

In the
Supreme Court of Virginia

Record No. 260127

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

Appellants,

v.

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

Appellees,

OPENING BRIEF OF APPELLANTS G. PAUL NARDO, SUSAN CLARKE
SCHAAR, AND TARA PERKINSON

John E. Lichtenstein (VSB #27048)
Gregory L. Lyons (VSB #24037)
Jacob B. Lichtenstein (VSB #100000)
LICHTENSTEIN LAW GROUP PLC
347 Highland Avenue, SW (24016)
P.O. Box 601
Roanoke, Virginia 24004-0601
Tel: (540) 343-9711
Fax: (540) 343-9713
John.Lichtenstein@lichtensteinlawgroup.com
Greg.Lyons@lichtensteinlawgroup.com
Jake.Lichtenstein@lichtensteinlawgroup.com
Counsel for the Appellant

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Table of Contents

Table of Authorities iii

I. Statement of the Case.....1

 A. Relevant legislative history2

 i. 2024 special session3

 ii. 2026 regular session8

 B. Relevant procedural history9

II. Assignments of Error17

III. Argument.....19

 A. The circuit court erred by holding that the General Assembly violated its own rules by improperly expanding the scope and purpose of the 2024 Special Session to consider and pass the proposed constitutional amendment, and thus, the first passage of the proposed constitutional amendment is void ab initio.....19

 i. Standard of Review20

 ii. The legislative power of the Commonwealth is vested solely in the General Assembly.20

 iii. The General Assembly did not violate its own rules.23

 B. The circuit court erred by holding that even if the General Assembly’s first passage of the proposed constitutional amendment on October 31, 2025, were valid, no “next general election of members of the House of Delegates,” *see* Va. Const. art. XII, § 1, occurred after that first passage because the election began on the first day of early voting on September 19, 2025.26

 i. Standard of Review27

 ii. The circuit court’s holding violates the constitutional and statutory definition of next general election of members of the House of Delegates under Virginia law.....27

 C. The circuit court erred by holding that even if the General Assembly’s first passage of the proposed constitutional amendment were valid and even if “election” is defined narrowly as only Election Day and not the entire period of

voting, the General Assembly failed to comply with the statutory notice requirement, *see* Code § 30-13 (requiring the Clerk of the House of Delegates to provide copies of the proposed constitutional amendment to every circuit court clerk to post at the front door of the courthouse at least three months prior to the “next ensuing general election of members of the House of Delegates”).....30

- i. Standard of Review30
- ii. The circuit court erred by elevating a non-applicable statutory posting provision to constitutional significance.31

D. The circuit court erred by entering final judgment, including declaratory judgment and permanent injunctive relief against the legislative clerks, while the legislative process remained ongoing, in violation of separation of powers and ripeness principles as well as immunity principles, without notice, prior to a court-imposed briefing deadline, and while demurrers and a plea of immunity remained pending.35

- i. Standard of Review37
- ii. The circuit court lacked subject matter jurisdiction over this matter because the constitutional amendment process was, and still remains, ongoing.
37
- iii. The circuit court erred by entering final judgment without adjudicating the legislative clerks’ plea of absolute legislative immunity.....45

IV. Conclusion.....50

Table of Authorities

Cases

Andrews v. Richmond Redevelopment & Hous. Auth., 292 Va. 79, 85, 787 S.E.2d 96, 99 (2016).....38

Ashland, LLC v. Virginia-American Water Co., 301 Va. 362, 368, 878 S.E.2d 378, 381 (2022)..... 20, 27, 31

Bd. of Supervisors v. Windmill Meadows, LLC, 287 Va. 170, 174–75, 752 S.E.2d 837, 839–40 (2014).....20

Blount v. Clarke, 291 Va. 198, 205, 782 S.E.2d 152, 155 (2016)..... 28, 29

Board of Supervisors v. Davenport & Co., 285 Va. 580, 587, 742 S.E.2d 59, 62 (2013).....49

Chase v. Senate of Va., 539 F. Supp. 3d 562 (E.D. Va. 2021) 13, 45, 47, 48

City of Danville v. Garrett, 294 Va. 36, 40, 803 S.E.2d 326, 328 (2017).. 20, 27, 31

City of Fairfax v. Shanklin, 205 Va. 227, 229, 135 S.E.2d 773, 775 (1964).....41

City of Fairfax v. Shanklin, 205 Va. 227, 230, 135 S.E.2d 773, 775–76 (1964).....38

City of Newport News v. Elizabeth City County, 189 Va. 825, 839, 55 S.E.2d 56, 64 (1949).....21

Commonwealth v. Harley, 256 Va. 216, 219–20, 504 S.E.2d 852, 854 (1998)38

Daniels v. Mobley, 285 Va. 402, 408, 737 S.E.2d 895, 898 (2013)..... 41, 42

Dombrowski v. Eastland, 387 U.S. 82, 85 (1967)46

Edwards v. Vesilind, 292 Va. 510, 525, 790 S.E.2d 469, 478 (2016). 37, 46, 47, 49, 50

Elizabeth River Crossings OpCo, LLC v. Meeks, 286 Va. 286, 311, 749 S.E.2d 176, 188 (2013).....19

Ex Parte McCardle, 74 U.S. (7 Wall.) 506, 514 (1869).....43

Fund for Animals, Inc. v. Va. State Bd. of Elections, 53 Va. Cir. 405, 2000 WL 1618006, at *3 (Richmond Cir. Ct. 2000).....36

Glasser & Glasser, PLC v. Jack Bays, Inc., 285 Va. 358, 369, 741 S.E.2d 599, 604 (2013).....37

Gravel v. United States, 408 U.S. 606, 617 (1972) 48, 50

Gray v. Binder, 294 Va. 268, 275, 805 S.E.2d 768, 771 (2017)37

Harris v. Deal, 189 Va. 675, 686–87, 54 S.E.2d 161, 166 (1949).....43

Harrison v. Day, 200 Va. 439, 448, 106 S.E.2d 636, 644 (1959)28

Jett v. Nardo, Case No. CL25-5352 (Richmond Cir. Ct. Nov. 5, 2025)36

Kelley v. Stamos, 285 Va. 68, 75, 737 S.E.2d 218, 221 (2013).....44

Koski v. Republican National Committee, Record No. 260169, 2026 WL 608588 (Mar. 4, 2026)..... 15, 16, 39, 40, 42

Lafferty v. Sch. Bd. of Fairfax Cnty., 293 Va. 354, 360, 798 S.E.2d 164, 167 (2017)41

Linnon v. Commonwealth, 287 Va. 92, 102, 752 S.E.2d 822, 828 (2014).....18

Marshall v. N. Va. Transp. Auth., 275 Va. 419, 432, 657 S.E.2d 71, 78 (2008)... 19,
21

Marshall v. Warner, 64 Va. Cir. 389, 2004 WL 963528, at *3 (Richmond Cir. Ct.
2004).....36

McEachin v. Bolling, 84 Va. Cir. 76, 2011 WL 10909615, at *3 (Richmond Cir.
Ct. 2011).....36

Miller v. Ayres, 211 Va. 69, 76, 175 S.E.2d 253, 258 (1970)28

Montgomery Cnty. v. Va. Dep’t of Rail & Pub. Transp., 282 Va. 422, 435, 719
S.E.2d 294, 300 (2011)..... 20, 27, 31

Montgomery v. Commonwealth, 75 Va. App. 182, 190 (2022).....35

Morrison v. Bestler, 239 Va. 166, 170, 387 S.E.2d 753, 755–56 (1990)..... 42, 43

Nelson v. Warden of the Keen Mt. Corr. Ctr., 262 Va. 276, 281, 552 S.E.2d 73, 75
(2001).....38

Pure Presbyterian Church of Wash. v. Grace of God Presbyterian Church, 296 Va.
42, 50, 817 S.E.2d 547, 552 (2018)..... 42, 43

Rebh v. Cnty. Bd. of Arlington Cnty. Va., 303 Va. 379, 380, 908 S.E.2d 439, 441
(2024).....37

Sch. Bd. of Chesterfield Cnty. V. Sch. Bd. of City of Richmond.....28

Scott v. James, 114 Va. 297, 76 S.E. 283 (1912)..... 36, 39, 40

Smith v. Allen Creek Assocs., LLC, 85 Va. App. 611, 623–24, 918 S.E.2d 783, 789
 (2025).....38

Supreme Court of Virginia v. Consumers Union of U.S., Inc., 446 U.S. 719, 733
 (1980).....47

W.S. Carnes, Inc. v. Bd. of Supervisors, 252 Va. 377, 383, 478 S.E.2d 295, 299
 (1996).....41

Walker v. Commonwealth, 302 Va. 304, 314, 887 S.E.2d 544, 549 (2023)20, 27, 30

Statutes

Act of Feb. 6, 2026, 2026 Va. Laws Ch. 6 (H.B. 1384).....9

Va. Code § 17.1-40917

Va. Code § 24.2-101 27, 29, 30

Va. Code § 30-13 9, 15, 16, 18, 30, 32, 33

Va. Code § 8.01-18440

Va. Code § 8.01-3863

Other Authorities

<https://lis.virginia.gov/bill-details/20261/HJ4>8, 30

<https://lis.virginia.gov/vote-details/HJ6001/20242/HV0014>.....5, 24

<https://lis.virginia.gov/vote-details/HJ6001/20242/SV0005>5, 24

<https://lis.virginia.gov/vote-details/HJ6007/20242/2429597>7

<https://lis.virginia.gov/vote-details/HJ6007/20242/SV90>7

lis.virginia.gov/vote-details/HJ6004/20242/2429265.....6, 24

Treatises

A.E. Dick Howard, *Commentaries on the Constitution of Virginia*, at 1175 (1974)
.....33

*Proceedings and Debates of the House of Delegates Pertaining to Amendment of
the Constitution, extra session 1969, regular session 1970*.....32

