy areas. Alternatively, Plaintiffs argue that these actions should be considered to have occurred during the General Assembly’s 2026 regular session for purposes of amending the Virginia Constitution. Plaintiffs’ sole alleged injury and claim to irreparable harm is that they will not be able to comply with ministerial duties set forth under Va. Code § 30-13.

² Patrick Larsen, *General Assembly Gavels Out-Maybe Not For Long*, VPM (Feb. 22, 2025), <https://www.vpm.org/news/2025-02-22/virginia-general-assembly-sine-die-2025-legislation-budget>.

³ HJR 6004, 2024 Special Session I, <https://lis.virginia.gov/bill-details/20242/HJ6004>.

⁴ HJR 6007, 2024 Special Session I, <https://lis.virginia.gov/bill-details/20242/HJ6007>.

Plaintiffs seek unprecedented injunctive relief that would directly interfere with the legislative process: a prohibition against (1) entry of HJR 6007 into the journals of the two chambers of the General Assembly, (2) referral of HJR 6007 to the 2026 regular session of the General Assembly, and (3) publication of HJR 6007 to the clerks of the circuit courts, purportedly pursuant to Va. Code § 30-13. *See* Compl. at 15. They further seek to directly impede the legislative process by demanding a judicial order enjoining the leaders of the current General Assembly from enrolling HJR 6007, signing it, and referring it to the 2026 regular session. *See id.* at 16. For the reasons set forth herein, Plaintiffs’ requested relief should be denied.

LEGAL STANDARD

To obtain preliminary injunctive relief, a movant must first establish that they will “suffer irreparable harm without the preliminary injunction.” *Cartograf USA, Inc. v. Comerica Bank*, 85 Va. App. 1, 19 (2025) (quoting Va. Sup. Ct. R. 3:26(c)). Even if that threshold requirement has been met, however, the Court “must determine whether three factors support the issuance of the injunction: (1) the movant has asserted a legally viable claim based on credible facts that will more likely than not succeed on the merits; (2) the balance of hardships favors granting the preliminary injunction; and (3) the public interest, if any, supports the issuance of a preliminary injunction.” *Id.* (citation modified) (quoting Va. Sup. Ct. R. 3:26(d)). “A preliminary injunction may be issued *only* if it is supported by factors [(1)] and [(2)], and [if] it is not contrary to the public interest in factor [(3)].” Va. Sup. Ct. R. 3:26(d) (emphasis added). In all cases, “a preliminary injunction is an extraordinary remedy.” *Levisa Coal Co. v. Consolidation Coal Co.*, 276 Va. 44, 53 (2008).

ARGUMENT

The Court should decline to consider the petition at the threshold, because it lacks jurisdiction to adjudicate Plaintiffs’ claims at all: First, because the claims are nonjusticiable under binding Supreme Court of Virginia precedent applying separation of powers, and second, because

Plaintiffs have failed to show that they have standing to pursue these claims to begin with. But even if the Court were to reach Plaintiffs' claims, the preliminary injunction motion should be denied because Plaintiffs have failed to show that they satisfy the requirements for extraordinary relief in any case. And in this case, the nature of the injunction requested makes it an even more extraordinary remedy. To grant that relief would impose judicial handcuffs on the General Assembly as it exercises its exclusive legislative power and effectively preclude the people from voting on any proposed constitutional amendment referred by their duly elected representatives.

I. The Court lacks jurisdiction to adjudicate Plaintiffs' claims.

A. Plaintiffs' claims are not justiciable under the separation of powers.

Plaintiffs seek to enjoin the Defendants from performing their legislative functions during the special legislative session. *See* Compl. at 15 ¶¶ D, E. In so doing, Plaintiffs ask this Court to adjudicate nonjusticiable questions in violation of the constitutional separation of powers.

In *Scott v. James*, a case addressing materially identical circumstances over a century ago, the Supreme Court of Virginia held that the very relief requested by Plaintiffs here—enjoining officials from performing statutory duties to effectuate a constitutional amendment—would “manifestly be an unwarranted interference by the courts with the constitutional processes of the legislative department,” and was therefore nonjusticiable. 114 Va. 297, 304 (1912). In that case, a “citizen and taxpayer” sought to enjoin the Secretary of the Commonwealth from transmitting to circuit court clerks a proposed constitutional amendment passed by the General Assembly. *Id.* at 299. Like Plaintiffs here, Scott alleged that the General Assembly passed the amendment through an unconstitutional procedure. *Id.* at 298, 302. The Supreme Court of Virginia denied relief, explaining that no “court of equity, nor any tribunal of the judiciary department of government, is authorized to interfere with *the process of legislation*.” *Id.* at 304 (emphasis added). This includes the constitutional amendment process: “[A]mending of the Constitution is the making of a

permanent law for the people of the state . . . and the courts *cannot* interfere to stop *any* of the proceedings while this permanent law is in the *process of being made*.” *Id.* (emphasis added).⁵

In this case, Plaintiffs seek precisely the same relief that the Supreme Court of Virginia found beyond the judiciary’s power in *Scott*—and more. The only difference is that, today, the duty of transmitting a proposed amendment to the county clerks for publication falls, by statute, on the Clerk of the House of Delegates instead of the Secretary of the Commonwealth. *Compare* Va. Code § 30-13 (“[T]he Clerk of the House of Delegates shall have published all proposed amendments to the Constitution for distribution from his office and to the clerk of the circuit court of each county and city two copies of the proposed amendments, one of which shall be posted at the front door of the courthouse and the other shall be made available for public inspection. Every clerk of the circuit court shall complete the posting required . . . and shall certify such posting to the Clerk of the House of Delegates.”), *with Scott*, 114 Va. at 301 (“[T]he Secretary of the Commonwealth shall cause to be sent to the clerks of each county . . . copies of this [proposed constitutional amendment] . . . and it shall be the duty of said clerks to deliver the same to the sheriff for distribution, whose duty it shall be forthwith to post the said copies at some public place in each election district.”). Here, as was true of the Secretary in *Scott*, the General Assembly has chosen the House clerk and

⁵ The Constitution provides that the whole of the “legislative power of the Commonwealth shall be vested in a General Assembly.” Va. Const. art. IV, § 1. The “legislative power” is the power to “enact laws or to declare what the law shall be,” which stands in contrast to the “judicial power,” the power to “declare what law *is* or *has been*.” *Wise v. Bigger*, 79 Va. 269, 274 (1884) (quoting *Wolfe v. McCaul*, 76 Va. 876, 880 (1882) (emphasis in original)); *see* Va. Const. art. VI, § 1. The legislative power includes all the duties of elected representatives as well as officers—including clerks—of the General Assembly, such as transmitting, printing, reading, and recording bills. *See* Va. Const. art. IV, § 11 (stating that “[n]o bill shall become a law unless, prior to its passage,” it has been (a) “reported,” (b) “printed,” (c) “read,” and (d) the votes on it have been “recorded in the journal”). The legislative power and process also includes “the duty of the General Assembly to submit such proposed . . . amendments to the voters qualified to vote in elections by the people, in such manner as it shall prescribe.” *id.* art. XII, § 1.

circuit court clerks as part of the “manner” in which it will submit any proposed amendment to the people. *See* Va. Code § 30-13. To enjoin those actions would intrude upon the legislative process by thwarting the General Assembly from carrying out its constitutionally prescribed role. That relief is squarely foreclosed by *Scott*.

The same is true of Plaintiffs’ request to enjoin the House and Senate Clerks from entering the proposal in the chambers’ journals, referring the proposal to the next legislative session, and “otherwise taking any actions to advance the current proposal.” Compl. at 15 ¶ D. As legislative officers, the Legislative Clerks’ recording, transmitting, referring, and any similar duties are plainly core legislative functions unreachable by the judicial power. *See Scott*, 114 Va. at 304; Va. Const. art. IV, §§ 1, 11. Courts may not “interfere to stop *any of the proceedings* while this permanent law is *in the process of being made*.” *Scott*, 114 Va. at 304. That includes all steps necessary to submit the proposed amendment to the voters and enact it.

Nor does the separation of powers permit the Court to enjoin defendants Scott and Earle-Sears from performing their core legislative functions such as enrolling, signing, and referring the proposed constitutional amendment to the 2026 general session. Compl. at 15 ¶ D. Courts, applying the reasoning of *Scott*, have consistently rejected similar requests for judicial interference in the proceedings of a coordinate branch of government. *E.g.*, *Marshall v. Warner*, 64 Va. Cir. 389, 2004 WL 963528, at *3 (Richmond Cir. Ct. Apr. 29, 2004) (refusing to enjoin President of Senate and Speaker of House of Delegates from signing bills passed by their respective chambers, as well as House Clerk from transmitting bills to Governor for signature, because doing so would require the court to impermissibly “intervene in the business of the legislature” (citing *Scott*, 114 Va. at 304)); *McEachin v. Bolling*, 84 Va. Cir. 76, 2011 WL 10909615, at *3 (Richmond Cir. Ct. Dec. 16, 2011) (refusing to enjoin Lieutenant Governor from casting tie-breaking vote on bills in

the Senate because the court “cannot intervene in the normal operating procedures of the Senate”). The relief sought here would similarly interfere with the legislative process and, just as in *Scott*, *Marshall*, and *McEachin*, would grind the legislative process to a halt. That is precisely the sort of “manifestly . . . unwarranted” intervention in the legislative process that the Virginia Supreme Court has forbidden. *Scott*, 114 Va. at 304.

