

**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,

Against

Record No. 260127

Court of Appeals No. 0190-26-3

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

APPELLEES.

AND

G. PAUL NARDO, IN HIS OFFICIAL CAPACITY AS  
CLERK OF THE VIRGINIA HOUSE OF DELEGATES, ET AL.,

APPELLANTS,

Against

Court of Appeals No. 0189-26-3

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

APPELLEES.

**BRIEF AMICUS CURIAE IN SUPPORT OF APPELLEES**

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## TABLE OF CONTENTS

	<b>Page</b>
I. Introduction.....	4
II. Timing.....	4
III. Wording.....	6
IV. Effect.....	7
V. Conclusion.....	8

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
I. Constitution of Virginia Article XII, Section 1.....	4, 5, 6, 8
II. Constitution of Virginia Article II, Section 6.....	8, 9

## **I. INTRODUCTION**

The special election on a proposed Constitutional Amendment which would allow for out-of-cycle congressional redistricting in the Commonwealth and which is the subject of this appeal is constitutionally infirm and objectionable in at least three (3) respects: timing, wording, and effect. First, the timing of the election violates the dictate contained in Article XII, Section 1 of the Constitution of Virginia that proposed constitutional amendments shall not be submitted to the voters sooner than ninety (90) days after final passage of the proposed amendments by the General Assembly. Second, the wording of the question appearing on the ballot of the special election is biased and misleading, and does not present the question in a sufficiently objective manner to comport with the Constitution. Third, if passed, the proposed Amendment will unfairly, disproportionately, and unconstitutionally affect Gloucester County and its voters.

## **II. TIMING**

The proposed Constitutional Amendment was passed by the General Assembly on January 16, 2026. Voting on the proposed Constitutional Amendment commenced on March 6, 2026, fewer than ninety (90) days after final passage of the Bill approving the proposed Amendment. Article XII, Section 1 of the Constitution of Virginia, with reference to proposed constitutional amendments, provides, in part,

that “it shall be the duty of the General Assembly to submit such 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 (90) days** after final passage by the General Assembly.” (Emphasis added). The proposed Amendment was submitted to the voters on the day they were allowed to vote on the Amendment, that is, March 6, 2026, forty-nine (49) days after final passage by the General Assembly of the proposed Amendment. Thus, the proposed Amendment violates the timing proscription set forth in Article XII, Section 1 of the Virginia Constitution.

While it is true that “election day” is set for April 21, 2026, which is and would be more than ninety (90) days after final passage of the proposed Amendment by the General Assembly, the controlling constitutional provision referenced and quoted above does not measure the ninety (90) day period from the date of final passage by the General Assembly to “election day”. Nor is the ninety (90) day period measured from passage to “the election.” Rather, the ninety (90) day period runs from final passage to when the Amendment is submitted to the voters. It would be disingenuous to argue that the Amendment was submitted to the voters any later than the day the voters could vote on the Amendment. Theoretically, all of the voters of the Commonwealth could have voted on the Amendment on March 6, 2026. It is thus clear that the time of the election violates Article XII, Section 1’s timing constraints, because the proposed Amendment was submitted to the voters sooner

than, rather than “not sooner than,” ninety (90) days after final passage by the General Assembly.

### III. WORDING

The wording of the question appearing on the ballot on the proposed constitutional amendment is as follows: “Question: Should the Constitution of Virginia be amended to allow the General Assembly to temporarily adopt new congressional districts to restore fairness in the upcoming elections, while ensuring Virginia’s standard redistricting process resumes for all future redistricting after the 2030 census?” Use of the phrase “to restore fairness in the upcoming elections” renders the question unconstitutionally biased and misleading, as it is calculated to sway the electorate to vote in favor of the question. The wording implies that a “no vote” would necessarily result in unfair upcoming elections. Everyone (or almost everyone) desires fair elections. However, the effect of the proposed Amendment, if passed, will inevitably result in an outcome many will consider to be unfair.