Constitutional Provisions

Va. Const. art. IV, § 1 19, 20, 22, 26

Va. Const. art. IV, § 1048

Va. Const. art. IV, § 14 21, 22

Va. Const. art. IV, § 3 26, 29, 30

Va. Const. art. IV, § 621

Va. Const. art. IV, § 7 19, 21, 26

Va. Const. art. IV, § 949

Va. Const. art. VI, § 144

Va. Const. art. XII, § 1 3, 16, 18, 26, 27, 28, 29, 31, 32, 33, 41

I. Statement of the Case

The Circuit Court for the County of Tazewell entered final declaratory judgment and a permanent injunction rendering a proposed, unenacted constitutional amendment void ab initio without notice to the parties and without addressing challenges to the circuit court’s subject matter jurisdiction. This appeal stems from a proposed constitutional amendment which was introduced in the General Assembly during the 2024 Special Session. Ryan T. McDougale, Virginia State Senator and Legislative Commissioner for the Virginia Redistricting Commission; William M. Stanley Jr., Virginia State Senator and Legislative Commissioner for the Virginia Redistricting Commission; Terry Kilgore, Delegate to the Virginia House of Delegates; and Virginia Trost-Thornton, Citizen Commissioner of the Virginia Redistricting Commission, filed a civil action against G. Paul Nardo, in his official capacity as Clerk of the Virginia House of Delegates; Susan Clarke Schaar, in her official capacity as Clerk of the Virginia Senate; Tara Perkinson, in her official capacity as Chief Deputy Clerk of the Virginia Senate (collectively, the “legislative clerks”); and Charity D. Hurst, in her official capacity as Clerk of Court of the Tazewell Circuit Court.¹

¹ Two additional plaintiffs were added in the amended complaint, namely Camilla Simon and Faythe Silveira. R. 125.

In granting declaratory judgment and issuing preliminary and permanent injunctive relief, the circuit court misconstrued and misapplied several procedural and substantive resolutions from this special session, which are discussed herein and are key to understanding the issues present in this appeal. Likewise, the procedural posture of this case at the time the circuit court entered its January 27, 2026, order, demonstrates that the case was not ripe for final judgment, providing an independent basis for reversal.

A. Relevant legislative history

The conduct of the General Assembly relevant to this appeal includes actions taken during both the 2024 special session and the 2026 regular session as part of the amendment process set forth in Article XII, Section 1 of the Constitution of Virginia. This provision states in full as follows:

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.

Va. Const. art. XII, § 1. This provision mandates that any proposed amendment pass by a majority vote in both chambers of the General Assembly in two sessions, which sessions must be separated by an intervening general election of members of the House of Delegates. Even then, however, the proposed amendment does not become law unless and until the voters of Virginia approve the measure by a majority vote, which vote cannot take place sooner than 90 days after the measure’s passage in the second session of the General Assembly.

i. 2024 special session

On April 17, 2024, during the 2024 regular session of the General Assembly, the Virginia House of Delegates and Virginia Senate passed House Joint Resolution No. 428 (“HJR 428”).² R. 2115. This resolution invoked the General Assembly’s prerogative under Section 6 of Article IV of the Constitution of

² While citations to the record are provided with regard to particular, relevant legislative acts, this Court may also consult “any book, record, register, journal, or other official document or publication purporting to contain, state, or explain” these legislative acts in taking judicial notice thereof, Va. Code § 8.01-386, such as the Virginia State Legislative Information System, available online at lis.virginia.gov.

Virginia, and applied to the Governor to convene a special session by a two-thirds majority vote of each chamber “for the purpose of considering Budget Bills”. *Id.* HJR 428 further stated that during the special session, the General Assembly “may stand in recess from time to time until reconvened by the joint call of the Speaker of the House of Delegates and Chair of the Senate Committee on Rules to consider such matters as are provided for in the procedural resolution adopted to govern the conduct of business coming before such Special Session” *Id.* The Governor then issued a proclamation on the General Assembly’s application, “summon[ing] the members of the Senate and the House of Delegates, constituting the General Assembly of Virginia, to meet in Special Session commencing the 13th day of May, Two Thousand and Twenty-Four for the purpose of the completion of the 2024-2026 biennial budget and amendments to the 2022-2024 biennial budget.” R. 2117.

Upon convening the special session on May 13, 2024, each chamber passed House Joint Resolution No. 6001 (“HJR 6001”), a procedural resolution which set the matters initially to be considered by the General Assembly during the special session. In relevant part, HJR 6001 states as follows:

RESOLVED by the House of Delegates, the Senate concurring, That during the 2024 Special Session 1 of the General Assembly, summoned by proclamation of the Governor on Wednesday, April 17, 2024 to begin Monday, May 13, 2024 at 12:00 PM, pursuant to the provisions of HJR 428, 2024 Regular Session, except with

unanimous consent of the house in which the legislation is offered, no bill, joint resolution, or resolution shall be offered or considered in either house during the Special Session other than (i) Budget Bill(s) and revenue bills; (ii) single-house commending and memorial resolutions; (iii) bills, joint resolutions, or resolutions affecting the rules of procedure or schedule of business of the General Assembly, either of its houses, or any of its committees; (iv) the election of judges and other officials subject to the election of the General Assembly; or (v) appointments subject to the confirmation of the General Assembly

R. 2118. Appellees Ryan T. McDougle, William M. Stanley, Jr., and Terry Kilgore each voted yea for HJR 6001 as part of its 99-0 passage in the House and 39-1 passage in the Senate. *See* <https://lis.virginia.gov/vote-details/HJ6001/20242/HV0014> (House vote); <https://lis.virginia.gov/vote-details/HJ6001/20242/SV0005> (Senate vote).

The General Assembly conducted business in the special session pursuant to HJR 6001 until the General Assembly approved House Joint Resolution No. 6004 (“HJR 6004”), a joint resolution which modified the rules of procedure and schedule of business of the special session and superseded HJR 6001. R. 2120. HJR 6004 retained the five categories of business set forth in HJR 6001, and added a sixth: bills or joint resolutions “addressing the impacts upon the Commonwealth, its budget, and its services due to layoffs, firings, or reductions in force by the federal government, changes to federal government programs, actions of the Department of Government Efficiency, and other actions affecting the

Commonwealth relating to the federal budget.” *Id.* HJR 6004 passed 40-0 in the Senate and 59-38 in the House, with Senators McDougle and Stanley voting yea, *see* R. 2200, and Delegate Kilgore voting nay, *see* lis.virginia.gov/vote-details/HJ6004/20242/2429265. Notably, HJR 6004 retained the third category of business set forth in HJR 6001, namely that the General Assembly could consider “bills, joint resolutions, or resolutions affecting the rules of procedure or schedule of business of the General Assembly, either of its houses, or any of its committees.” R. 2120. The General Assembly then conducted business under HJR 6004, which, upon its passage, became the procedural resolution governing the 2024 special session.

In October 2025, the General Assembly again modified the rules of procedure and schedule of business of the General Assembly by the passage of House Joint Resolution No. 6006 (“HJR 6006”). R. 2122. Like HJR 6004, HJR 6006 retained the categories of business set forth in the previous procedural resolution, and added another: “joint resolution proposing an amendment to the Constitution of Virginia related to reapportionment or redistricting.” *Id.* Although Senators McDougle and Stanley and Delegate Kilgore each voted nay on HJR 6006, the joint resolution passed the House by a vote of 50-42 and the Senate by a vote of 21-17. R. 2123. Thus, HJR 6006 superseded HJR 6004 and became the governing procedural resolution of the 2024 special session.

It was pursuant to HJR 6006 that the House and Senate considered, and passed, House Joint Resolution No. 6007 (“HJR 6007” or “proposed constitutional amendment”), which proposed “an amendment to Section 6 of Article II of the Constitution of Virginia and propos[ed] an amendment to the Constitution of Virginia by adding in the Schedule a section numbered 6, relating to apportionment; congressional districts; limited authority of the General Assembly to modify.” R. 2124. The measure passed the House on October 29, 2025, by a vote of 51-42 and the Senate on October 31, 2025, by a vote of 21-16.³ R. 2125–2126.

If enacted into law, HJR 6007 would modify the process by which Virginia’s federal electoral districts are reapportioned. Specifically, the resolution proposes a time-limited authorization which would allow the General Assembly, outside of the decennial reapportionment process, “to modify one or more congressional districts . . . in the event that any State of the United States of America conducts a redistricting of such state’s congressional districts . . . for any purpose other than (i) the completion of the state’s decennial redistricting in response to a federal census and reapportionment mandated by the Constitution of the United States and established in federal law or (ii) as ordered by any state or federal court to remedy

³ Senators McDougale and Stanley and Delegate Kilgore each voted nay. *See* <https://lis.virginia.gov/vote-details/HJ6007/20242/2429597> (House vote); <https://lis.virginia.gov/vote-details/HJ6007/20242/SV90> (Senate vote).

an unlawful or unconstitutional district map.” *Id.* By its own terms, the proposed constitutional amendment would expire on October 31, 2030. *Id.*

ii. 2026 regular session

The passage of HJR 6007 during the 2024 special session constituted the first passage of the measure under the process outlined in Article XII, Section 1. Then, following the November 4, 2025, general election of members of the House of Delegates, the proposed constitutional amendment was referred to the General Assembly during the 2026 regular session, where it was introduced as House Joint Resolution No. 4 (“HJR 4”), and passed the House on January 14, 2026, by a vote of 66-33-1 and the Senate on January 16, 2026, by a vote of 21-18.⁴ *See* <https://lis.virginia.gov/bill-details/20261/HJ4>.

Following the measure’s passage in each of the two sessions of the General Assembly, separated by an intervening general election of members of the House of Delegates, the General Assembly passed, and the Governor signed, a general appropriation act which, among other fiscal apportionments, budgeted funds to conduct the voters’ referendum on the proposed constitutional amendment and set the referendum to occur on April 21, 2026. *See* Act of Feb. 6, 2026, 2026 Va.

⁴ Senators McDougle and Stanley and Delegate Kilgore again voted nay. *See* <https://lis.virginia.gov/vote-details/HJ4/20261/2619795> (House vote); <https://lis.virginia.gov/vote-details/HJ4/20261/SV30> (Senate vote).