B. Plaintiffs lack standing.

Separate from the fatal barrier imposed by *Scott*, Plaintiffs’ claims are nonjusticiable for yet another reason: they lack standing to pursue them. *See Morgan v. Bd. of Supervisors of Hanover Cnty.*, 302 Va. 46, 58 (2023) (“Standing to sue is part of the common understanding of what it takes to make a justiciable case.”). The standing requirement “ensure[s] that the person who asserts a position has a substantial legal right to do so and that his rights will be affected by the disposition of the case.” *Cupp v. Bd. of Supervisors of Fairfax Cnty.*, 227 Va. 580, 589 (1984). This requires a complainant to “allege facts demonstrating a particularized harm to some personal or property right, legal or equitable, or imposition of a burden or obligation upon the petitioner different from that suffered by the public generally.” *Friends of the Rappahannock v. Caroline Cnty. Bd. of Supervisors*, 286 Va. 38, 48 (2013) (citation modified); *see also Howell v. McAuliffe*, 292 Va. 320, 330, (2016) (“It is incumbent on petitioners to allege facts sufficient to demonstrate standing.”).

Plaintiffs’ only alleged injury is that they will be placed in an “impossible position” because they cannot comply with § 30-13 and will thus be required to “violate their oaths of office.” Compl. ¶¶ 43–44. As explained further below, *infra* Section II.D, this assertion is based on a misreading of § 30-13. But even if Plaintiffs’ understanding of § 30-13 were correct, performing a ministerial duty that is inconsistent with the clerks’ subjective view of the law is not an injury *in fact*. Plaintiffs do not allege that they are likely to face any *consequences* as a result of this purported violation. Complying with a law that one believes to be invalid is not, without more, an injury in fact. *See*

TransUnion LLC v. Ramirez, 594 U.S. 413, 427 (2021) (“[A]n injury in law is not an injury in fact.”). That circular reasoning would render the standing requirement a nullity. If that were the case, *any* public official charged with implementing *any* legislative enactment would have standing based on their personal view of the law. Courts in Virginia have rightly rejected this theory of standing. *See Marshall*, 2004 WL 963528, at *2 (“Assuming that the Plaintiffs are correct that they will be required to vote against their oath of office in voting for a bill that they consider to be unconstitutional, abstain, or vote their conscience against such a bill, this does not amount to a cognizable injury for the purpose of standing.”).

II. Plaintiffs are unlikely to succeed on the merits of their claims.

Even if the Court could reach the merits of Plaintiffs’ claims, they have failed to show they are likely to succeed. First, HJR 6006—and HJR 6007, adopted pursuant to it—was a constitutional exercise of the General Assembly’s legislative power, as confirmed by the constitutional text and history and longstanding legislative precedent. Second, Plaintiffs—and Attorney General Jason Miyares—are plainly wrong that the “next” general election is the 2027 general election. The next election is tomorrow, November 4. And third, Plaintiffs’ understanding of their obligations under Va. Code § 30-13 is at odds with the statutory text and constitutional history.

A. The special legislative session continued by HJR 6006 is constitutional.

HJR 6006 is a constitutional exercise of the legislative power. First, Virginia’s Constitution, unlike those of other states, does not limit the General Assembly’s power to take up any business it deems appropriate at a special session. And second, HJR 6006 did not convene a *new* special session, but rather continued the existing special session that was never adjourned. The fact that an intervening regular legislative session occurred between those portions of the special session does not change the analysis.

1. The General Assembly may set the agenda for a special session.

In Virginia, the power to set the agenda for a legislative session—including a special session—lies with the General Assembly, not the Governor. The Constitution provides that the whole of the “legislative power of the Commonwealth shall be vested in a General Assembly.” Va. Const. art. IV, § 1. The “authority of the General Assembly *shall extend to all subjects* of legislation not” otherwise forbidden by the Constitution in Article IV, § 14, or other specific provisions. *See id.* art. IV, § 14 (emphasis added). As then-Attorney General John Marshall Coleman explained in a 1982 official opinion: “The Virginia Constitution is not a grant of powers to the General Assembly, but a statement of limitations on its otherwise plenary powers. In the absence of such restrictive provisions, the legislative power of the General Assembly, when convened in special session, is as broad as its powers in its regular sessions.” Ex. 3 (1981-82 Va. Rep. Att’y Gen. 188).

The Virginia Constitution grants the Governor the power to “convene the General Assembly on application of two-thirds of the members elected to each house thereof, or when, in his opinion, the interest of the Commonwealth may require.” Va. Const. art. V., § 5; *see also id.* art. IV, § 6. To “convene” means to “to cause to assemble,” or “to come together in a body.” *Convene*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/convene> (last visited Nov. 2, 2025). That is the extent of the Governor’s role. Unlike in other states, “[t]he Virginia Constitution does not grant authority to the Governor to limit or restrict the powers of the legislature at a special session. Neither does it limit the General Assembly to the subject matter specified in the Governor’s proclamation which convenes the special session.” Ex. 3.

Plaintiffs contend that within Article IV, § 6 and Article V, § 5 lies an unwritten executive power to restrict what legislation the General Assembly may consider while sitting in a special session. Their argument flows not from the constitutional text, but from a significant misreading of Virginia’s constitutional history. Plaintiffs claim that the new Virginia Constitution ratified in

1971 radically expanded the Executive’s power over special sessions of the General Assembly. *See* Compl. ¶¶ 14–16. They state, incorrectly, that this specific power to convene a special session “was first adopted in the revised Constitution of Virginia in 1971.” *Id.* ¶ 14. And they claim that this change left the General Assembly without any constitutional power to expand the scope of matters to be considered at an existing special session. *Id.* ¶¶ 15–16. That, too, is incorrect.

To start, Plaintiffs’ initial premise that special sessions are an invention of the 1971 Constitution is wrong. Virginia’s 1902 Constitution also granted the Governor the power to convene a special session—and it similarly lacked any textual limitation on the General Assembly’s legislative power to set its own agenda. Va. Const. art. V, § 73 (1902) (“The Governor shall . . . convene the General Assembly on application of two-thirds of the members of both houses thereof, or, when in his opinion, the interest of the State may require.”). The language of the 1902 Constitution carried over to Article V, § 5 of the current 1971 Constitution, which defines the executive power. *See* Va. Const. art. V, § 5. The drafters of the 1971 Constitution *also* added similar language to Article IV, § 6, which defines the *legislative power*. *Id.* art. IV, § 1; *id.* art. IV, § 6 (“The Governor may convene a special session of the General Assembly when, in his opinion, the interest of the Commonwealth may require and shall convene a special session upon the application of two-thirds of the members elected to each house.”). In Plaintiffs’ view, the addition of this companion provision greatly expanded the Governor’s role in legislative affairs by introducing to Virginia for the first time the concept of the “special session.” Compl. ¶¶ 14–16.

Virginia’s constitutional history squarely refutes Plaintiffs’ understanding of Article IV, § 6. The Virginia Commission on Constitutional Revision drafted, assessed, and commented on the proposed constitutional amendments enacted in 1971 via a report to the General Assembly, Governor, and people of Virginia. *See* Ex. 4 (Rep. of Comm’n on Const. Revision (Jan. 1, 1969)).

The Commission explicitly noted that the proposed “special session” language in Article IV, § 6 “effects *no change in substance*” from the 1902 Constitution, that the change was “merely one of organization,” and that it “simply duplicates a provision *already found* in the Executive article (present section 73).” Ex. 4 at 132, 139 (emphasis added). The new language appeared in Article IV, § 6 merely for “completeness”: “The provision belongs in the Executive article, as that article is, among other things, a catalogue of the Governor’s powers; it belongs as well in proposed section 6 of the Legislative article, since this section deals with the convening of legislative sessions and ought to list all of the ways in which the General Assembly can be convened.” Ex. 4 at 139–40. In other words, the addition of the words “special session” to Article IV, § 6 effected no change at all to the balance of powers between the Governor and the General Assembly.⁶

Plaintiffs nonetheless argue that, by inserting the term “special session” into Article IV, § 6, the drafters of the 1971 Constitution intended to grant the Governor a new and expansive power to limit the subject matter of a special session that he convenes. Compl. ¶¶ 14–16. They cite no Virginia authority for this proposition. They admit that “to their knowledge,” “no Virginia court has yet” held as much. *Id.* ¶ 16. Instead, they rely on a collection of cases from courts in Nebraska, Arizona, Pennsylvania, Alabama, Georgia, Ohio, and Colorado that demonstrate those states’ constitutions granted their governors greater power over special legislative sessions. *Id.* (collecting cases). Based on these out-of-state cases, Plaintiffs contend that the drafters and ratifiers of the 1971 Constitution would have understood that a “special” session is one whose agenda the Governor controls. *Id.* But these authorities support the reverse proposition: that the framers of the

⁶ As to Article V, § 5, the Commission similarly commented that there was “no change in substance” between the 1971 provision and its counterpart in Section 73 of the 1902 Virginia Constitution that granted the Governor the power to convene a special session. Ex. 4 at 164.

