No. 260127

IN THE
SUPREME COURT OF VIRGINIA

DON SCOTT, in his Official Capacity
as Speaker of the Virgina House of Delegates, et al.,
Petitioners,

and

COMMONWEALTH OF VIRGINIA,
Intervenor-Petitioner,

v.

RYAN MCDOUGLE, Virginia State Senator and Legislative Commissioner for the Virginia Redistricting Commission, et al.,
Respondents.

RESPONDENTS' OPENING BRIEF

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INTRODUCTION

Virginians overwhelmingly voted to end partisan redistricting in 2020. They ratified a constitutional amendment that vested an independent commission with authority over drawing congressional districts, with this Court as backup if the commission were unable to complete its duty in a timely manner. Va. Const. art. II, §6-A. When the Commission reached an impasse following the 2020 census, this Court adopted a new map to govern congressional elections for the remainder of this decade. A bare partisan majority in the General Assembly is attempting to trash that map and vest itself with the power to draw a new map mid-cycle for partisan gain. Four days before voting closed in the 2025 general election, they proposed an amendment that will permit them to redraw congressional districts. Their stated goal is to oust four sitting Republicans from the U.S. House of Representatives, transforming the Commonwealth's balanced representation into a 10-to-1 Democratic advantage.

But set politics aside. "It is our boast that ours is a government of law and not of men." *Cutchin v. City of Roanoke*, 113 Va. 452, 474 (1912). Virginia's Constitution establishes a multi-step, deliberative amendment process. The General Assembly must pass a proposed amendment twice around an intervening general election, to enable the voters to weigh in after each passage. This Court

has held that Virginians are entitled to "strict compliance" with that process. *Coleman v. Pross*, 219 Va. 143, 158 (1978).

But the partisan majority has bulldozed every step of that process on its path to reshape the Commonwealth. They started by commandeering a 2024 special budgetary session to introduce their novel redistricting plan, exceeding the constitution's limits on legislative authority and ignoring pre-established voting thresholds set for that session. Next, the partisan majority bypassed the constitutionally mandated intervening election, ramming through their proposed amendment after a million Virginians had already voted in the 2025 election. Rushing the proposed amendment through at that late date, they also violated Code §30-13's requirement to post the amendment publicly three months before the election. Worse still, they all but admitted to violating §30-13 by attempting to repeal that provision retroactively *during this litigation*. None of this was compliance, let alone "strict compliance" with the law. *Id.* If a partisan majority can strategically repeal Virginia law to pull the rug out from voters during ongoing litigation, then our system can hardly be called a "government of law." *Cutchin*, 113 Va. at 474.

Denying Virginians "strict compliance" with the constitutional amendment process has real consequences that, left unremedied, will cast a perma-

nent cloud on Virginia's fundamental law. Take Camilla Simon, one of the Plaintiffs here, and a Democratic voter. Like a million of her fellow Virginians, Ms. Simon voted early in the 2025 general election, and she supported the independent redistricting commission that had just been added to the constitution. So when Ms. Simon's delegate introduced the partisan redistricting amendment at the tail end of early voting—after she had voted—she was taken by surprise. Ms. Simon strongly opposes partisan redistricting. Had she known her delegate was sponsoring such a measure, she never would have voted for him. But she couldn't change her vote. And because the amendment was introduced after she had already voted, Ms. Simon was denied the opportunity to hold her delegate accountable in the amendment process—an opportunity the constitution guarantees her. This Court should not bless that result. It should reiterate that Virginians are entitled to strict compliance with the constitutional amendment process and affirm the Circuit's Court's judgment.

STATEMENT OF THE CASE

A. Virginia ratifies an amendment to end partisan redistricting.

In 2020, Virginians amended their constitution to establish an independent redistricting commission. Consisting of eight General Assembly members and eight Commonwealth citizens, the commission convenes "every ten years" to draw the congressional and state legislative districts following the census. Va.