Laws Ch. 6 (H.B. 1384). The general appropriations act further repealed Va. Code § 30-13, which repeal was made retroactive to July 1, 1971. *Id.* By its own terms and those of Va. Code § 1-214(C), this general appropriations act became effective on its February 6, 2026, passage.

B. Relevant procedural history

On October 28, 2025, plaintiffs in this matter filed an initial complaint and an emergency motion for temporary restraining order in the Circuit Court for the County of Tazewell, seeking to have the circuit court enjoin the legislative clerks from fulfilling their constitutional duties with regard to the proposed constitutional amendment, which, at the time the complaint was filed, had not yet passed either chamber of the General Assembly.⁵ R. 1–23. The circuit court then set, and plaintiffs filed a notice of, a hearing on the motion for TRO for the following day, October 29, 2025. R. 24–25.

The circuit court denied the motion for TRO at this hearing, during which hearing the circuit court received evidence and heard argument from plaintiffs; the legislative clerks; and then-proposed-intervenors Don Scott, in his official capacity as Speaker of the Virginia House of Delegates, Scott Surovell, in his official

⁵ The initial complaint contains a scrivener’s error, stating that the complaint was filed on October 18, 2025. R. 1. The complaint was actually filed on October 28, 2025, along with the emergency motion for temporary restraining order and a notice of hearing on the motion. R. 20, 24.

capacity as Majority Leader of the Virginia Senate, and Louise Lucas, in her official capacity as President Pro Tempore of the Virginia Senate.⁶ While no transcript of this hearing is available, the circuit court received evidence and heard argument on the substantive and procedural history of the 2024 special session up to that point and declined to find that a TRO was warranted. The circuit court entered an order to this effect on October 31, 2025, and set a hearing on plaintiffs' request for a preliminary injunction for November 5, 2024. R. 41–42.

Following entry of this order, the legislative clerks were named as defendants in a separate civil action, filed in the Circuit Court for the City of Richmond, seeking substantially similar relief as that sought in the initial complaint in this civil action. R. 2144–2145 (Nov. 5, 2025, order of the Circuit Court for the City of Richmond in *Jett et al. v. Nardo et al.*, Case No. CL25-5352). On November 3, 2025, the Richmond circuit court held a hearing on plaintiffs' motions for TRO and preliminary injunction, at the conclusion of which the Richmond circuit court denied both motions. *Id.* The court held in part that the matter was not justiciable, as explained in its order of November 5, 2025:

Plaintiffs' action also invites the Court to prematurely invade the province of the legislature. For well over a century, the courts of the Commonwealth have recognized a bedrock principle that amending the Constitution is a process left exclusively to the sound judgment of the legislature that proposes amendments and the citizens that

⁶ Charity D. Hurst has neither appeared nor been represented in this civil action.

ratify or reject them. *See Scott v. James*, 114 Va. 297 (1912). While that process is ongoing, “the courts cannot interfere to stop any of the proceedings.” *See id.* at 304. This matter is not currently justiciable.

R. 2144–2145.

After the Tazewell circuit court denied plaintiffs’ motion for TRO, and after the Richmond circuit court denied a substantially similar request by the plaintiffs in that matter, the plaintiffs in the Tazewell matter withdrew their request for preliminary injunction. *See* R. 65–66 (“On further consideration, Plaintiffs provide notice that they withdraw their request for a preliminary injunction, meaning the hearing set for November 5, 2025, is no longer necessary.”). No further action was taken in the matter until November 18, 2025, when the legislative clerks and then-proposed-intervenor Scott filed demurrers to the initial complaint, raising challenges to the circuit court’s subject matter jurisdiction and asking that the case be dismissed. *See* R. 114–118 (demurrer of the legislative clerks); R. 90–108 (demurrer of then-proposed-intervenor Scott). On the same day, plaintiffs filed a motion for leave to amend and file an amended complaint. R. 119–157.

The circuit court held a hearing on December 12, 2025, to consider the motion for leave to amend, as well as the motion to intervene and objections to venue raised by the legislative clerks and by Scott. As set forth in its order following the hearing, the circuit court granted plaintiffs’ motion for leave to amend, overruled the objections and denied the motions as to venue raised by the

legislative clerks and then-proposed-intervenor Scott, and granted the motion to intervene as to Scott.⁷

On December 17, 2025, even though plaintiffs had withdrawn their initial request for preliminary injunction, they filed a second “emergency motion for preliminary injunction.” R. 276–296. Even though the circuit court denied plaintiffs’ first motion for TRO, R. 41–42, on January 7, 2026, before the second motion for preliminary injunction could be heard, plaintiffs filed a second “emergency motion for temporary restraining order.” R. 353–361. On January 12, 2026, intervenor Scott and the legislative clerks filed responses in opposition to plaintiffs’ second emergency motion for TRO, R. 427–449 (Scott’s response in opposition); R. 475–480 (the legislative clerks’ response in opposition), and the legislative clerks also filed a plea of absolute legislative immunity, R. 453–461. In a written order entered January 13, 2026, the circuit court denied this second emergency motion for TRO. In strikingly similar language to that of the Richmond circuit court in the *Jett v. Nardo* order denying those plaintiffs’ motions for TRO and preliminary injunction, the Tazewell circuit court wrote as follows:

⁷ Scott was joined in the motion to intervene by Scott Surovell, in his official capacity as Majority Leader of the Virginia Senate, and Louise Lucas, in her official capacity as President Pro Tempore of the Virginia Senate. R. 30. While the circuit court granted the motion as to Scott during the December 12, 2025, hearing, the court “held in abeyance” the motion as to Surovell and Lucas “pending resolution of further issues in this civil action.” R. 349. However, the circuit court never ruled on the motions to intervene as to Surovell and Lucas.

Plaintiffs Motion at its core, requests the Court to invade the province of the Legislature prior to the final actions of the Legislature. For well over a century, the courts of the Commonwealth have recognized a bedrock principle that amending the Constitution is a process left exclusively to the sound judgment of the Legislature that proposes amendments and the citizens that ratify or reject them. See *Scott v. James*, 114 Va. 297 (1912). While that process is ongoing, “the courts cannot interfere to stop any of the proceedings.” See *id.* at 304. In the Separation of Power doctrine established by the U.S. Constitution as well as the Constitution of Virginia, the Court’s role in these situations is limited to scrutinizing the Constitutionality of any action of the Legislature . . . at the conclusion of the act, not in the process thereof.

R. 482. The circuit court also ruled that a TRO was not justified because the legislative clerks had not committed, and would not commit, “any wrongdoing by carrying out their respective duties as Clerks and agents of their employer legislators.”⁸ *Id.*

The circuit court held a hearing on plaintiffs’ second motion for preliminary injunction on January 21, 2026, and made clear at the outset of the hearing that no other motions were being heard. R. 1683. The legislative clerks requested the opportunity to argue their plea of legislative immunity, however the circuit court directed that it would take up the second emergency motion for preliminary

⁸ The circuit court also recognized that the case “pose[d] an analogous situation to *Chase v. Senate of Va.*, 539 F. Supp. 3d 562 (E.D. Va. 2021),” with regard to legislative immunity, but neither granted nor denied the legislative clerks’ plea of immunity. R. 481.

injunction without any prejudice to the legislative clerks' plea of immunity. R. 1683–1686.

At the conclusion of the hearing, the circuit court provided for supplemental briefing on the issue of ripeness, to be submitted by January 31, 2026. R. 2015. Moreover, the circuit court informed the parties that following receipt of the parties' briefing, the circuit court would rule no later than February 12, 2026. *Id.* The circuit court took up no other matter during the January 21, 2026, hearing.

On January 27, 2026, without notice to the parties and in violation of the circuit court's own procedural schedule given directly to the parties at the conclusion of the January 21, 2026, hearing, the circuit court issued its ruling disposing of the entire case. R. 596–617. The circuit court provided no notice to the parties that it intended to rule on matters other than the second “emergency motion for preliminary injunction,” at the time the only matter taken up by the circuit court. The circuit court provided no opportunity to the parties to argue the merits of the case before issuing its ruling of January 27, 2026. Additionally, the circuit court entered this order without ruling on a demurrer and a plea of immunity filed by the legislative clerk defendants, and without ruling on a demurrer filed by the intervenor-defendant.

The circuit court made three rulings in its order, as relevant to this appeal. First, the circuit court found that the General Assembly violated its “own rules and

resolutions” by passing additional, superseding procedural resolutions governing the 2024 special session, and concluded that this conduct rendered HJR 6007 void ab initio. R. 597–599. Second, the circuit court found that the October 2025 passage of HJR 6007 during the 2024 special session did not qualify as the first passage for purposes of amending the constitution under Article XII, Section 1 because early voting had already begun in the 2025 general election of members of the House of Delegates. R. 599–600. Third, the circuit court found that the General Assembly failed to comply with Va. Code § 30-13, “which therefore PROHIBITS the proposed amendment from being submitted to the voters for their consideration.” R. 601. The circuit court then issued a “TEMPORARY and PERMANENT INJUNCTION, requiring the Clerk of the Circuit Court of Tazewell County to post the proposed Constitutional Amendment at least ninety (90) days BEFORE the next ensuing election of the members of the House of Delegates election [sic].” *Id.*

In *Koski v. Republican National Committee*, Record No. 260169, 2026 WL 608588 (Mar. 4, 2026), this Court aptly set forth the holdings of the circuit court in this case:

In the first case appealed to this Court, *Scott v. McDougle*, the circuit court entered declaratory judgments on several legal challenges to the proposed constitutional amendment, and those judgments are currently pending review in this Court. In those declaratory judgments, the circuit court held:

- The General Assembly violated its own rules by improperly expanding the scope and purpose of the 2024 Special Session to consider and pass the proposed constitutional amendment, and thus, the first passage of the proposed constitutional amendments is void ab initio.
- Even if the General Assembly's first passage of the proposed constitutional amendment on October 31, 2025, were valid, no “next general election of members of the House of Delegates,” *see* Va. Const. art. XII, § 1, occurred after that first passage because the election began on the first day of early voting on September 19, 2025.
- Even if the General Assembly's first passage of the proposed constitutional amendment were valid and even if “election” is defined narrowly as only Election Day and not the entire period of voting, the General Assembly failed to comply with the statutory notice requirement, *see* Code § 30-13 (requiring the Clerk of the House of Delegates to provide copies of the proposed constitutional amendment to every circuit court clerk to post at the front door of the courthouse at least three months prior to the “next ensuing general election of members of the House of Delegates”).