1971 Constitution *purposely omitted* this expansion of gubernatorial power from its provisions on legislative sessions.

Unlike Virginia, the constitutions of Nebraska, Arizona, Pennsylvania, Alabama, Georgia, Ohio, and Colorado *expressly granted* to the Governor the power to set and limit the “purpose” of a special session and the items that the legislature may consider at such a session.⁷ The lack of such an express limitation on the legislative power in Virginia’s 1971 Constitution shows that the omission was intentional—especially since, as Plaintiffs allege, it was “widely considered,” *in states that had these more expansive gubernatorial power provisions*, “settled law that the call for such a session could properly limit the subjects to be addressed by the session.” *Id.*

⁷ See *Arrow Club v. Neb. Liquor Control Comm’n*, 131 N.W.2d 134, 137 (Neb. 1964) (citing Neb. Const. art. IV, § 8 (“The Governor may, on extraordinary occasions, convene the legislature by proclamation, stating therein the purpose for which they are convened, and the legislature shall enter upon no business except that for which they were called together.”)); *State ex rel. Conway v. Versluis*, 120 P.2d 410, 413 (Ariz. 1941) (citing Ariz. Const. art. 4, pt. 2, § 3 (“In calling such special session, the governor shall specify the subjects to be considered at such session, and at such session no laws shall be enacted except such as relate to the subjects mentioned in such call.”)); *Com. ex rel. Schnader v. Liveright*, 161 A. 697, 703 (Pa. 1932) (citing Pa. Const. art. 3, § 25 (In special session, “there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session.”)); *In re Ops. of Justs.*, 166 So. 710, 712 (Ala. 1936 (referencing Ala. Const. art. IV, § 76 (In special session, “there shall be no legislation upon subjects other than those designated in the proclamation of the governor calling such session, except by a vote of two-thirds of each house.”)); *Jones v. State*, 107 S.E. 765, 766 (Ga. 1921) (citing Ga. Const. art. 5, § 1, ¶ 13 (“[N]o law shall be enacted at called sessions of the General Assembly except such as shall relate to the object stated in [the Governor’s] proclamation convening them.”)); *State ex rel. Bond v. Beightler*, 21 N.E. 123, 123–24 (Ohio 1939) (citing Ohio Const. art. III, § 8 (Governor “shall state in the proclamation the purpose for which such special session is called, and no other business shall be transacted at such special session except that named in the proclamation, or in a subsequent public proclamation or message to the general assembly issued by the governor during said special session.”)); *People v. Larkin*, 517 P.2d 389, 390 (Colo. 1973) (citing Colo. Const. art. V, § 7 (At “sessions convening in even numbered years, the general assembly shall not enact any bills except those raising revenue, those making appropriations, and those pertaining to subjects designated in writing by the governor during the first 10 days of the session.”))).

In further contrast, other provisions of the Virginia Constitution *do* set limits on what the General Assembly can take up at certain types of legislative sessions. The Constitution provides that the legislature may reconvene “after adjournment of each regular or special session for the purpose of considering bills which may have been returned by the Governor with recommendations for their amendment . . . *No other business shall be considered at a reconvened session.*” *Id.* (emphasis added). “[W]hen the General Assembly includes specific language in one section of a statute but omits that language from another section of the statute, [courts] must presume that the exclusion of the language was intentional.” *Fines v. Rappahannock Area Comm. Servs. Bd.*, 301 Va. 305, 317 (2022) (quoting *Halifax Corp. v. First Union Nat’l Bank*, 262 Va. 91, 100 (2001)).

2. The 2024 Special Session was never adjourned.

HJR 6006 did not declare a new special session, but rather continued the previous special session called in 2024 and revised its agenda. A special session ends only when it is formally adjourned *sine die* or when the legislature for which it was called expires. *See* Va. Const. art. IV, § 6. The legislature never finally adjourned the current special session. The legislature originally sat for the special session in May 2024, with one of its purposes being to address budgetary issues as requested by the Governor. It then recessed that special session without final adjournment. As that special session never adjourned, the General Assembly exercised its legislative power to continue the same special session earlier this year and address other (nonbudgetary) matters. *See id.*; Larsen, *supra* n.1. ; *see also* Ex. 3. After addressing these other issues, the General Assembly again recessed the special session without adjourning until it continued the session once more this past week to consider a proposed constitutional amendment on redistricting. Compl. Ex. D (HJR 6006).

Nothing in the Constitution limits the duration of a special session once called by the Governor (or the legislature by a two-thirds vote). Although the Constitution authorizes the Governor to *convene* special legislative sessions, he has no power to adjourn, or otherwise limit the duration of, those sessions—just as he has no constitutional authority to set the legislative agenda at those sessions. *See supra* Section II.A.1; *see also* Va. Const. art. IV, § 6. The decision when or whether to adjourn a special session, like the legislative agenda of the special session itself, falls within the core of the legislative power vested in the General Assembly. *See* Va. Const. art. IV, §§ 1, 6. When the Constitution *does* set durational limits on a legislative session, it does so expressly: “no regular session of the General Assembly convened in an even-numbered year shall continue *longer than sixty days*; no regular session of the General Assembly convened in an odd-numbered year shall continue *longer than thirty days*” with limited exceptions. *Id.* § 6 (emphasis added). There is no similar limitation on the duration of a special session.

It does not matter that there was an intervening regular legislative session after the first portion of the 2024 special session recessed and before Speaker Scott continued the special session earlier in 2025. Plaintiffs argue this “had the effect of extinguishing any conceivable continuing authority to remain in special session, inasmuch as the entire concept of a ‘special’ session is to allow the General Assembly to meet in-between its regular sessions.” Compl. ¶ 24. They cite no authority for that proposition. The constitutional text, which provides *no* limits on a special session’s duration or requirements for its adjournment, certainly does not support their view. *See* Va. Const. art. IV, § 6. Aside from *specifically prescribed* durational limits on *regular* and *reconvened* sessions, the Constitution vests the General Assembly with plenary power over its own

proceedings—including the power to decide for itself how long a special session, once convened, can continue. *Id.* §§ 1, 6.⁸

Historical practice further supports the view that the General Assembly may continue a special session that has not yet been adjourned, even after an intervening regular session. As described *supra*, the legislature earlier this year sat for a second portion of the special session originally convened in 2024. In another example, the Governor convened two special sessions of the General Assembly in 2018. As part of those sessions, the General Assembly noted that the special sessions did not “constitutionally expire[]” until January 8, 2020, which coincided with “the expiration of the terms of the members of the 2018-2019 Sessions of the House of Delegates.” Journal of the Senate of Virginia, 2018 Special Session I (Monday, June 11, 2018); Journal of the Senate of Virginia, 2018 Special Session II (Thursday, Aug. 30, 2018). Following that 2018 special session meeting and its expiration at the start of 2020 was, of course, a regular session in 2019.

B. The “next general election” for purposes of Article XII, § 1, will be held tomorrow, November 4, 2025.

Plaintiffs erroneously argue that, because Virginians were already casting ballots for the November 2025 general election when HJR 6007 was approved by the General Assembly in late October, the “next general election” for purposes of Article XII, § 1 is the November 2027 election. Compl. ¶¶ 33–34, 41–42; *see also* Compl. Ex. F (Va. Att’y Gen. Op. 25-029). Plaintiffs (and the Attorney General opinion they rely on) are wrong. Under the plain text of the Constitution and Virginia statutes, the “next general election” for the House of Delegates is clearly that which will

⁸ Rather than identify any relevant constitutional text, Plaintiffs argue that Virginia’s “longstanding ‘distrust of legislators,’” resulted in constitutional limits on the duration of the legislature’s ability to convene and make law. Compl. ¶¶ 12–13 (quoting A.E. Dick Howard, 1 *Commentaries on the Constitution of Virginia* 491, 493 (1974)). Indeed, the Constitution does place significant limits on special sessions: They can be convened only upon the call of the Governor or a two-thirds vote of the legislature. Va. Const. art. IV, § 6. Those limits are enumerated in the constitutional text.

occur tomorrow, on November 4, 2025. *See* Va. Code § 24.2-101 (“‘General election’ means an election held in the Commonwealth on the Tuesday after the first Monday in November”); *see also id.* § 24.2-215 (Delegates shall be elected at the “general election” every odd year). And Virginia’s early voting statutes reinforce this, by explicitly recognizing that early ballots are cast prior to the “election.” They provide that such “[a]bsentee voting in person shall be available on the forty-fifth day *prior to any election*,” *id.* § 24.2-701.1(A) (emphasis added), and that “voter satellite offices [may] be used in the locality for absentee voting in person . . . within 60 days next *preceding any general election*,” *id.* § 24.2-701.2 (emphasis added)). This understanding is entirely consistent with the policy of “prevent[ing] an amendment from being submitted to the people until it has been approved by two sets of members of the House of Delegates elected at different times.” Ex. 5 (Va. Const., as amended 1928); *see also Scott*, 114 Va. at 303 (recognizing legislatively initiated amendment process requires “[o]ne Legislature [to] propose and agree to the amendment” and then the “succeeding General Assembly” to then approve it, before submission to the people).