Const. art. II, §6-A(a).[1] If the Commission fails to submit a timely plan, "the districts shall be established by the Supreme Court of Virginia." *Id.* §6-A(f). A separate statute governs this Court's procedures for establishing districts in that circumstance. *See* Code §30-399.

This Court applied these rules in 2021 when it established congressional and state legislative districts for this decade. After "extensive public comment," two special masters jointly prepared and submitted a redistricting map to this Court. *In re: Decennial Redistricting Pursuant to the Constitution of Virginia*, Va. Sup. Ct. (2021), perma.cc/4TGK-88T9. They drew the map "without referencing partisanship" to create "an unbiased map naturally, using neutral principles" and "which did not unduly favor either party." Bernard Grofman & Sean Trende, *Memo to the Chief Justice and Justices of the Supreme Court of Virginia re: Redistricting Maps* 7, 10 (Dec. 27, 2021), perma.cc/55M3-5CVT.

This Court "unanimously" found that the proposed maps "are fully compliant" with federal and state law applied "in an apolitical and nonpartisan manner." *Decennial Redistricting*, *supra*, at 2. And the adopted maps have governed elections for state and federal officials. *Id.* at 2-3. Unless Petitioners prevail, the

[1] A proposed map must adhere to principles in the Code and Article II, §6 of the constitution. Those principles include, for example, that "[a] map of districts shall not, when considered on a statewide basis, unduly favor or disfavor any political party." Code §24.2-304.04(8).

maps approved by this Court will govern the upcoming congressional election as well as those in 2028 and 2030.

B. The General Assembly convenes a 2024 special session.

The Virginia Constitution provides for special sessions in certain circumstances. Va. Const. art. IV, §6. The General Assembly sometimes convenes in special session, usually to address holdover budget issues. That's what happened in April 2024, when supermajorities in the General Assembly applied to the Governor for a special legislative session. In that application, the General Assembly stipulated that the special session could consider only "such matters as are provided for in the procedural resolution" for "such Special Session." HJR 428, Gen. Assemb., Reg. Sess. (Va. 2024).

The Governor thus called a special session for "the purpose of completion of the 2024-2026 biennial budget." *Proclamation*, Off. of Gov. of Va. (Apr. 17, 2024), perma.cc/R7JL-F62S. When the special session began, the General Assembly passed a resolution by near-unanimous margins that delineated the substantive scope of the session. *See* HJR 6001 History, Gen. Assemb., Spec. Sess. (Va. 2024), perma.cc/5VSC-NFQ4. It "limit[ed] legislation to be considered" to the budget, memorial resolutions, scheduling, judges, and other appointments, expandable only by the unanimous consent of all members. HJR 6001, Gen. As-

semb., Spec. Sess. (Va. 2024), perma.cc/NPB2-ZH67. The General Assembly adjourned and reconvened the special session throughout 2024 to continue work on these issues, and these alone.

In January 2025, the General Assembly convened its regular session. By constitutional mandate, "[t]he General Assembly shall meet once each year" in regular session beginning "on the second Wednesday in January." Va. Const. art. IV, §6. The General Assembly adjourned the regular session on February 22, 2025, according to the 30-day limit for regular sessions in odd-numbered years. *See* 2025 Session Calendar, Va. House of Delegates (Feb. 22, 2025), perma.cc/9SPU-5EMY. In April 2025, the General Assembly exercised its prerogative to briefly "reconvene" the regular session for "the purpose of considering bills which may have been returned by the Governor." Va. Const. art. IV, §6. Both houses approved the Governor's recommendations and amendments to the budget and that same day adjourned the reconvened regular session *sine die*. *See 2025 Regular Session Minutes*, Gen. Assemb., perma.cc/5PPH-2QD5 (House); perma.cc/7898-74WS (Senate).

C. Democrats commandeer a 2024 special session with the stated intention to gerrymander four Republican districts out of existence.