2026 WL 608588, at *3.

Following the circuit court’s January 27, 2026, order, the legislative clerks and intervenor Scott each filed a notice of appeal to the Court of Appeals of Virginia, R. 618–621 (notice of appeal of the legislative clerks); R. 622–623 (notice of appeal of intervenor Scott), as well as motions to stay the order in the circuit court, R. 624–634 (emergency motion to stay of the legislative clerks); R. 635–887 (emergency motion to stay of intervenor Scott), and in the Court of

Appeals, R. 970–984 (emergency motion to stay of the legislative clerks); R. 1083–1418 (emergency motion to stay of the legislative clerks). On February 4, 2026, the Court of Appeals filed a motion in this Court, requesting that this Court certify this action for review under Va. Code § 17.1-409(B)(1). R. 965–968. The Court of Appeals stated that this case “present[s] questions ‘of such imperative public importance as to justify the deviation from normal appellate practice and to require prompt decision in the Supreme Court.’” R. 966. On February 13, 2026, this Court granted the Court of Appeals’ motion and awarded this appeal. R. 1673–1676. This Court further set a briefing schedule and denied the motions to stay filed by the legislative clerks and intervenor Scott, stating further that “the denial of the motions to stay has no effect on the referendum scheduled for April 21, 2026” R. 1676.

II. Assignments of Error

- The circuit court erred by holding that the General Assembly violated its own rules by improperly expanding the scope and purpose of the 2024 Special Session to consider and pass the proposed constitutional amendment, and thus, the first passage of the proposed constitutional amendment is void ab initio. R. 626; R. 937–938; R. 1665; R. 645–647.⁹

⁹ By ruling prior to the date by which the circuit court had invited supplemental briefing, and prior to consideration of the demurrers respectively submitted by the legislative clerks and intervenor Scott, as well as prior to consideration of the clerks’ plea of immunity, the circuit court prevented real-time preservation of objections to the January 27, 2026, order. Nevertheless, the legislative clerks and intervenor Scott each raised specific objections to the circuit court’s January 27, 2026, order in pleadings filed on February 2, 2026. R. 936–939; R. 940–947. The legislative clerks expressly “adopt[ed] in full intervenor-defendant Don Scott’s

- The circuit court erred by holding that even if the General Assembly’s first passage of the proposed constitutional amendment on October 31, 2025, were valid, no “next general election of members of the House of Delegates,” *see* Va. Const. art. XII, § 1, occurred after that first passage because the election began on the first day of early voting on September 19, 2025. R. 937–938; R. 1665; R. 647–649.
- The circuit court erred by holding that even if the General Assembly’s first passage of the proposed constitutional amendment were valid and even if “election” is defined narrowly as only Election Day and not the entire period of voting, the General Assembly failed to comply with the statutory notice requirement, *see* Code § 30-13 (requiring the Clerk of the House of Delegates to provide copies of the proposed constitutional amendment to every circuit court clerk to post at the front door of the courthouse at least three months prior to the “next ensuing general election of members of the House of Delegates”). R. 929–934; R. 937–938; R. 1665; R. 649–653.
- The circuit court erred by entering final judgment, including declaratory judgment and permanent injunctive relief against the legislative clerks, while the legislative process remained ongoing, in violation of separation of powers and ripeness principles as well as immunity principles, without notice, prior to a court-imposed briefing deadline, and while demurrers and a plea of immunity remained pending. R. 630–631; R. 937–938; R. 625–626; R. 937–938.

response in opposition to plaintiffs’ motion for final judgment and renewed emergency motion to stay,” R. 936, and intervenor Scott expressly “join[ed] in Legislative Clerk Defendants’ Response in Opposition to Plaintiffs’ Motion for Final Judgment and Renewed Motion to Stay,” R. 941. Accordingly, for purposes of the assignments of error, pursuant to having expressly adopted the other’s objections and preservations, both the legislative clerks and intervenor Scott may rely on the objections raised by the other in these pleadings. *See Linnon v. Commonwealth*, 287 Va. 92, 102, 752 S.E.2d 822, 828 (2014).

III. Argument

A. The circuit court erred by holding that the General Assembly violated its own rules by improperly expanding the scope and purpose of the 2024 Special Session to consider and pass the proposed constitutional amendment, and thus, the first passage of the proposed constitutional amendment is void ab initio.

“*The legislative power of the Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and a House of Delegates.*” Va. Const. art. IV, § 1 (emphasis added). As this Court has written, the “General Assembly’s legislative powers are ‘without limit,’ restricted only by express or necessarily implied prohibitions arising from the Constitution of Virginia or the United States Constitution.” *Elizabeth River Crossings OpCo, LLC v. Meeks*, 286 Va. 286, 311, 749 S.E.2d 176, 188 (2013) (quoting *Marshall v. N. Va. Transp. Auth.*, 275 Va. 419, 432, 657 S.E.2d 71, 78 (2008)). The circuit court’s declaration that the proposed constitutional amendment was void ab initio because the General Assembly violated its own rules constitutes reversible error in two respects: first, the circuit court’s decision improperly usurped the legislative power of the Commonwealth, which is vested solely in the General Assembly and includes the power to “settle its rules of procedure.” Va. Const. art. IV, § 7. Second, from the outset of the 2024 special session, the General Assembly explicitly provided itself the authority to amend or supersede the governing procedural resolution.

i. Standard of Review

The circuit court’s holding that the General Assembly improperly expanded the scope of the 2024 special session, and that the passage of the proposed constitutional amendment during the 2024 special session is thus void ab initio, presents questions of law, including issues of constitutional interpretation, all of which is reviewed de novo. *See Walker v. Commonwealth*, 302 Va. 304, 314, 887 S.E.2d 544, 549 (2023) (stating that questions of law, including a circuit court’s interpretation of the Constitution of Virginia, are subject to de novo review) (first citing *Ashland, LLC v. Virginia-American Water Co.*, 301 Va. 362, 368, 878 S.E.2d 378, 381 (2022); and then citing *Montgomery Cnty. v. Va. Dep’t of Rail & Pub. Transp.*, 282 Va. 422, 435, 719 S.E.2d 294, 300 (2011)); *see also City of Danville v. Garrett*, 294 Va. 36, 40, 803 S.E.2d 326, 328 (2017) (“This Court also reviews de novo the application of a statute to the undisputed, stipulated facts in a declaratory judgment action.” (citing *Bd. of Supervisors v. Windmill Meadows, LLC*, 287 Va. 170, 174–75, 752 S.E.2d 837, 839–40 (2014))).

ii. The legislative power of the Commonwealth is vested solely in the General Assembly.

Article IV, Section 1 of the Constitution of Virginia vests the whole of the “legislative power of the Commonwealth . . . in a General Assembly, which shall consist of a Senate and House of Delegates.” Va. Const. art. IV, § 1. This

legislative power includes the prerogative to “settle its rules of procedure,” Va. Const. art. IV, § 7, and the “authority of the General Assembly shall extend to all subjects of legislation” not forbidden or restricted by specific terms of the Constitution, Va. Const. art. IV, § 14. As this Court has written:

Established principles govern our determination whether the General Assembly has adhered to the Constitution in exercising its legislative power. . . . Every law enacted by the General Assembly carries a strong presumption of validity, and courts are concerned only with the issue whether a legislative enactment has been rendered according to, and within, constitutional requirements. *City of Newport News v. Elizabeth City County*, 189 Va. 825, 839, 55 S.E.2d 56, 64 (1949). *The separate question regarding the wisdom and the propriety of a statute are matters within the province of the legislature. Id.* at 831, 55 S.E.2d at 60.

Marshall, 275 Va. at 427, 657 S.E.2d at 75 (emphasis added).

The circuit court’s holding that the General Assembly improperly expanded the scope of the 2024 special session inappropriately questions the legislative power of the General Assembly. Virginia’s Constitution contains no limitation on the matters to be brought before the General Assembly in special session. *See* Va. Const. art. IV, § 6. The Constitution speaks only to the manner in which a special session may be convened, either through the Governor’s call “when, in his opinion, the interest of the Commonwealth may require,” or “upon the application of two-thirds of the members elected to each house.” *Id.* Here, the 2024 special session was triggered by the latter option in passing HJR 428. R. 2115. In the absence of a

specific prohibition limiting the General Assembly’s power to define the scope of the special session, and in consideration of the absolute vesting of legislative power in the General Assembly, *see* Va. Const. art. IV, § 1, the circuit court’s holding that the General Assembly improperly expanded the scope of the special session constitutes reversible error. *See* Va. Const. art. IV, § 14 (“[A] specific grant of authority in this Constitution upon a subject shall not work a restriction of [the General Assembly’s] authority upon the same or any other subject.”).

In its January 27, 2026, order, the circuit court wrote that the “legislators required to reach the two-thirds super majority in order to demand a Special Session under Article IV, Section 6, have the right to depend on the accompanying rule which limit the subject matter of the items they agree can be considered in the Special Session.” R. 598. The circuit court introduced this reliance, quasi-contract theory *sua sponte*, and without citation to supporting legal authority. This theory finds no basis in the Constitution of Virginia, and, wrongfully superimposes a contractual theory of analysis onto a singularly vested constitutional legislative authority. The Constitution of Virginia vests the General Assembly with the sole authority to legislate; no theory of contract is applicable, nor can any undermine this prerogative.

iii. The General Assembly did not violate its own rules.