C. There is no conflict with Va. Code § 30-13.

Plaintiffs misread Va. Code § 30-13 to argue that they and other county clerks lack sufficient time to publish the proposed constitutional amendment for at least three months before the November 2025 general election. *See* Compl. ¶¶ 36, 43. They are incorrect. The clerks’ obligations under § 30-13 will not arise until “the end of the session of the General Assembly.” Va. Code § 30-13. That is the triggering event for the Clerk of the House of Delegates’ obligations under that section, including “distribut[ing] . . . to the clerk of the circuit court of each county and city two copies of the proposed amendments.” *Id.* The special session of the General Assembly has not ended and—unless adjourned *sine die*—will not end until the legislature for which it was called expires. At that point, the Clerk of the House will begin the process of arranging the House

journal and distributing any proposed amendments to the county clerks. *Id.* And only after receiving the proposed amendments from the Clerk of the House are the county clerks obliged to complete the required posting “not later than three months prior to the *next ensuing* general election.” *Id.* (emphasis added). The “next ensuing general election” after the end of the special session will be the November 2027 general election.

To read § 30-13, contrary to its plain text, as requiring publication before the 2025 general election would be inconsistent with the current text of the Constitution and the relevant constitutional history. When the Constitution was revised in 1971, the drafters purposely “omit[ed] the requirement that is. . . in the present Constitution, that the first General Assembly to approve an amendment must publish it ninety days before the next election for the House of Delegates.” Ex. 1 at 496 (House Debates on Constitutional Revision (Apr. 2, 1969)). Instead, the drafters adopted an alternative approach: there must be a 90-day period between the final approval of the proposed amendment by the *second* General Assembly and submission of the proposed amendment to the people. *Id.*; *see also* Va. Const. art. XII, § 1. In doing so, the drafters “str[uck] out any reference to publication,” because “the real purpose” of ensuring an informed public would “be served by requiring a lapse of at least ninety days’ time between the final action of the General Assembly and the submission of the proposal to the people.” Ex. 1 at 496. Section 30-13 cannot be read to insert into the constitutional amendment process a requirement that the framers explicitly omitted.⁹

⁹ In addition, § 30-13 was originally enacted before the 1971 Constitution, 1959 Va. Acts 190, and was drafted to implement a constitutional requirement that no longer exists. The 1971 Constitution effectively rendered § 30-13 obsolete: the public notice function is now fulfilled through the 90-day constitutional waiting period, not through any separate publication requirement executed by circuit court clerks. Recognizing this, the Virginia Code Commission, as part of a broader effort to clean up outdated provisions throughout Title 30, recently voted unanimously to repeal § 30-13 because the provision is outdated and “not reflective of the modern constitutional amendment

III. Plaintiffs will not suffer irreparable harm absent an injunction.

Plaintiffs have offered no evidence that they will suffer *any* harm, let alone the *irreparable* harm required for preliminary relief. *See, e.g., McEachin*, 2011 WL 10909615, at *4 (“There can be no showing of irreparable harm where the [p]laintiff cannot [] show *he* will actually suffer any harm at all.”(emphasis in original)). Showing irreparable harm is a threshold requirement, without which Plaintiffs cannot obtain a preliminary injunction. Va. Sup. Ct. R. 3:26(c). “An irreparable injury is one for which ‘fair and reasonable redress may not be had in a court of law and [for which] to refuse the injunction would be a denial of justice.’” *Highlander v. Va. Dep’t of Wildlife Res.*, 84 Va. App. 404, 436 (2025) (quoting *Thompson v. Smith*, 155 Va. 367, 387 (1930)). Plaintiffs’ confusion about their statutory obligations does not satisfy this high standard.

As explained above, *supra* Section II.C, nothing prevents Plaintiffs from complying with the plain text of § 30-13, and thus they face no “irreparable harm” from being unable to comply with their statutory obligations. Moreover, even if their interpretation is correct, Plaintiffs cannot explain how they would be *harmed* by their supposed inability to comply with § 30-13—let alone *irreparably* harmed. *See supra* Section I.B. The relief they seek—judicial clarification regarding their legal obligations to publish proposed amendments—is more appropriately sought through a declaratory judgment. And such relief will remain available to them without the extraordinary remedy of a preliminary injunction. *Scott*, 114 Va. at 304 (concluding that courts may only “pass upon the validity of the [proposed constitutional] amendment” after it has been enacted). Because

process” as explicitly prescribed in Article XII, § 1. *See* Ex. 2 at 4 (Va. Code Commission Meeting Materials (Oct. 22, 2025)); *see also* Virginia Code Commission, *Meeting of October 22, 2025*, at 11:23:18-11:24:35, available at <https://sg001-harmony.sliq.net/00304/harmony/en/PowerBrowser/PowerBrowserV2/20251022/-1/21047?startposition=20251022112318&mediaEndTime=20251022112435&viewMode=2&globalStreamId=4> (voting unanimously).

Plaintiffs have another adequate remedy, the harm they complain of—even if cognizable—is not irreparable, and they are not entitled to injunctive relief.¹⁰

IV. The balance of the equities disfavors injunctive relief.

Plaintiffs similarly cannot show that the balance of the equities favors granting injunctive relief. Beyond a conclusory allegation that the equities favor them because they will be “subject to a statutory obligation which they have no means to fulfill,” Compl. ¶ 47, their Complaint is silent on this factor. As explained above, Plaintiffs cannot identify *any* harm that they will suffer if the General Assembly is not enjoined. On the other side of the ledger, the injunction they seek would work grave harm to the legislative defendants’ ability to exercise their constitutionally prescribed legislative functions. *Marshall*, 2004 WL 963528, at *3 (finding that a court’s “participation in the decision-making process of the legislature . . . greatly burden[s] the General Assembly’s ability to perform its constitutional duties”). For that reason, as discussed in greater detail above, *see supra* Section I.A, injunctive relief is “not available” when it “would serve to invade the legislative prerogatives” of the General Assembly. *Nat’l Ass’n for Advancement of Colored People v. Comm. on Offenses Against the Admin. of Just.*, 201 Va. 890, 904 (1960). The relief Plaintiffs seek would amount to “unwarranted interference by the courts with the constitutional processes of the legislative department.” *Scott*, 114 Va. at 304.

V. Injunctive relief is not in the public interest.

For similar reasons, an injunction would harm the public interest. “Respect for the separation of the powers of the legislative and judicial branches of government is an essential

¹⁰ To the extent that plaintiffs presently seek a declaratory judgement as to the validity of the special session and the proposed constitutional amendment, their claim is unripe. *See Treacy v. Smithfield Foods, Inc.*, 256 Va. 97, 103–04 (1998) (“To be entitled to declaratory relief, a plaintiff must present “a controversy [] involv[ing] specific adverse claims that are based on present not future or speculative[] facts that are ripe for judicial assessment.”).

element of our constitutional system.” *Advanced Towing Co., LLC v. Fairfax Cnty. Bd. of Supervisors*, 280 Va. 187, 191 (2010). The public interest is best served when each branch of government stays within its constitutionally prescribed role. *See McEachin*, 2011 WL 10909615, at *4 (recognizing, in discussing this factor, that “there are numerous cases throughout Virginia’s jurisprudence in which the Supreme Court has refrained from enjoining the process of legislation”); *cf. Texas v. United States*, 787 F.3d 733, 768 (5th Cir. 2015) (finding that an injunction that “maintains the separation of powers” served the public interest). Here, that means allowing the legislative process to move forward without judicial encumbrance, while preserving the ability of courts to “pass upon the validity of a constitutional enactment *when put in force*.” *Scott*, 114 Va. at 304 (emphasis added).

CONCLUSION

The Court should deny Plaintiffs’ request for preliminary injunctive relief.

Dated: November 3, 2025

Respectfully submitted,

/s/ Aria C. Branch

Aria C. Branch (VSB No. 83682)

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**Pro hac vice* application forthcoming

Counsel for Defendant Don Scott

CERTIFICATE OF SERVICE

I hereby certify that this document, as well as all supporting documents filed herewith, will be served on all parties, consistent with Rule 1:12 of the Rules of the Supreme Court of Virginia.

Dated: November 3, 2025

/s/ *Aria C. Branch*
Aria C. Branch

INDEX OF EXHIBITS

Exhibit No.	Description
Exhibit 1	House Debates on Constitutional Revision (Apr. 2, 1969) (excerpted)
Exhibit 2	Virginia Code Commission Meeting Materials (Oct. 22, 2025) (excerpted)
Exhibit 3	Virginia Attorney General Opinion (Apr. 1, 1982), 1981-82 Va. Op. Atty. Gen. 188 (Va. A.G.), 1981-82 Va. Rep. Atty. Gen. 188, 1982 WL 175652
Exhibit 4	Report of the Commission on Constitutional Revision, House Document No. 1 (Jan. 1, 1969) (excerpted)
Exhibit 5	Constitution of Virginia (as amended June 19, 1928) (excerpted)

Exhibit 1

W. M., Bagley, Bradshaw, Bryan, S. G., Bryan, T. P., Butler, Callahan, Campbell, Carneal, Cleaton, Dalton, G. W., Dalton, J. N., Daniel, Davis, DeBruhl, Diamonstein, Dickson, Dudley, Durland, DuVal, Earman, Farley, E. W., Farley, G. O., Fidler, Fowler, Frost, Fugate, Funkhouser, Galland, Garland, Geisler, Gibson, Giesen, Gray, F. T., Gray, J. D., Gunn, Gwathmey, Hagen, Harrell, Jones, Kostel, Lane, Largent, Lemmon, Levin, McDiarmid, McGlothlin, McMath, McMurren, McNamara, Manning, Marks, Marshall, Mason, Middleton, Moore, Moss, Owens, Paxson, Pendleton, D. G., Pendleton, E. B., Phillips, Philpott, Pope, Putney, Rawlings, Reid, Reynolds, Richardson, Roller, Sacks, Schlitz, Sears, Sheppard, Slaughter, Smith, W. R., Thompson, L. R., Thomson, J. M., Van Clief, Walker, White, Whitehurst, Williams, Yates, Mr. Speaker—89.