While it is true that Article XII, Section 1 of the Constitution of Virginia provides that proposed constitutional amendments are to be submitted to the voters “in such manner as [the General Assembly] shall prescribe,” this “presentment clause” should be read to require presentation to the voters of a proposed constitutional amendment in an objective, non-biased manner. The wording of the

presentment clause should not be construed to give the General Assembly carte blanche to word the ballot question in such a way as to practically ensure its passage. Although a ballot question need not contain the entire text of a proposed constitutional amendment, at a minimum, the question must fairly summarize the amendment, without using biased, misleading or slanted verbiage. The ballot question on the proposed constitutional redistricting amendment used the phrase “to restore fairness in the upcoming elections,” rendering the question constitutionally defective.

#### IV. EFFECT

The proposed constitutional amendment and the new congressional districts likely to result therefrom will unfairly, disproportionately, and unconstitutionally affect Gloucester County and its voters, and other similarly situated rural counties in the Commonwealth and their voters. Gloucester County is currently in the 1st Congressional District. The proposed congressional redistricting would move all of Gloucester County along with the entirety of twelve other counties (and portions of two others) to the 8<sup>th</sup> Congressional District, combining those counties with **portions** of three (3) urban counties and the City of Alexandria. This proposed 8<sup>th</sup> Congressional District would snake its way from York County along the eastern seaboard all the way to Arlington County, some 170 miles, while narrowing drastically as it meanders northward. The redistricting would group all of the voters

of Gloucester County and other more rural, conservative counties with a portion of the population, but greater in number of voters, of more urban, populated, liberal jurisdictions in northern Virginia in such a way as to unconstitutionally dilute and disenfranchise the voters of Gloucester County and similarly situated counties. Further, the redistricting would not comport with the requirement contained in Article II, Section 6 of the Constitution of Virginia “that [e]very electoral district shall be composed of contiguous and compact territory.” The configuration of the district does not even remotely resemble any recognizable geometric shape. Although the new 8<sup>th</sup> Congressional District may be contiguous, it is not compact by any stretch of the imagination; thus, the district violates Article II, Section 6 of the Constitution of Virginia.

## V. CONCLUSION

The proposed Constitutional Amendment was submitted to the voters sooner than ninety (90) days after passage of the proposed Amendment by the General Assembly, in contravention of Article XII, Section 1 of the Constitution of Virginia. The wording of the question on the ballot is constitutionally defective, in that it does not fairly present the question to the voters. The Amendment and resulting congressional districts will unfairly, disproportionately, and unconstitutionally affect Gloucester County and its voters, and similarly situated counties, effectively disenfranchising the voters of those jurisdictions. The resulting gerrymandered

congressional districts will not comply with the requirement set forth in Article II, Section 6 of the Constitution of Virginia that every electoral district be composed of compact territory. For all of these reasons, and for the reasons set forth in the Brief of the Appellees herein, this Court should hold that the special election is invalid, as it is unconstitutional.

Respectfully submitted,

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#### CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 5:1B(c), a true copy of this Brief Amicus Curiae was emailed to all counsel for the Appellants, and to all counsel for the Appellees, this \_\_\_\_\_ day of April, 2026.

/s/Edwin N. Wilmot  
Edwin N. Wilmot

## CERTIFICATE OF COMPLIANCE

I hereby certify that according to Rule 5:30(2) that no party's counsel authored this brief in whole or in part; that no party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and that no person, other than the amicus curiae, its members, or its counsel, contributed money that was intended to fund preparing or submitting the brief. I also certify that I have filed an electronic copy of the foregoing Brief with the Clerk of the Supreme Court of Virginia, that the foregoing brief does not exceed 50 pages, and that I have otherwise complied with Rule 5:26 and 5:30 of the Rules of the Supreme Court of Virginia.

/s/Edwin N. Wilmot

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