The circuit court misread the procedural resolutions which governed the 2024 special session. In its January 27, 2026, order, the circuit court took issue with the General Assembly’s passage of HJR 6004 and 6006 “without unanimous consent OR a super majority.” R. 597. The premise embraced by the circuit court—that HJR 6001 required such votes—is mistaken. In relevant part, HJR 6001 stated as follows:

RESOLVED by the House of Delegates, the Senate concurring, That during the 2024 Special Session 1 of the General Assembly, summoned by proclamation of the Governor on Wednesday, April 17, 2024 to begin Monday, May 13, 2024 at 12:00 PM, pursuant to the provisions of HJR 428, 2024 Regular Session, except with unanimous consent of the house in which the legislation is offered, no bill, joint resolution, or resolution shall be offered or considered in either house during the Special Session other than (i) Budget Bill(s) and revenue bills; (ii) single-house commending and memorial resolutions; (iii) *bills, joint resolutions, or resolutions affecting the rules of procedure or schedule of business of the General Assembly, either of its houses, or any of its committees;* (iv) the election of judges and other officials subject to the election of the General Assembly; or (v) appointments subject to the confirmation of the General Assembly

R. 2118 (emphasis added). HJR 6001 specifically provided for the consideration of joint resolutions “affecting the rules of procedure or schedule of business of the General Assembly” in subsection (iii). *Id.* This provision provides explicit authority to amend the business to be considered by the legislature during the 2024

special session by majority vote. Thus, by express provision, the legislature needed only a majority vote to modify those matters which could be considered during the special session. Moreover, this provision, as part of HJR 6001, passed unanimously in the House and 39-1 in the Senate, with Senators McDougle and Stanley and Delegate Kilgore each voting yea. *See* <https://lis.virginia.gov/vote-details/HJ6001/20242/HV0014> (House vote); <https://lis.virginia.gov/vote-details/HJ6001/20242/SV0005> (Senate vote).

The circuit court's ruling in this regard is further flawed because the subsequent procedural resolutions explicitly supersede the previous procedural resolutions. HJR 6004 states that "notwithstanding the limitations established by House Joint Resolution No. 6001," the General Assembly could consider impacts of federal layoffs and related activities on the Commonwealth. R. 2120. Senators McDougle and Stanley voted in favor of HJR 6004, R. 2200, while Delegate Kilgore voted nay, *see* lis.virginia.gov/vote-details/HJ6004/20242/2429265. The same is true for HJR 6006, which stated that "notwithstanding the limitations established by House Joint Resolution No. 6001 and House Joint Resolution No. 6004," the General Assembly could consider a joint resolution proposing a constitutional amendment related to reapportionment or redistricting. R. 2122. Moreover, both HJR 6004 and HJR 6006 retained the provision providing for consideration of joint resolutions "affecting the rules of procedure or schedule of

business of the General Assembly.” R. 2120 (as to HJR 6004); R. 2122 (as to HJR 6006).

A close reading of the plain language of the procedural resolutions at issue in this case debunks the circuit court’s conclusion that the General Assembly violated its own “rules and resolutions.” R. 598. Instead, the clear, step-by-step process by which the General Assembly executed its singular constitutional legislative authority in its consideration of resolutions regarding its rules of procedure and schedule of business supports the procedural soundness of the 2024 special session and the legislature’s ultimate consideration of the proposed constitutional amendment.

In addition, the circuit court’s January 27, 2026, order found that the special session was valid “up to and including the October 31, 2025 meeting of said Special Session.” R. 596. The circuit court also held that “the 2024 Special Session was a valid special session up to and including all meetings until January 13, 2026.” R. 600. HJR 6006 passed the House on October 27, 2025, and the Senate on October 29, 2025. R. 2123. If the 2024 special session was valid until October 31, 2025, or until January 13, 2026, as the circuit court held, then the passage of HJR 6006 was valid.

It is not the role of the courts to nitpick the procedural rules and conduct of the General Assembly. The legislative power of the Commonwealth resides in the

General Assembly, Va. Const. art. IV, § 1, which includes the authority to settle its own rules of procedure, Va. Const. art. IV, § 7. Accordingly, the circuit court’s ruling that the General Assembly violated its own rules by improperly expanding the scope and purpose of the 2024 Special Session to consider and pass the proposed constitutional amendment, and thus, that the first passage of the proposed constitutional amendment is void ab initio, is in error.

B. The circuit court erred by holding that even if the General Assembly’s first passage of the proposed constitutional amendment on October 31, 2025, were valid, no “next general election of members of the House of Delegates,” see Va. Const. art. XII, § 1, occurred after that first passage because the election began on the first day of early voting on September 19, 2025.

Article XII, Section 1 of the Constitution of Virginia provides the mechanism by which the Constitution is amended. The proposed constitutional amendment complied with these requirements, including the requirement that the proposal pass both houses of the General Assembly twice, with an intervening general election of members of the House of Delegates. Moreover, the Constitution itself directs and defines what is a general election of members of the House of Delegates: members of the House “shall be elected biennially by the voters of the several house districts on the Tuesday succeeding the first Monday in November.” Va. Const. art. IV, § 3. Virginia statutory authority is expressly consistent: a “general election” is defined as, in relevant part, “an election held in the

Commonwealth on the Tuesday after the first Monday in November” Va. Code § 24.2-101. The plain language of these constitutional and statutory definitions demonstrates that the circuit court’s ruling that no general election of members of the House occurred after the first passage of the proposed constitutional amendment, for purposes of Article XII, Section 1 of the Constitution of Virginia, was in error.

i. Standard of Review

The circuit court’s holding raises issues of constitutional and statutory interpretation, which are reviewed de novo. *See Walker*, 302 Va. at 314, 887 S.E.2d at 549 (stating that questions of law, including a circuit court’s interpretation of the Constitution of Virginia, are subject to de novo review) (first citing *Ashland, LLC*, 301 Va. at 368, 878 S.E.2d at 381; and then citing *Montgomery Cnty.*, 282 Va. at 435, 719 S.E.2d at 300); *see also City of Danville*, 294 Va. at 40, 803 S.E.2d at 328.

ii. The circuit court’s holding violates the constitutional and statutory definition of next general election of members of the House of Delegates under Virginia law.

The circuit court’s holding that the passage of the proposed constitutional amendment during the 2024 special session did not constitute the first passage of the amendment for purposes of Article XII, Section 1 of the Virginia Constitution

because the provision passed in October 2025 after early voting had begun on September 19, 2025, violates fundamental principles of constitutional and statutory interpretation. *See Miller v. Ayres*, 211 Va. 69, 76, 175 S.E2d 253, 258 (1970) (“We are bound by the meaning of the language used in the Virginia Constitution and by the statutes of this state.”); *Blount v. Clarke*, 291 Va. 198, 205, 782 S.E.2d 152, 155 (2016) (“If there are ‘no doubtful or ambiguous words or terms used, we are limited to the language of the section [of the Virginia Constitution] itself and are not at liberty to search for meaning, intent or purpose beyond the instrument.’” (quoting *Harrison v. Day*, 200 Va. 439, 448, 106 S.E.2d 636, 644 (1959))); *see also Sch. Bd. of Chesterfield Cnty. V. Sch. Bd. of City of Richmond*, 219 Va. 244, 250–51, 247 S.E.2d 380, 384 (1978) (“In construing a statute, the legislative definition should prevail. . . . Where a statute is plain and unambiguous there is no room for construction by the court and the plain meaning and intent of the statute will be given to it. . . . When a statute is clear and unequivocal, general rules for the construction of statutes of doubtful meaning have no application.” (internal citations omitted)).

The issue raised in the circuit court’s holding and the issue before this Court is the definition of “next general election of members of the House of Delegates” as the term is used in Article XII, Section 1 of the Constitution of Virginia. In an

earlier section of the same article of the Constitution, the clear definition is provided:

The House of Delegates shall consist of not more than one hundred and not less than ninety members, *who shall be elected biennially by the voters of the several house districts on the Tuesday succeeding the first Monday in November.*

Va. Const. art. IV, § 3 (emphasis added). This provision provides constitutional source and clarity to the definition of general election of members of the House of Delegates, and Virginia law instructs that in the event of such clarity, this definition prevails. *Blount*, 291 Va. at 205, 782 S.E.2d at 155. Article IV, Section 3 defines “general election of members of the House of Delegates,” as does Va. Code § 24.2-101. Whether in consideration of the development of early voting or other potential examples of the means and manner of elections, the circuit court had neither constitutional nor statutory authority to change the definition of general election.

Applying the plain meaning of “next general election of members of the House of Delegates” to this case demonstrates that General Assembly has complied with Article XII, Section 1 of the Constitution of Virginia. First, during the 2024 special session, the proposed constitutional amendment passed the House on October 29, 2025, and the Senate on October 31, 2025. R. 2125–2126. On October 31, 2025, for purposes of Article XII, Section 1, the “next general election

of members of the House of Delegates” was November 4, 2025. *See* Va. Const. art. IV, § 3; Va. Code § 24.2-101. Then, following that election, the measure again passed the General Assembly, this time during the 2026 regular session. *See* <https://lis.virginia.gov/bill-details/20261/HJ4>.

In the face of constitutional and statutory language that expressly defines next general election, the circuit court erred by judicially changing such definition. In doing so, the circuit court violated established principles of constitutional and statutory interpretation, and the circuit court’s contrary holding that “[t]here is no rational conclusion except that the ELECTION began on the first day of voting (September 19, 2025) and ended on November 4, 2025,” R. 599, must be reversed.