Nays—Anderson, C. W., Bacon, Cantrell, Johnson, Lightsey, McCoy, Mann, Morrison, Rawls, Smith, R. M.—10.

A recess was taken, following which the House directed its attention to House Joint Resolution No. 18, relating to a new Article XII, Future Changes. Consideration was given to the amendment in the nature of a substitute reported from the Committee on Privileges and Elections in the following form:

Proposing an amendment to the Constitution of Virginia,
relating to a new Article XII, Future Changes.

Resolved by the House of Delegates, the Senate concurring, a majority of the members elected to each house agreeing, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed and referred to the General Assembly at its first regular session after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 196 of the Constitution, namely:

Strike from the Constitution of Virginia, Article XV, Future Changes in the Constitution, consisting of Sections 196 and 197, and insert in lieu thereof a new Article XII, Future Changes, consisting of Sections 1 and 2, as follows:

ARTICLE XII

FUTURE CHANGES

Section 1. Amendments.

Any amendment or amendments to this Constitution may be proposed in the Senate or House of Delegates, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, the name of each member and how he voted to be recorded, and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates. If, at such regular session or any subsequent special session of that General Assembly the proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the voters qualified to vote in elections by the people, in such manner as it shall prescribe and not sooner than ninety days after final passage by the General Assembly. If a majority of those voting vote in favor of any amendment, it shall become part of the Constitution on the date prescribed by the General Assembly in submitting the amendment to the voters.

Section 2. Constitutional convention.

The General Assembly may, by a vote of two-thirds of the members elected to each house, call a convention to propose a general revision of, or specific amendments to, this Constitution, as the General Assembly in its call may stipulate.

The General Assembly shall provide by law for the election of delegates to such a convention, and shall also provide for the submission, in such manner as it shall prescribe and not sooner than ninety days after final adjournment of the convention, of the proposals of the convention to the voters qualified to vote in elections by the people. If a majority of those voting vote in favor of any proposal, it shall become effective on the date prescribed by the General Assembly in submitting the convention proposals to the voters.

MR. SLAUGHTER: Mr. Speaker, ladies and gentleman of the House, the members, of course, are familiar with House Joint Resolution No. 18 as introduced, which contains the recommendations of the Commission on Constitutional Revision.

At the present time under Section 196 there are two ways of amending the Constitution, the first of which is passage by two General Assemblies and approval of the people. The other method requires that a majority of the General Assembly submit the question to the people as to whether a convention shall be called, the people elect delegates, and the convention is held.

The committee substitute makes a number of changes, but not of substance. I call your attention to the comment on page 325. In Section 1 we omit the requirement that is in the revisor's proposal and in the present Constitution, that the first General Assembly to approve an amendment must publish it ninety days before the next election for the House of Delegates. The committee felt that the purpose of this was to have some way for the people to be informed as to the text of the proposed amendment. We provide that there must be ninety days between the date of the approval by the second General Assembly and the submission of the proposed amendment to the people. We struck out any reference to publication because of some question about what sort of publication might be required. We felt that the real purpose would be served by requiring a lapse of at least ninety days' time between the final action of the General Assembly and the submission of the proposal to the people, so that they would be informed.

Section 1 provides, as does present Section 196, that amendments shall be submitted to the people at such time as the General Assembly may prescribe and shall become effective on such date as the General Assembly may prescribe in submitting the amendments.

In Section 2, as the Commission on Constitutional Revision points out, the important change is to require the approval by the people of any constitutional amendment made by convention. This is an important change, because that requirement is not in the present Constitution. It is now possible that a convention could act without submitting its action for the approval of the people. We have retained that proposal of the Commission. We have also followed the Commission's recommendation to increase from a majority to two-thirds the vote necessary in the General Assembly to call a convention. We provide, similar to the provision in Section 1, that after the final adjournment of the convention there must be at least ninety days before the proposal is submitted to the people; and it can be submitted at such time and, if adopted, become effective at such time as the General Assembly may prescribe when it submitted the convention proposal to the people.

Exhibit 2

**Virginia Code Commission
Meeting Materials
October 22, 2025**

SUBTITLE II.

THE LEGISLATIVE BRANCH OF GOVERNMENT.

Drafting note: Proposed Subtitle II is created to logically organize provisions relating to the legislative process and legislative agencies headed by a director who is subject to confirmation by the General Assembly. Proposed Subtitle II is divided into proposed Chapters 3 (Officers of the General Assembly), 4 (Legislative Process and Procedures), 5 (Auditor of Public Accounts), 6 (Division of Capitol Police), 7 (Division of Legislative Automated Systems), 8 (Division of Legislative Services), 9 (Joint Legislative Audit and Review Commission, and 10 (Reapportionment and Redistricting).

CHAPTER 3.

OFFICERS OF THE GENERAL ASSEMBLY.

Drafting note: Proposed Chapter 3, Officers of the General Assembly, is created to logically organize provisions in existing Chapters 1 (General Assembly and Officers Thereof), 1.1 (General Assembly Salaries and Expenses), 13.1 (Sexual Harassment Training Act), and 19 (Virginia Commission on Intergovernmental Cooperation) relating to the roles, duties, and privileges of officers of the General Assembly. Proposed Chapter 3 contains the following three articles: Article 1 (The Clerks of the General Assembly), Article 2 (Officers and Employees of the General Assembly), and Article 3 (Virginia Commission on Intergovernmental Cooperation).

Article 1.

The Clerks of the General Assembly.

Drafting note: Existing provisions relating to the Clerks of the General Assembly and the roles, duties, and privileges of their staff are logically organized and consolidated in proposed Article 1.

§ ~~30-12~~ 30.1-300. Duties of ~~officers~~ the Clerks of each house; operation of the General Assembly.

27 A. The ~~several officers~~ Clerks of each house of the General Assembly shall perform
28 such duties as shall be required of them by their respective houses and shall each receive such
29 salaries as shall be fixed from time to time by the general appropriation act.

30 ~~§ 30-19.19. Salaries of Clerks of House of Delegates and Senate.~~

31 ~~The Clerk of the House of Delegates and the Senate shall each receive such salaries as~~
32 ~~shall be fixed from time to time by the general appropriation act.~~

33 ~~§ 30-19.20. Employment and compensation of personnel.~~

34 ~~The House of Delegates and the Senate and the clerks thereof are~~

35 B. The Clerks of each house are authorized to employ such personnel as may be deemed
36 necessary for the efficient operation of the General Assembly, including each of its standing
37 committees approved by the Committee on Rules of the appropriate house, as prescribed by the
38 rules or resolutions of the respective houses. The compensation of such personnel shall be set
39 by resolution and such personnel shall be paid from the contingent fund of each house.

40 ~~The House of Delegates and the Senate shall by resolution or resolutions set the~~
41 ~~compensation of the personnel employed by each house, and the personnel shall be paid from~~
42 ~~the contingent fund of each house, respectively.~~

43 C. The maintenance, operation, upkeep, upgrades, and construction of the General
44 Assembly Building and other legislative spaces shall be overseen and directed by the Clerks of
45 each house acting jointly, except that each Clerk shall be responsible for their respective spaces
46 in the General Assembly Building or any other legislative space.

47 D. The Clerks of each house shall jointly administer the Capitol Guides program.

48 E. Executive orders or other directives issued by the Governor or other executive branch
49 agency that relate to purchasing, finance, or information technology are not applicable to the
50 legislature, as a separate and distinct branch of government, except in the event that the Clerks
51 of the House of Delegates and the Senate jointly determine, subject to the agreement of the
52 Speaker of the House and the chair of the Senate Committee on Rules, that compliance with
53 such order or directive is in the best interest of the legislature.

F. The Clerks of each house are authorized to agree to or enter into any Memorandum of Understanding or other agreement with any executive branch agency or private vendor for any and all services.

Drafting note: Existing §§ 30-12, 30-19.19, and 30-19.20 are combined in this proposed section because they address related topics. Technical changes are made for clarity and consistency. Technical changes are made for clarity and consistency.

A provision of existing § 30-34.2 relating to the maintenance and operation of the General Assembly Building is relocated to this proposed section and revised to more accurately describe the scope of the Clerks' authority over the General Assembly Building and other legislative spaces. A provision of existing § 30-34.2 relating to the Capitol Tour Guides is relocated to this proposed section and revised to reflect the operational name of the Tour Guides program.