On October 23, 2025—34 days after voting had begun in the 2025 general election—Speaker of the House of Delegates Don Scott sent a letter to General

Assembly members expressing his desire to reconvene the legislature. R.133. Despite the intervening 2025 regular session, Speaker Scott purported to reconvene the 2024 special session called to adopt the budget. R.134. The House reconvened the 2024 special session, but it did not consider a budget bill. Instead, a bare partisan majority proposed an amendment to nullify Article II, §6-A of the Virginia Constitution and the maps drawn by this Court for the next several federal election cycles. R.134.

The proposed amendment would empower the General Assembly to seize redistricting authority from the Virginia Redistricting Commission. If any State in the country redraws congressional districts "for any purpose other than" the standard "decennial redistricting" or "as ordered by [a] state or federal court," the General Assembly can freely "modify one or more congressional districts at any point." HJR 6007, Gen. Assemb., Spec. Sess. (Va. 2024), perma.cc/5WYD-5HNA. Of course, this condition is not a condition at all because it had already been satisfied when the proposed amendment was advanced. On October 29, the House approved HJR 6007 in a 51–42 on party lines. R.135. On October 31, the Senate approved HJR 6007 in a 21–16 vote, again on party lines. R.152.

The reason for the proposed amendment is no secret. Virginia Democrats are dissatisfied with the maps approved by this Court in 2021. So they seek to toss those maps out to shore up Democratic power in Congress for the 2026

midterm election. Speaker Scott and Senate President Louise Lucas have since released their proposed map. *See* HB 29, Proposed 2026 Virginia Congressional Map, Gen. Assemb., Reg. Sess. (Va. 2026), perma.cc/7NXK-VPZS.

The map would give Virginia "the most aggressive gerrymander of any other state" in the country, transforming four Republican districts into Democratic districts. David M. Poole, *A 10-1 Map Would Give Virginia the Most Aggressive Gerrymander of Any Other State*, Cardinal News (Feb. 5, 2026), perma.cc/NHE3-DVPB. Under the Democrats' 10–1 map, the 46% of Virginians who voted for the Republican presidential candidate in 2024 will get just 9% of the seats in the U.S. House of Representatives. *See* Editorial Board, *The Gerrymander Boomerang in Virginia*, Wall St. J. (Mar. 12, 2026), perma.cc/4QPV-SQLR. Senator Lucas boasted, "We said 10–1 and we meant it." Brakkton Booker, *Virginia Democrats Release Proposed New Congressional Map*, Politico (Feb. 5, 2026), perma.cc/LN5S-KBJV.

D. Over a million Virginians vote in the 2025 general election before the partisan majority proposes the amendment at issue.

Well before Democrats manipulated the special session for their redistricting ploy, Virginians were voting. As required by law, voting for the 2025 general election began on September 19, 2025. Code §24.2-701.1(A). All 100

seats in the House of Delegates were on the ballot—including the seats of Rodney Willett, who introduced the redistricting amendment, and Speaker Scott. R.129, 137.

Nearly a third of voters voted early. R.284. And by the time legislators introduced the proposed amendment for the first time, over a million Virginians had already voted for their delegates.[2] Among those who voted early are two Plaintiffs in this case, Camilla Simon and Faythe Silveira. Both had already cast their ballots in the general election when the General Assembly introduced the proposed amendment on October 27, 2025. R.138.

Ms. Simon tried to contact her delegate, Rodney Willett, to inform him that she opposed the proposed amendment and to request that he withdraw the resolution. R.138. She received no response. Had Ms. Simon known about the proposed redistricting amendment, she would have voted differently. R.140. She even asked the Department of Elections if she could cancel her ballot or change her vote. R.139. She could not. Ms. Silveira was likewise given no notice of the proposed amendment before casting her ballot in the 2025 general election. R.130. Both voters—and countless others—were robbed of their constitutional right to publication of a proposed amendment prior to voting.

[2] *Early Voting in Virgina, 2025 November General*, VPAP, perma.cc/FU23-RWRD.