C. The circuit court erred by holding that even if the General Assembly’s first passage of the proposed constitutional amendment were valid and even if “election” is defined narrowly as only Election Day and not the entire period of voting, the General Assembly failed to comply with the statutory notice requirement, *see* Code § 30-13 (requiring the Clerk of the House of Delegates to provide copies of the proposed constitutional amendment to every circuit court clerk to post at the front door of the courthouse at least three months prior to the “next ensuing general election of members of the House of Delegates”).

i. Standard of Review

The circuit court’s holding raises issues of constitutional and statutory interpretation, which are reviewed de novo. *See Walker*, 302 Va. at 314, 887 S.E.2d at 549 (stating that questions of law, including a circuit court’s

interpretation of the Constitution of Virginia, are subject to de novo review) (first citing *Ashland, LLC*, 301 Va. at 368, 878 S.E.2d at 381; and then citing *Montgomery Cnty.*, 282 Va. at 435, 719 S.E.2d at 300); *see also City of Danville*, 294 Va. at 40, 803 S.E.2d at 328.

- ii. The circuit court erred by elevating a non-applicable statutory posting provision to constitutional significance.

Article XII, § 1 of the Virginia Constitution states in pertinent part as follows:

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.

Va. Const., Art. XII, § 1.

Plainly missing from Art. XII, § 1 is *any* requirement that the General Assembly – or anyone else – post or otherwise publish proposed constitutional

amendments, before or after the required intervening House of Delegates election. That was by design. When the Constitution of Virginia was revised in 1971, the drafters purposely “omit[ted] the requirement [in the 1902 Constitution] ... that the first General Assembly to approve an amendment must publish it ninety days before the next election for the House of Delegates.” *Proceedings and Debates of the House of Delegates Pertaining to Amendment of the Constitution, extra session 1969, regular session 1970*, at 496. The drafters knowingly “str[uck] out any reference to publication,” *id.*, and replaced the then-existing three-month publication requirement with a constitutional 90-day waiting period after the second legislative passage of a proposed amendment before the amendment can be submitted to Virginia voters. *Id.*

The replacement of the 1902 Constitution’s three-month publication requirement with the current Constitution’s 90-day waiting period in Art. XII, § 1 means that any non-compliance with the publication provisions of § 30-13 cannot serve as a basis for challenging the legitimacy of a constitutional amendment. As Virginia constitutional scholar A.E. Dick Howard has written:

Section 1 does not require publication of amendments, only a delay of ninety days. Section 196 of the 1902 Constitution required that after an Assembly's first approval of a proposed amendment, the amendment must be "published" for three months before the next election of delegates. When at the 1969 session the Assembly dropped the publication requirement and instead inserted into section I the ninety-day delay, it avoided what

otherwise could have been a troublesome problem of what the law means by 'publication.' Since section 1 does not require publication, an amendment cannot be challenged on the ground that publication was insufficient.

A.E. Dick Howard, *Commentaries on the Constitution of Virginia*, at 1175 (1974).

By its ruling, the circuit court in this matter conflates the controlling constitutional provision of Article XII, Section 1, which sets forth the sole constitutional time-frame of notice of proposed constitutional amendments, with the ministerial statutory provisions of § 30-13, which, by its own terms, is not even activated until the end of the regular or special session within which the constitutional amendment is proposed. As applied to this case, HJR 6007 was passed initially by the House and Senate on October 29, 2025, and October 31, 2025, respectively. At that time, the “next general election of members of the House of Delegates” for purposes of Article XII, Section 1 was November 4, 2025. By contrast, the special session did not conclude until January 14, 2026, and § 30-13, again, by its own express terms, was not triggered until that date of conclusion. The timing and actions of the General Assembly with regard to the proposed constitutional amendment was pursuant to express constitutional authority under Article XII, Section 1. That the timing of such constitutionally authorized action did not allow for application of the non-constitutional, statutory posting provisions of § 30-13 does not render the proposed constitutional amendment void ab initio, as the circuit court erroneously ruled in its January 27, 2026, order.

The circuit court explicitly stated that § 30-13 “isn’t constitutional.” R. 1742. However, the court erroneously gave constitutional status to § 30-13’s ministerial publication and posting requirements. In fact, the statute’s provisions did not apply and the General Assembly was not required to follow them.

The trial court’s characterization of § 30-13’s publication and posting provisions as the General Assembly’s “prescrib[ing]” the “manner” in which proposed amendments are submitted to Virginia voters after final legislative passage, also misses the mark. “Manner” as used in Article XII, Section 1 simply cannot be stretched to reach procedures to be followed before the required legislative approvals have occurred.

There is one constitutional time limit for constitutional amendments in Virginia – the 90-day waiting period after the second legislative approval of the amendment. The trial court erred by elevating to constitutional equality this statutory provision which, by its own terms, was not applicable to this context. Additionally, when the trial court ruled on January 27, there was not even any established noncompliance with the ministerial directives of § 30-13, which are not triggered until the “end of the session of the General Assembly” in which an amendment is proposed.

Moreover, the actions of the House clerk pursuant to § 30-13 are not triggered until end of the session in which the constitutional amendment was

proposed. And the Tazewell Circuit Court clerk had no ability or responsibility under the statute to post anything until she received it.

Further, on February 6, 2026, the Governor Spanberger signed H.D. Bill 1384 into law. H.D. Bill 1384 repealed § 30-13 in accordance with the October 2025 bipartisan recommendation of the Virginia Code Commission, which recommended repeal of § 30-13 because it was outdated and “not reflective of the modern constitutional amendment process.” R. 1413. The repeal is expressly made retroactive to 1971, when the Constitution was amended to remove the publication requirement of the 1902 Constitution that the statutory predecessors of § 30-13 had implemented. An express statement of intended retroactive application is one of the ways the General Assembly can give retroactive effect to a statute.

Montgomery v. Commonwealth, 75 Va. App. 182, 190 (2022). Respectfully, ministerial, non-constitutional provisions in an expressly retroactively repealed statute cannot be the basis for delegitimizing a constitutional amendment.

D. The circuit court erred by entering final judgment, including declaratory judgment and permanent injunctive relief against the legislative clerks, while the legislative process remained ongoing, in violation of separation of powers and ripeness principles as well as immunity principles, without notice, prior to a court-imposed briefing deadline, and while demurrers and a plea of immunity remained pending.

The circuit court’s decision on January 27, 2026, violated the constitutional doctrines of the separation of powers and legislative immunity. At the time the

circuit court issued its ruling, the legislative clerks and intervenor Scott had filed demurrers challenging the court's subject matter jurisdiction pursuant to *Scott v. James*, and the legislative clerks had also filed a plea of absolute legislative immunity. The circuit court issued its January 27, 2026, final ruling before its self-imposed supplemental briefing deadline, without addressing any of these responsive pleadings, and without notice to the legislative clerks and intervenor Scott. Thus, the circuit court erroneously ignored these basic legitimate challenges to the circuit court's subject matter jurisdiction.

During the entirety of this case, the constitutional amendment process has been, and remains, ongoing, and therefore this case was not and is not ripe for adjudication. *See Scott v. James*, 114 Va. 297, 76 S.E. 283 (1912); *see also Jett v. Nardo*, Case No. CL25-5352 (Richmond Cir. Ct. Nov. 5, 2025) (citing *Scott*, 114 Va. at 304, 76 S.E. at 285); *Fund for Animals, Inc. v. Va. State Bd. of Elections*, 53 Va. Cir. 405, 2000 WL 1618006, at *3 (Richmond Cir. Ct. 2000) (citing *Scott*, 114 Va. at 304, 76 S.E. at 285); *Marshall v. Warner*, 64 Va. Cir. 389, 2004 WL 963528, at *3 (Richmond Cir. Ct. 2004) (citing *Scott*, 114 Va. at 304, 76 S.E. at 285); *McEachin v. Bolling*, 84 Va. Cir. 76, 2011 WL 10909615, at *3 (Richmond Cir. Ct. 2011) (citing *Scott*, 114 Va. at 304, 76 S.E. at 285). Moreover, the legislative clerks are absolutely legislatively immune, not just from judgment, but

from suit. *See Edwards v. Vesilind*, 292 Va. 510, 525, 790 S.E.2d 469, 478 (2016) (“[W]hen it applies, legislative privilege confers immunity from . . . civil suit.”).

i. Standard of Review

“A challenge to subject matter jurisdiction presents a question of law that we review de novo.” *Gray v. Binder*, 294 Va. 268, 275, 805 S.E.2d 768, 771 (2017) (citing *Glasser & Glasser, PLC v. Jack Bays, Inc.*, 285 Va. 358, 369, 741 S.E.2d 599, 604 (2013)).

ii. The circuit court lacked subject matter jurisdiction over this matter because the constitutional amendment process was, and still remains, ongoing.

The circuit court did not address substantial challenges to its subject matter jurisdiction before issuing its January 27, 2026, order, instead rendering declaratory judgment and injunctive relief on the entirety of the case. R. 596–601. But the fact that the proposed constitutional amendment has never been enacted into law has rendered this action nonjusticiable since its initial filing. Therefore, this case is not a case of actual controversy, and the circuit court’s January 27, 2026, order constitutes an advisory opinion prohibited under Virginia law. *See Rebh v. Cnty. Bd. of Arlington Cnty. Va.*, 303 Va. 379, 380, 908 S.E.2d 439, 441 (2024) (“In Virginia, ‘the courts are not constituted to render advisory opinions, to decide moot questions or to answer inquiries which are merely speculative.’”

(quoting *Commonwealth v. Harley*, 256 Va. 216, 219–20, 504 S.E.2d 852, 854 (1998)); *City of Fairfax v. Shanklin*, 205 Va. 227, 230, 135 S.E.2d 773, 775–76 (1964) (“[T]he courts are not constituted, and the declaratory judgment statute was not intended to vest them with authority, to render advisory opinions, to decide moot questions or to answer inquiries which are merely speculative.”); *Smith v. Allen Creek Assocs., LLC*, 85 Va. App. 611, 623–24, 918 S.E.2d 783, 789 (2025) (“[A]n actual controversy is a prerequisite to a court having authority. . . . This prerequisite can be referred to as the requirement of a justiciable controversy. . . . Without an actual controversy, any opinion rendered by the court is advisory, which the court lacks jurisdiction to render.” (internal citations omitted)).