Proposed subsections E and F restate the principle of separation of powers as it relates to executive orders and directives and the applicability of such to the legislature and codify the general authority of the Clerks of each house to make decisions related to the operation of the legislature.

~~§ 30-13. Other duties of Clerk of House of Delegates; publication of proposed amendments to Constitution.~~

~~In addition to such duties as may be prescribed by the rules of the House of Delegates, the Clerk of the House of Delegates shall at the end of the session of the General Assembly prepare a well-arranged index to the journal of the House and the documents printed during the session by order of the House. He shall have published, with the acts and joint resolutions proposing amendments to the Constitution; joint resolutions providing for studies for legislation of each session of the General Assembly; the unadjusted United States decennial census counts for the Commonwealth's counties, cities, and towns; and a carefully prepared and well-arranged index of the acts and joint resolutions.~~

~~The Clerk of the House of Delegates shall have published all proposed amendments to the Constitution for distribution from his office and to the clerk of the circuit court of each county and city two copies of the proposed amendments, one of which shall be posted at the front door of the courthouse and the other shall be made available for public inspection. Every clerk of the circuit court shall complete the posting required not later than three months prior to the next ensuing general election of members of the House of Delegates and shall certify such posting to the Clerk of the House of Delegates. The Clerk of the House of Delegates shall report to the General Assembly at its next regular session the action taken by him under this section, including the costs incurred in the printing and distribution of the amendments. The report shall be published in the Journal of the House of Delegates.~~

Drafting note: This section is proposed for repeal. Provisions in the first paragraph and Article IV, Sections 7 and 10 of the Constitution of Virginia are redundant. Provisions in the second paragraph predate the Code of 1919 and are not reflective of the modern constitutional amendment process.

~~§ 30-14~~ 30.1-301. Clerk of the House of Delegates to be Keeper of the Rolls; ~~other duties~~ certification of acts and other records.

A. The Clerk of the House of Delegates shall be the Keeper of Rolls of the Commonwealth. He shall, by such permanent and substantial method as he may deem proper, enroll all of the acts of the General Assembly and joint resolutions proposing amendments to the Constitution and shall reenroll all bills that have been amended in accordance with the recommendation of the Governor ~~by such other permanent and substantial method or methods as he may deem proper; and~~ He shall have the enrolled acts bound for publication after they have been signed by the Speaker of the House of Delegates and the President of the Senate.

B. The Clerk of the House of Delegates shall have the custody of the acts and joint resolutions of the General Assembly; and the records of the House of Delegates; ~~and, when required, shall furnish a copy of any or any part of any of them, or of any section or sections of the Code in the form published pursuant to § 30-148; which copy, being certified by him shall~~

Exhibit 3

THOMSON REUTERS

WESTLAW Virginia Attorney General Opinions*The Honorable Claude W. Anderson*

Office of the Attorney General

April 1, 1982

1981-82 Va. Op. Atty. Gen. 188 (Va.A.G.), 1981-82 Va. Rep. Atty. Gen. 188, 1982 WL 175652

Office of the Attorney General

Commonwealth of Virginia

*1 April 1, 1982

1 GENERAL ASSEMBLY. SPECIAL SESSION. GENERAL ASSEMBLY NOT RESTRICTED TO SUBJECT MATTER SPECIFIED IN GOVERNOR'S PROCLAMATION.1 The Honorable **Claude W. Anderson**

*1 Member

*1 House of Delegates

*1 As Chairman of the Privileges and Elections Committee, you have asked to be advised if the General Assembly of Virginia, convened in special session pursuant to a proclamation of the Governor, may consider matters other than those specially contained in the proclamation.

*1 The Virginia Constitution provides two means of calling a special session of the General Assembly: (1) Governor's initiative, and (2) upon application of two-thirds of the members elected to each house. See Art. IV, § 6 of the Constitution of Virginia (1971).

*1 The Governor may call a special session at his discretion when, in his opinion, the interest of the Commonwealth may require. Section 6 sets no limit on the subject matter of the special session. The decision to call, or not to call, is his alone and is not subject to judicial review. The reason assigned by the Governor for calling the session also lies in his sole discretion, not subject to challenge.

*1 The Virginia Constitution does not grant authority to the Governor to limit or restrict the powers of the legislature at a special session. Neither does it limit the General Assembly to the subject matter specified in the Governor's proclamation which convenes the special session. The Virginia Constitution is not a grant of powers to the General Assembly, but a statement of limitations on its otherwise plenary powers. In the absence of such restrictive provisions, the legislative power of the General Assembly, when convened in special session, is as broad as its powers in its regular sessions. See *Richards Furniture Corp. v. Board of Commissioners of Anne Arundel County*, 233 Md. 249 (1964), 196 A.2d 621; 73 Am.Jur.2d Statutes § 35 (1974); 82 C.J.S. Statutes § 10 (1953); 1 Cooley Constitutional Limitations (7th ed.) 222.

*1 Accordingly, I am of the opinion that the Governor is free to limit the subject matter on which he bases his proclamation convening the General Assembly into special session, but the General Assembly is not restricted to the subject matter specified in the Governor's proclamation.

*1 John Marshall Coleman

*1 Attorney General

1981-82 Va. Op. Atty. Gen. 188 (Va.A.G.), 1981-82 Va. Rep. Atty. Gen. 188, 1982 WL 175652

END OF DOCUMENT

Exhibit 4

**REPORT OF THE
COMMISSION ON CONSTITUTIONAL REVISION
to
HIS EXCELLENCY, MILLS E. GODWIN, JR.
GOVERNOR OF VIRGINIA
THE GENERAL ASSEMBLY OF VIRGINIA
and
THE PEOPLE OF VIRGINIA**



**HOUSE DOCUMENT NO. 1
January 1, 1969**

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1969

THE CONSTITUTION
OF
VIRGINIA

Report of the
Commission on Constitutional Revision
to
His Excellency, Mills E. Godwin, Jr.
Governor of Virginia
The General Assembly of Virginia
and
the People of Virginia

January 1, 1969

COMMISSION ON CONSTITUTIONAL REVISION

Albertis S. Harrison, Jr.

Chairman

Albert V. Bryan, Jr.

Alexander M. Harman, Jr.

George M. Cochran

Oliver W. Hill

Ted Dalton

J. Sloan Kuykendall

Colgate W. Darden, Jr.

Davis Y. Paschall

Hardy Cross Dillard

Lewis F. Powell, Jr.

*** * * * ***

A. E. Dick Howard

Executive Director

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salary provision; this would simply give explicit sanction to present practice. Further, in the proposal, the ban on raising members' salaries during their terms has been extended to a like ban on increasing allowances. This would change present practice. Without such a parallel restriction on raising allowances, the ban on increasing salaries would seem to be far less meaningful.

(2) *When increases effective.* The other change is meant to clarify the present provision. As section 45 is now worded, salary raises voted by the General Assembly cannot become effective "until after the end of the term for which the members voting thereon were elected." This creates an ambiguity as to whether raises voted by the Assembly may be effective for House members after their reelection but before Senate terms have expired. The proposed section would remove this ambiguity so that once a House member has been reelected, the raise can become effective as to him even though the senators have not yet stood for reelection.

(3) *Election to civil office of profit.* The Commission proposes no change in the provision now in section 45 regarding election of legislators to civil offices of profit. The phrase "civil office of profit in the Commonwealth" is somewhat uncertain in meaning. Research into the judicial construction of this and like phrases has confirmed the suspicion that no precise meaning can be assigned to it.¹⁷ Virginia cases construing the language of section 45 are virtually non-existent,¹⁸ and here, as with section 44,¹⁹ it is doubtful that there is enough of a problem to justify the Commission in attempting to devise a better formula. Hence the Commission has left the "civil office of profit" language as it presently exists in section 45. Here, as elsewhere, "Commonwealth" is substituted for "State."

Section 6. Legislative sessions.

The General Assembly shall meet once in two years on the second Wednesday in January next succeeding the election of members of the House of Delegates and may continue in session for a period not longer than ninety days. Neither house shall, without the consent of the other, adjourn to another place, nor for more than three days.

The Governor may convene a special session of the General Assembly when, in his opinion, the interest of the Commonwealth may require and

17. For various interpretations of this and like phrases see, e.g., *State ex rel. Herbert v. Ferguson*, 142 Ohio St. 496, 52 N.E.2d 980 (1944); *State v. Spaulding*, 102 Iowa 639, 72 N.W. 288 (1897); *State ex rel. Landis v. Futch*, 122 Fla. 837, 165 So. 907 (1936); *State ex rel. McIntosh v. Hutchinson*, 187 Wash. 61, 59 P.2d 1117 (1936); *Hudson v. Annear*, 101 Colo. 550, 75 P.2d 587 (1938).

18. Apparently the only case construing section 45 is *Norris v. Gilmer*, 183 Va. 367, 32 S.E.2d 88 (1944).

19. See commentary on proposed Legislative section 4, *supra*, p. 129.

shall convene a special session upon the application of two-thirds of the members elected to each house. Members shall be allowed salary and allowances for not exceeding thirty days at any special session.

Source: Present section 46.

Comment: The proposed section, like present section 46, preserves the existing system of biennial sessions of the General Assembly. In other respects there are significant changes in the section. Firstly, the length of regular sessions has been increased from 60 to 90 days, without, however, the possibility of a further extension of that session. Secondly, the present restriction against paying the legislators for more than 60 days of a regular session has been removed, but the limit on paying them for no more than 30 days of a special session has been retained. Thirdly, the proposed section, unlike present section 46, deals with the convening of a special session; this effects no change in substance, merely one of organization. Each of these changes is discussed in greater detail below.

(1) *Annual versus biennial sessions.* As recently as World War II, the overwhelming majority of American state legislatures met every other year; in 1941 only four states had annual sessions of their legislatures.²⁰ The years since World War II have seen a pronounced trend to annual sessions, so that today legislatures in at least twenty-one states meet annually.²¹

Currently there is considerable interest in Virginia in the question of whether the General Assembly, which under present section 46 has biennial regular sessions, should meet in regular session every year. The question of annual legislative sessions was one of the few subjects which Governor Godwin mentioned specifically in his message asking the Legislature to create the Commission on Constitutional Revision.²² During its study of the Constitution, the Commission has received many expressions of opinion about the merits of annual sessions, both from members of the General Assembly²³ and from individuals and organizations in the Commonwealth at large.²⁴

Frequent meetings of state legislatures were the rule in the constitutions adopted after the American Revolution. The Virginia Constitution

20. Council of State Governments, *American State Legislatures: Their Structures and Procedures* (Chicago, 1959), p. 4.

21. *State Constitutional Provisions Affecting Legislatures*, p. 24.

22. Address of Mills E. Godwin, Jr., Governor, to the General Assembly, Wednesday, January 10, 1968 (S.D. 1; Richmond, 1968), p. 11.

23. Public Views Documents 7, 18, 40, 43, 50, 61, 106, 107, 108, 110, 111, 114, 139, 140.

24. Public Views Documents 24, 29, 30, 36, 41, 58, 72, 76, 85, 86, 116, 126, 143, 150, 177, 184, 185, 193, 194.

of 1776, like the first constitutions of other states, contained virtually no limitations on the legislative branch of government.²⁵ It was executives, not legislatures, which the former colonists feared; fresh in their minds was the memory of abuses they had suffered at the hands of royal governors. It was natural that the framers of Virginia's first Constitution should have wanted regular and frequent meetings of the most popular branch of government. Hence the Constitution of 1776 provided that the General Assembly should meet "once or oftener every year."

The Constitution of 1830 continued annual sessions,²⁶ but in 1851 a provision was adopted calling for biennial sessions.²⁷ By the mid-nineteenth century, the confidence of the men of '76 in legislatures had given way to a rising mistrust. Men of property were concerned about state taxing and spending; citizens in the declining eastern counties were worried about the rising political power of the western regions. These and other motives caused the convention of 1850-51 to start "in earnest the practice of circumscribing the powers of the general assembly which reached its climax in the Convention of 1901" ²⁸ Some of the restrictions took the form of limits on the Legislature's substantive powers; another hobble was less frequent legislative sessions.

The Constitution of 1870 restored annual sessions,²⁹ but an amendment in 1876 returned to biennial meetings. During the 1901-02 Convention, the frequency of legislative sessions was discussed, and an effort was made by some delegates to have the Legislature meet only quadrennially.³⁰ This move was defeated, and the Constitution adopted in 1902 provided, as it still does, for biennial sessions.

Much has happened, of course, since 1902, and the Commission has approached the question of annual sessions, like other constitutional matters, as one which deserves an independent judgment based on present data. The Commission has concluded not to recommend departure from the present system of biennial sessions. In view of the widespread interest within and without the Legislature in the subject, the Commission feels it appropriate to develop the principal arguments involved.

25. This was a special cause of complaint with some. Jefferson observed in his *Notes on the State of Virginia* that "All the powers of government, legislative, executive, and judiciary, result to the legislative body. The concentrating these in the same hands is precisely the definition of despotic government." *Writings of Thomas Jefferson*, ed. Paul L. Ford (New York, 1892), III, 223. This complaint, of course, was directed more at the 1776 Constitution's failure to implement the separation of powers than at the legislative powers of the Legislature as such.

26. Constitution of 1830, Art. III, § 9.

27. Constitution of 1851, Art. IV, § 8.

28. James E. Pate, *Constitutional Revision in Virginia Affecting the General Assembly* (Williamsburg, Va., 1930), p. 144.

29. Constitution of 1870, Art. V, § 6.

30. See *1901-02 Convention Debates*, I, 461-62.

session as a check on what the executive branch does (an argument for annual sessions) or the additional cost of annual sessions (an argument against them). But the ones discussed above strike the Commission as especially relevant. In coming to its conclusion—that it should not recommend annual sessions—the Commission is by no means saying there is not a problem of legislative workload. The problem unquestionably exists. Rather, the Commission has concluded that there are many ways to attack this problem—annual sessions being but one attack⁴²—and that some of the other avenues, such as longer sessions, more adequate office space and staff, and improved internal procedures, ought to be tried, before a decision is taken that, as a last resort, annual sessions are a better solution.

(2) *Length of sessions.* As noted at the outset of the commentary on proposed section 6, while the Commission proposed retaining biennial sessions of the General Assembly, it does propose several changes in present section 46. One of these changes is to increase the length of the regular session from 60 to 90 days. This, in the judgment of the Commission, should be a significant step in helping the General Assembly to deal efficiently and smoothly with its legislative business.

(3) *Legislators' salaries.* The proposed section removes the restriction presently found in section 46 on salaries being paid to members of the General Assembly after 60 days of a legislative session. The Commission thinks it only fair that, to the extent that the Constitution allows the Legislature to be in session, to that extent the legislators ought to be paid for their services. Therefore, under the proposal, members can be paid for the full 90-day session. However, the salary limit of 30 days for a special session has been retained, on the theory that the business of any special sessions should fairly be concluded within that time.

(4) *Convening of special sessions.* The second paragraph of the proposed section is not found in present section 46, but it represents no change in substance, since it simply duplicates a provision already found in the Executive article (present section 73). The provision has been repeated both in the Executive article (proposed section 5) and here in the Legislative article for completeness. The provision belongs in the Executive article, as that article is, among other things, a catalogue of the Governor's

42. As has been noted, annual sessions might bring with them serious unwanted side effects. From others' experience, it seems that if annual sessions were adopted it would be virtually impossible to return to biennial sessions. See p. 134 *supra*. The Commission's proposal best avoids this inflexible position by suggesting lengthening the present legislative sessions rather than introducing annual ones. If, after a few years, the ninety day session does not permit sufficient consideration of legislation, then, as a last resort, annual sessions could be authorized.

powers; it belongs as well in proposed section 6 of the Legislative article, since this section deals with the convening of legislative sessions and ought to list all of the ways in which the General Assembly can be convened.

(5) *Quorum*. Finally, it should be noted that the last sentence of present section 46, dealing with the quorum and with compelling attendance of members, has been omitted in proposed section 6 because of its inclusion in proposed section 8.

Section 7. Organization of General Assembly.

The House of Delegates shall choose its own Speaker; and, in the absence of the Lieutenant Governor, or when he shall exercise the office of Governor, the Senate shall choose from its own body a president pro tempore. Each house shall select its officers, settle its rules of procedure, and direct writs of election for supplying vacancies which may occur during a session of the General Assembly. If vacancies occur while the General Assembly is not in session, such writs may be issued by the Governor under such regulations as may be prescribed by law. Each house shall judge of the election, qualification, and returns of its members, may punish them for disorderly behavior, and, with the concurrence of two-thirds of its elected membership, may expel a member.

Source: Present section 47.

Comment: No change in substance. The first two sentences of the proposal are identical to the present language. The third sentence (“If vacancies”) represents no substantive change from the present provision but has been slightly rephrased for stylistic reasons. The final sentence also represents no change in substance, although the words “of its elected membership” have been added after “two-thirds” to clarify what is believed to be the intended meaning of the original.

Assembly’s power to punish or expel members. Virginia’s Constitution, like the constitutions of 48 states⁴³ and the Federal Constitution,⁴⁴ provides that each house of the Legislature shall judge of the qualifications of its members. Further, the Virginia Constitution, like 42 state constitutions⁴⁵ and the Federal Constitution,⁴⁶ allows each house, upon a two-thirds vote, to expel a member. At the present time, there is increasing

43. Citizens Conference on State Legislatures, *State Constitutional Provisions Affecting Legislatures* (Kansas City, Mo., 1967), p. 18.

44. Art. I, § 5.

45. *State Constitutional Provisions Affecting Legislatures*, p. 20.

46. Art. I, § 5.

make impeachment appropriate are now either named specifically in the proposed section or would fall under the category of being appointed by the Governor or elected by the General Assembly.

An alternative method of removing judges would be available under the system conceived by the Commission in section 10 of the proposed Judicial article, *infra*, pp. 205-6.

Section 18. Auditor of Public Accounts.

An Auditor of Public Accounts shall be elected by the joint vote of the two houses of the General Assembly for the term of four years. His powers and duties shall be prescribed by law.

Source: Present section 82.

Comment: No change, except that the section is moved into the Legislative article from its present position in the Executive article of the Constitution. The Auditor is properly a legislative rather than an executive officer.