While the circuit court should have considered these challenges to its subject matter jurisdiction before issuing its January 27, 2026, order, this Court may do so now. Subject matter jurisdiction is the foundation of the judiciary’s power to act and may be raised at any time, before any court. *See Andrews v. Richmond Redevelopment & Hous. Auth.*, 292 Va. 79, 85, 787 S.E.2d 96, 99 (2016) (“[L]ack of subject matter jurisdiction may be raised at any time, in any manner, before any court, or by the court itself.” (quoting *Nelson v. Warden of the Keen Mt. Corr. Ctr.*, 262 Va. 276, 281, 552 S.E.2d 73, 75 (2001))).

This Court recently discussed *Scott* in the March 4, 2026, *Koski* ruling:

For over a century, we have recognized the ‘well settled principle regulating the jurisdiction of courts of equity that

such courts will not, with few exceptions, enjoin the holding of an election, or interfere, by its process of injunction, with the holding of an election.’ *Scott v. James*, 114 Va. 297, 304–05, 76 S.E. 283 (1912). This principle does not mean that judicial review of allegedly unlawful elections ceases to exist. It only means that, as a prudential matter, Virginia courts generally should not prematurely enjoin an upcoming election. As we explained in *Scott*:

[T]he amending of the Constitution is the making of a permanent law for the people of the State by which they are to be governed in the future, and the courts cannot interfere to stop any of the proceedings while this permanent law is in process of being made. If the amendment is not adopted, of course, no question will ever come before the court. If, upon completion of the proceedings, the validity of the amendment is assailed on the ground that the several provisions of the Constitution have not been complied with, then the courts can pass upon the validity of the amendment.

2026 WL 608588, at *2.

In the *Koski* ruling, this Court emphasized that “[i]t cannot be overstated that *Scott* focused only on the timing of the exercise of judicial injunctive remedies—not on a court’s constitutional power of judicial review.” *Id.* at *3. The Court further stated that “[i]f the electorate approves the proposed amendment, we then must exercise our constitutional duty to review lower courts’ declaratory judgments¹ before us on appeal and address de novo what equitable remedies, if any, are appropriate.” *Id.* (internal footnote omitted). Distinguishing between the

injunction at issue in *Scott* and the declaratory judgment at issue in this case, the Court further stated that “*Scott*’s limitation on enjoining the holding of an election does not foreclose a court’s duty to issue a declaratory judgment regarding the validity of that injunction.” *Id.* at *3, n.4.

Applying *Koski* and the Court’s discussion of *Scott* therein, the circuit court in this case clearly lacked subject matter jurisdiction to issue an injunction against the Clerk of the Tazewell County Circuit Court before the proposed constitutional amendment was enacted into law. *See Scott*, 114 Va. at 304, 76 S.E. at 285 (“I do not think that a court of equity, nor any tribunal of the judiciary department of government, is authorized to interfere with the process of legislation.”). Critically, the legislative clerks respectfully submit that the circuit court lacked jurisdiction to issue declaratory judgment in this matter.

The Declaratory Judgment Act, codified at Va. Code § 8.01-184, states as follows:

In cases of actual controversy, circuit courts within the scope of their respective jurisdictions shall have power to make binding adjudications of right, whether or not consequential relief is, or at the time could be, claimed and no action or proceeding shall be open to objection on the ground that a judgment order or decree merely declaratory of right is prayed for.

“A plaintiff has standing to institute a declaratory judgment proceeding if it has a ‘justiciable interest’ in the subject matter of the proceeding, either in its own right

or in a representative capacity. In order to have a ‘justiciable interest’ in a proceeding, the plaintiff must demonstrate an actual controversy between the plaintiff and the defendant,” *Lafferty v. Sch. Bd. of Fairfax Cnty.*, 293 Va. 354, 360, 798 S.E.2d 164, 167 (2017) (quoting *W.S. Carnes, Inc. v. Bd. of Supervisors*, 252 Va. 377, 383, 478 S.E.2d 295, 299 (1996)), involving “specific adverse claims, based upon present rather than future or speculative facts.” *Daniels v. Mobley*, 285 Va. 402, 408, 737 S.E.2d 895, 898 (2013) (quoting *City of Fairfax v. Shanklin*, 205 Va. 227, 229, 135 S.E.2d 773, 775 (1964)).

Here, the circuit court entered judgment declaring the proposed constitutional amendment void ab initio even though the voters of Virginia had not decided the matter, as is their ultimate right under Article XII, Section 1 of the Constitution of Virginia. Nor will the measure be put to the public until the April 21, 2026, referendum. As explained in Sections III.A.–C., *supra*, the circuit court’s declaratory judgment, and the holdings of the circuit court in reaching this judgment, are substantively incorrect, and this Court should reverse the circuit court if this Court reaches the merits of this appeal. Additionally, however, the circuit court lacked subject matter jurisdiction to issue declaratory judgment in the first place because the validity of the proposed constitutional amendment was based on “future or speculative facts.” *Daniels*, 285 Va. at 408, 737 S.E.2d at 898. Neither courts nor litigants are in the business of predicting elections, and the

results of the upcoming referendum remain unclear. This Court, in the *Koski* ruling, recognized that the referendum could go either way:

“If the electorate rejects the proposed amendment, any pending legal proceedings will be dismissed as moot. *See Scott*, 114 Va. at 304, 76 S.E. 283. If the electorate approves the proposed amendment, we then must exercise our constitutional duty to review lower courts’ declaratory judgments[□] before us on appeal and address de novo what equitable remedies, if any, are appropriate.”

2026 WL 608588, at *3 (internal footnote omitted).

However, declaratory judgment is not valid where real questions exist as to whether the rights at issue will ever materialize. *Daniels*, 285 Va. at 408, 737 S.E.2d at 898. Accordingly, the circuit court lacked subject matter jurisdiction as there was no case of actual controversy, and further lacked authority under the Declaratory Judgment Act to enter declaratory judgment in this matter. *See id.* at 408, 737 S.E.2d at 899 (“It is beyond question that this Court may consider, *sua sponte*, whether a requisite justiciable controversy exists under the declaratory judgment statute, as the declaratory judgment statute was not intended to vest the courts with authority to render advisory opinions.”).

This Court has explained that a “judgment on the merits made without subject matter jurisdiction is null and void.” *Pure Presbyterian Church of Wash. v. Grace of God Presbyterian Church*, 296 Va. 42, 50, 817 S.E.2d 547, 552 (2018) (quoting *Morrison v. Bestler*, 239 Va. 166, 170, 387 S.E.2d 753, 755–56 (1990)).

“A void judgment is in legal effect no judgment. By it no rights are divested and from it no rights are obtained. All claims flowing out of it are void. It may be attacked in any proceeding by any person whose rights are affected.” *Id.* (quoting *Harris v. Deal*, 189 Va. 675, 686–87, 54 S.E.2d 161, 166 (1949)). Accordingly, if the circuit court lacked subject matter jurisdiction to issue declaratory judgment as well as the injunction, then its order of January 27, 2026, is null and void. “Once a court determines that it lacks subject matter jurisdiction, ‘the only function remaining to the court is that of announcing the fact and dismissing the cause.’” *Id.* (quoting *Ex Parte McCardle*, 74 U.S. (7 Wall.) 506, 514 (1869)).

Accordingly, the legislative clerks further respectfully submit that passage of the proposed constitutional amendment on April 21, 2026, will not vest this Court with subject matter jurisdiction to consider the circuit court’s declaratory judgment. The question for this Court in evaluating whether the circuit court had subject matter jurisdiction hinges on the circumstances present at the time this case was before the circuit court. *See Pure Presbyterian Church of Wash.*, 296 Va. at 50, 817 S.E.2d at 552 (“A defect in subject matter jurisdiction cannot be cured by reissuance of process, passage of time, or pleading amendment.” (quoting *Morrison*, 239 Va. at 170, 387 S.E.2d at 755)). Accordingly, passage of the proposed constitutional amendment on April 21, 2026, will not retroactively imbue the circuit court with subject matter jurisdiction. It follows that if the circuit court

did not have jurisdiction to enter declaratory judgment or issue an injunction at the time it entered its January 27, 2026, order, then this Court does not have jurisdiction to adjudicate this appeal, other than to vacate the circuit court's order and remand this case to the circuit court to be dismissed.

This result is further supported by the nature of the Court's jurisdiction in this case, namely that of appellate jurisdiction as opposed to original jurisdiction. Article VI, Section 1 of the Constitution of Virginia defines the scope of judicial power in the Commonwealth, and states in relevant part as follows:

The Supreme Court shall, by virtue of this Constitution, have original jurisdiction in cases of habeas corpus, mandamus, and prohibition; to consider claims of actual innocence presented by convicted felons in such cases and in such manner as may be provided by the General Assembly; in matters of judicial censure, retirement, and removal under Section 10 of this article; and to answer questions of state law certified by a court of the United States or the highest appellate court of any other state. *All other jurisdiction of the Supreme Court shall be appellate. Subject to such reasonable rules as may be prescribed as to the course of appeals and other procedural matters, the Supreme Court shall, by virtue of this Constitution, have appellate jurisdiction in cases involving the constitutionality of a law under this Constitution or the Constitution of the United States and in cases involving the life or liberty of any person.*

Va. Const. art. VI, § 1 (emphasis added); *see also Kelley v. Stamos*, 285 Va. 68, 75, 737 S.E.2d 218, 221 (2013) (stating that Section 1 of Article VI “by itself confers jurisdiction upon the Supreme Court of Virginia in certain matters,” and vests in

the General Assembly the power to otherwise define the jurisdiction of Virginia courts). This case, which presents questions of constitutional interpretation, statutory interpretation, and subject matter jurisdiction, does not fall into any of the specifically enumerated categories within which this Court has original jurisdiction. Instead, this case falls squarely within this Court's appellate jurisdiction, and thus the circumstances which existed at the time of the circuit court's January 27, 2026, order are determinative. The circuit court lacked subject matter jurisdiction, and the legislative clerks respectfully request that the January 27, 2026, order be vacated and this matter remanded to the circuit court to be dismissed.