ARTICLE V

EXECUTIVE

In the Commission's study of the constitutional provisions touching the office of Governor and the state administration, the Commission has sought to ensure that the executive branch of the government is as strong as the other independent and coordinate branches. One of the discernible flaws in the Constitution of 1776, in the judgment of men like Thomas Jefferson, James Madison, Edmund Randolph, and St. George Tucker, was its creation of a weak and ineffectual chief executive, subservient to the legislative branch. What all of these men wanted was a government of checks and balances, in which each of the three principal branches had a measure of independence. As Tucker put it, was the union of executive and legislative powers any "less dangerous when the legislature has the executive at its devotion, than when the executive dictates to an obedient legislature?"¹

This defect in Virginia's Constitution has long since been corrected. It is Virginia's good fortune that the present Constitution creates a strong and responsible chief executive. Hence the significant changes which the

1. *Tucker's Blackstone* (Philadelphia, 1803), I, Appendix, 120. For like statements by Jefferson, see *Writings of Thomas Jefferson*, ed. Paul L. Ford (New York, 1892), III, 223; by Madison, see *Writings of James Madison*, ed. Gaillard Hunt (New York, 1900-10), II, 166; by Randolph, see 44 *Va. Mag. Hist. & Biog.* 35, 48, 105 (1936).

Commission would propose in the Executive article are few in number. These changes are summarized here; they are discussed in greater detail in the section-by-section commentary.

(1) *Executive disability.* There is widespread agreement that the existing provision dealing with disability of the Governor (section 78) is inadequate. The Commission has studied a number of alternative ways of handling this vexing question. Its recommendation (proposed section 15) closely parallels the Twenty-fifth Amendment to the United States Constitution, which was the outgrowth of years of study of the problem of presidential disability, was the subject of extended public discussion, and was unanimously approved by the General Assembly of Virginia in 1966.

(2) *The Governor as administrator.* The Commission recommends that the Governor, as head of the Commonwealth's administrative structure, have clear constitutional authority to appoint and discharge his policy-making advisors at the top levels. Therefore the Commission offers a new section (proposed section 10) which provides that, as to principal executive departments headed by individuals (not those headed by a board or commission), (a) the Governor shall appoint the department heads subject to such legislative confirmation as the General Assembly may prescribe, (b) these men shall serve at the pleasure of the Governor (that is, they may be removed without cause), and (c) the General Assembly shall prescribe the qualifications of department heads. The ability of the General Assembly to provide for confirmation and to prescribe qualifications should serve as a sufficient check to ensure that future Governors continue the practice of appointing able men.

(3) *Executive reorganization.* Another proposal advanced by the Commission to enhance the Governor's ability to act as an efficient administrator is a new section (proposed section 9) for executive initiation of administrative reorganization. The proposal would allow the Governor to put into effect practices which a good business executive would want to adopt in his business. Section 9 authorizes the Governor to initiate reorganization of the executive branch which, if not disapproved by the General Assembly, becomes effective and has the force of law. The proposal does not strengthen the office of the Governor at the expense of the Legislature. Both have their place in the proposed arrangement: the Governor can take the initiative, but the General Assembly can have the final say, if it wishes it.

(4) *Deletions in Article V.* Like other parts of the present Constitution, the Executive article has a number of sections which are quite unnecessary in a constitution. They constitute detail of a kind which belongs in the general laws. In particular, it is unnecessary for the Constitution, as it does now, to name specific non-elective offices such as the Secretary

(3) *Age.* No change is proposed. Under the proposed section, as under present section 71, one must be thirty years of age to be Governor.

Section 4. Place of residence and compensation of Governor.

The Governor shall reside at the seat of government. He shall receive for his services a compensation to be prescribed by law, which shall neither be increased nor diminished during the period for which he shall have been elected. While in office he shall receive no other emolument from this or any other government.

Source: Present section 72.

Comment: No change.

The Commission believes that the provision requiring the Governor to reside in Richmond, while originally designed to bar an absentee Governor from the office and perhaps unnecessary today, retains certain symbolic value. It works no hardship on the Governor and indeed enhances the prestige of the Mansion. Likewise the Commission does not believe that the prohibition on an increase in the Governor's salary is an undue burden. Certainly the prohibition against diminishing his salary is valuable.¹¹ In short, it is believed that there is no compelling reason for change in this section.

Section 5. Legislative responsibilities of Governor.

The Governor shall communicate to the General Assembly, at every session, the condition of the Commonwealth, recommend to its consideration such measures as he may deem expedient, and convene the General Assembly on application of two-thirds of the members of both houses thereof, or when, in his opinion, the interest of the Commonwealth may require.

Source: Derived from the first sentence of the first paragraph of present section 73.

Comment: No change in substance.

As noted in the commentary introducing the Executive article, the Commission proposes to reorganize the heterogeneous and involved provisions of present section 73, with few changes in substance, into several sections,

11. Between 1850 and 1928, the Constitution spelled out the exact amount of the Governor's salary. The Commission which recommended the 1928 revision of the Constitution wisely suggested deleting that provision and substituting the language of present section 72, which, as to compensation, is almost the exact language found in the Constitution before 1850.

each of which will group related powers of the Governor in a more comprehensible manner.

Proposed section 5 is concerned with the Governor's role in proposing legislation and in convening the General Assembly. The language of the proposed section is virtually the exact language of the relevant lines of present section 73, except that "Commonwealth" is substituted for "State." The affirmative provisions of the section recognize the desirability of the Governor's direct involvement in the legislative process.

Section 6. Presentation of bills; veto powers of Governor.

Every bill which shall have passed the Senate and House of Delegates shall, before it becomes a law, be presented to the Governor. If he approve, he shall sign it; but, if not, he may return it with his objections to the house in which it originated, which shall enter the objections at large on its journal and proceed to reconsider the same. If, after such consideration, two-thirds of the members present, which two-thirds shall include a majority of the members elected to that house, shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of all the members present, which two-thirds shall include a majority of the members elected to that house, it shall become a law, notwithstanding the objections.

The Governor shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object. The item or items objected to shall not take effect except in the manner heretofore provided in this section as to bills returned to the General Assembly without his approval.

If the Governor approve the general purpose of any bill but disapprove any part or parts thereof, he may return it, with recommendations for its amendment, to the house in which it originated, whereupon the same proceedings shall be had in both houses upon the bill and his recommendations in relation to its amendment as is above provided in relation to a bill which he shall have returned without his approval, and with his objections thereto; provided, that if after such reconsideration, both houses, by a vote of a majority of the members present in each, shall agree to amend the bill in accordance with his recommendation in relation thereto, or either house by such vote shall fail or refuse to so amend it, then and in either case the bill shall be again sent to him, and he may act upon it as if it were then before him for the first time. In all cases above set forth, the names of the members voting for and against the bill or item or items of an appropriation bill, shall be entered on the journal of each house.

Exhibit 5

CONSTITUTION

OF

VIRGINIA

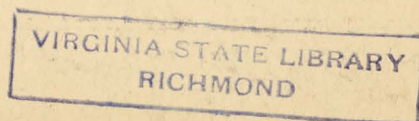


As Amended June 19, 1928

RICHMOND:

DIVISION OF PURCHASE AND PRINTING

1929



ARTICLE XV

Future Changes in the Constitution

Section 196. Amendments.—Any amendment or amendments to the Constitution may be proposed in the Senate or House of Delegates, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the ayes and noes taken thereon, and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates, and shall be published for three months previous to the time of such election. If, at such regular session or any subsequent extra session of that General Assembly the proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the people, in such manner and at such time as it shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors, qualified to vote for members of the General Assembly, voting thereon, such amendment or amendments shall become part of the Constitution.

The amendment ratified June 19, 1928.—Under the original section 196, when an amendment to the Constitution was proposed by the General Assembly, it was referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates, and if at such regular session, the amendment was agreed to, or concurred in, it was then submitted to the people. The amended section 196 allows the amendment to be agreed to, or concurred in, not only at such regular session, but at any subsequent extra session of that General Assembly. This change will enable the General Assembly at an extra session to review what was done at the regular session, or if no action was taken on the amendment at such regular session, the change will enable the General Assembly to act upon the amendment at an extra session following such regular session. The change is not contrary to the policy which prevents an amendment from being submitted to the people until it has been approved by two sets of members of the House of Delegates elected at different times.

Section 197. Constitutional Convention; how called.—At such time as the General Assembly may provide, a majority of the members elected to each house being recorded in the affirmative, the question, "shall there be a convention to revise the Constitution and amend the same?" shall be submitted to the electors qualified to vote for members of the General Assembly; and in case a majority of the electors so qualified, voting thereon, shall vote in favor of a convention for such purpose, the General Assembly, at its next session, shall provide for the election of

delegates to such convention; and no convention for such purpose shall be otherwise called.

ARTICLE XVI

Rules of Construction

Section 198. Rules of construction.—In this Constitution, the singular shall include the plural, and the masculine the feminine.

In conferring a power or imposing a duty, “may” is permissive and “shall” is mandatory.

Omissions, having been often made for brevity, or because a part omitted was superfluous, do not necessarily imply a change of policy.

These rules do not apply where a contrary intent plainly appears.

New section.—This section is new. It was ratified June 19, 1928.