- iii. The circuit court erred by entering final judgment without adjudicating the legislative clerks' plea of absolute legislative immunity.

The Court issued the January 27, 2026, order without ruling on the legislative clerks' plea of immunity, despite the circuit court's previous order of January 13, 2026, wherein the circuit court relied on this immunity in denying the second motion for TRO, stating in relevant part:

The Court finds that the current case poses an analogous situation to *Chase v. Senate of Va.*, 539 F. Supp. 3d 562 (E.D. Va. 2021), where the Court therein reasoned that,

“Here, the Court, persuaded by the reasoning in *Rangel and Harwood*, concludes that legislative immunity extends to Schaar. First,

as in Rangel, the Virginia Constitution requires both houses of the General Assembly to maintain a journal of proceedings. Second, as in both Rangel and Harwood, there is no allegation that [*572] Schaar committed any wrongdoing. Rather, her job is to act as the agent of the senators in complying with a facially neutral constitutional provision. *Cf Harwood*, 69 F.3d at 631. On these facts, Schaar is entitled to partake of the legislative immunity that would have been afforded to the state senators.”

Likewise, this Court cannot find that any of these three Clerks have committed, or will commit, any wrongdoing by carrying out their respective duties as Clerks and agents of their employer legislators.

The Court therefore **DENIES** Plaintiffs' Emergency Motion for Temporary Restraining Order.

R. 481–482.

Questions of absolute legislative immunity implicate the Court’s subject matter jurisdiction because the doctrine provides immunity from suit. *See Edwards v. Vesilind*, 292 Va. 510, 525, 790 S.E.2d 469, 478 (2016) (“[W]hen it applies, legislative privilege confers immunity from . . . civil suit.” (citing *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967))). The legislative privilege which shields the legislative clerks in this action is absolute. *Id.* at 525, 790 S.E.2d at 477 (“Once a court determines that legislative privilege attaches, it is absolute in nature.”). The doctrine shields these clerks not just from judgment, but, more fundamentally,

from suit. *See Supreme Court of Virginia v. Consumers Union of U.S., Inc.*, 446 U.S. 719, 733 (1980) (explaining that “a private civil action, whether for an injunction or damages, creates a distraction and forces [legislators] to divert their time, energy, and attention from their legislative tasks to defend the litigation” (brackets in original)). This immunity extends to attempts to subject the legislative clerk defendants to declaratory or injunctive relief. *See id.* at 732–33 (finding that state actors performing legislative functions, like federal actors performing legislative functions, are immune from prospective, injunctive relief in civil actions); *see also Chase*, 539 F. Supp. 3d at 569 (holding that Susan Clarke Schaar, the Clerk of the Virginia Senate, was absolutely legislatively immune with regard to particular clerk duties, including the keeping of the journal of the Senate; the court further expressly held that “this absolute legislative immunity also applies . . . even where the remedy sought is declaratory or injunctive relief.” (citing *Consumers Union of U.S., Inc.*, 446 U.S. at 732)).

The legislative clerks are protected by this immunity because the doctrine shields not only members of the General Assembly, but also certain non-legislators for the performance of legislative functions. In *Edwards*, this Court recognized that non-legislators are shielded by absolute legislative immunity for the performance of legislative functions which, if performed by the legislators themselves, would entitle the legislators to immunity. 292 Va. at 532, 790 S.E.2d at 481 (“The

Supreme Court [of the United States] recognized that application of the privilege to alter egos of the legislators, when performing legislative functions, was vital to a functioning legislative process.” (citing *Gravel v. United States*, 408 U.S. 606, 617 (1972)). This case concerns the clerks’ performance of their official duties, and forces them to defend their constitutionally and statutorily mandated conduct. The legislative privilege exists to shield the legislative clerks from this very sort of prosecution.

In *Chase v. Senate of Virginia*, the court found that Susan Clarke Schaar, the Clerk of the Virginia Senate and one of the legislative clerks in this action, has absolute legislative immunity for the performance of her legislative duties. The court held that Schaar could not be subject to declaratory judgment or an injunction for the performance of her duties as clerk, including keeping a journal of the Senate’s proceedings. 539 F. Supp. 3d at 571–72. Reasoning that “legislative employees in administrative roles can be entitled to legislative immunity,” the court found that Schaar, in keeping the Senate journal, acted “as the agent of the senators in complying with a facially neutral constitutional provision,” and thus was “entitled to partake of the legislative immunity that would have been afforded to the state senators.” *Id.* (citing Va. Const. art. IV, § 10). The Court concluded that it lacked subject matter jurisdiction over the action as it pertained to Schaar and accordingly dismissed the case against her. *Id.* at 572.

This legislative privilege stems from the Speech or Debate Clause of Article IV, Section 9,¹⁰ which itself “‘is derived from’ the similar provision in the federal Speech or Debate Clause found in Article I, Section 6 of the United States Constitution.” *Edwards*, 292 Va. at 522 (quoting *Board of Supervisors v. Davenport & Co.*, 285 Va. 580, 587, 742 S.E.2d 59, 62 (2013)). In *Edwards*, this Court recognized the vital nature of legislative immunity to the proper functioning of our constitutional republic:

The Clause is an integral piece of the separation of powers framework, one of the most central and enduring principles of the Constitution of Virginia. As part of the list of “Immunities of legislators” in Article IV, Section 9, the Clause represents one of the specific and significant bulwarks the Constitution erects to protect the legislature from improper interference by the executive branch and the judiciary. Legislative privilege necessarily must be robust in order to preserve constitutional separation of powers and prevent interference with the legislative process.

¹⁰ Article IV, Section 9 states in full as follows:

Members of the General Assembly shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest during the sessions of their respective houses; and *for any speech or debate in either house shall not be questioned in any other place*. They shall not be subject to arrest under any civil process during the sessions of the General Assembly, or during the fifteen days before the beginning or after the ending of any session.

Va. Const. art. IV, § 9 (emphasis added).

292 Va. at 524, 790 S.E.2d at 477. This Court emphasized that the “very nature of the Clause concerns the separation of powers and the protection of legislative processes. *At its essence, it prevents intrusion into the legislative process from the executive branch or from a ‘possibly hostile judiciary.’*” *Id.* at 525, 790 S.E.2d at 478 (emphasis added) (quoting *Gravel*, 408 U.S. at 617).

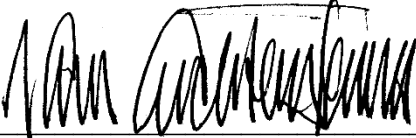
Here, the circuit court erred by entering final judgment on January 27, 2026, without addressing the legislative clerks’ plea of immunity. These clerks were named as defendants in this matter in their official capacities, and the allegations, judgment and injunctive relief sought against them pertained squarely to their duties under Virginia law as clerks. Accordingly, the circuit court erred by entering final judgment without addressing the clerks’ challenge to the circuit court’s jurisdiction over them.

IV. Conclusion

The legislative clerks respectfully request that this Court reverse the circuit court’s January 27, 2026, order entering declaratory judgment and issuing an injunction for the reasons set forth in Sections III.A.–C., *supra*. In the alternative, for the reasons set forth in Section III.D., the legislative clerks respectfully request that this Court rule that the circuit court lacked subject matter jurisdiction in this case, vacate the January 27, 2026, order, and remand this case to be dismissed by the circuit court.

Respectfully submitted,

**G. PAUL NARDO
SUSAN CLARKE SCHAAR
TARA PERKINSON**

By: 
Counsel

John E. Lichtenstein (VSB #27048)
Gregory L. Lyons (VSB #24037)
Jacob B. Lichtenstein (VSB #100000)
Lichtenstein Law Group PLC
347 Highland Avenue, SW (24016)
P.O. Box 601

Roanoke, Virginia 24004-0601

Tel: (540) 343-9711

Fax: (540) 343-9713

John.Lichtenstein@lichtensteinlawgroup.com

Greg.Lyons@lichtensteinlawgroup.com

Jake.Lichtenstein@lichtensteinlawgroup.com

*Counsel for appellants G. Paul Nardo, Susan Clarke Schaar, and Tara
Perkinson*

CERTIFICATE

I hereby certify that this brief complies with Rule 5:26 of the Rules of the Supreme Court of Virginia, and that this brief contains 50 pages and 12,614 words excluding the cover page, table of contents, table of authorities, signature blocks, and certificate. I further certify that on March 23, 2026, I served a copy of this brief by email on counsel of record as follows:

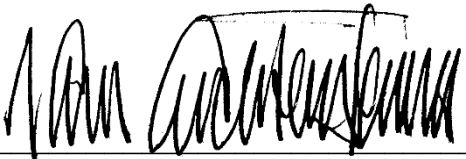
Tillman J. Breckenridge (VSB #84657)
Solicitor General of Virginia
Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219
Tel: (804) 371-6018
Fax: (804) 786-1991
SolicitorGeneral@oag.state.va.us
*Counsel for the Commonwealth
of Virginia*

Richard F. Hawkins, III (VSB #40666)
THE HAWKINS LAW FIRM, PC
2222 Monument Avenue
Richmond, Virginia 23220
Tel: (804) 308-3040
Fax: (804) 308-3132
rhawkins@thehawkinslawfirmpc.com

Matthew A. Seligman
GRAYHAWK LAW
3015 Main Street, Suite 330
Santa Monica, California 90405
Tel: (310) 571-5993
matthew@grayhawkllaw.com
Counsel for Intervenors

Michael A. Thomas (VSB #93807)
Gillespie, Hart, Pyott & Thomas, P.C.
179 Main Street
Tazewell, Virginia 24651
Tel: (276) 988-5525
Fax: (276) 988-6427
mthomas@ghartlaw.com

Thomas R. McCarthy (VSB #47154)
Conor Woodfin (VSB #98937)
Consovoy McCarthy PLLC
1600 Wilson Boulevard, Suite 700
Arlington, Virginia 22209
Tel: (703) 243-9423
tom@consovoymccarthy.com
conor@consovoymccarthy.com
Counsel for Appellees


Counsel for Legislative Clerks

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