E. Plaintiffs file this case to stop the General Assembly's unlawful amendment procedure.

Plaintiffs filed this case in October 2025. After briefing and a hearing, the Circuit Court granted a permanent injunction and declaratory relief in Plaintiffs' favor. The court held that the General Assembly exceeded its legislative authority by acting beyond the session's scope. R.596-599. The court observed that the General Assembly's procedural resolution limited the special session to considering budget bills and similar items, "'except with unanimous consent'" of the members. R.597. Because the proposed constitutional amendment never received unanimous consent, it was "an invalid expansion of the General Assembly's own call to the Governor for the 2024 Special Session." R.598-99. The court thus declared the proposed amendment "void, ab initio." R.599.[3]

Next, the Circuit Court held that the proposed amendment had not complied with the amendment process laid out in Article XII of the Virginia Constitution. The court observed that "[t]he Constitution requires an intervening election following the first passage of a proposed Constitutional Amendment." R.599 (emphasis omitted). And it found "no rational conclusion except that the election began on the first day of voting (September 19, 2025) and ended on

[3] The court rejected Plaintiffs' alternative argument that the 2025 instance of the 2024 special session was invalid for the separate reason that it adjourned by operation of law when the General Assembly convened its 2025 regular session. R.596.

November 4, 2025." R.599 (emphasis omitted). Unlike the first defect, the intervening-election defect did not render the proposed amendment "void ab initio." Rather, the Court simply declared "that following the October 31, 2025 vote and passage of House Joint Resolution 6007 there has not been an ensuing general election of the House of Delegates, and such ensuing general election cannot occur until 2027." R.599.

Finally, the Court found that Defendants did not comply with §30-13 because they did not publish and publicly post the proposed amendment three months in advance of the 2025 general election. "The sole purpose" of that law, the Court observed, "is to provide the voters with notice and information PRIOR to the election of the House of Delegates members who would be elected to vote on the proposed Constitutional Amendment for the second vote as required under the Constitution." R.600. All parties agreed that the General Assembly did not comply with §30-13. So the Court granted a temporary and permanent injunction. R.601.

This Court is familiar with the remaining proceedings. Defendants appealed to the Court of Appeals, which moved to certify the case to this Court. R.1646-1647. Defendants also moved to stay the Circuit Court's injunction. This Court granted certification under Code §17.1-409. R.1674. And it denied the stay motions, observing "the limited scope of the injunctive relief issued in the

circuit court's order." R.1676. The Court set a briefing schedule and later calendared oral argument for April 27, 2026.

STANDARD OF REVIEW

This Court reviews legal findings de novo, but "factual findings … are not to be disturbed unless they are plainly wrong." *Wilkins v. Commonwealth*, 292 Va. 2, 7 (2016). Because this case concerns the legality of a proposed constitutional amendment, "a standard of strict compliance with all specified prerequisites, rather than a standard of substantial compliance, must be applied." *Coleman*, 219 Va. at 158.

ARGUMENT

I. The Circuit Court correctly found that the General Assembly lacked authority to adopt the proposed amendment in its special session.

The Circuit Court correctly ruled that the proposed amendment is "void, ab initio" because it was approved through an "invalid expansion" of "the 2024 Special Session" that exceeded the scope of "the General Assembly's own call to the Governor." R.598-99. The proposed amendment exceeded the scope of business for the 2024 special session that was approved of by "two-thirds of the members" of each chamber in their "application" to the Governor. Va. Const. art. IV, §6. Further, the 2024 special session had already terminated by operation of law long before the General Assembly considered the proposed amendment.

Both are independent reasons to affirm. The enrolled bill doctrine doesn't apply and wouldn't require a different conclusion anyway.

A. The proposed amendment is void because it was passed in an improperly expanded special session.

"It is well established that the legislature while in special session can transact no business except that for which it was called together." *Arrow Club, Inc. v. Neb. Liquor Control Comm'n*, 131 N.W.2d 134, 137 (Neb. 1964). What makes special sessions "special" is partly that the legislature is called to address a narrow purpose. The General Assembly's "application" for the special session identifies that purpose. Va. Const. art. IV, §6. In contrast to regular sessions, the constitution requires direct gubernatorial involvement to convene a special session. The General Assembly cannot convene a special session on its own; it can only *apply* to the Governor, who is then obligated to convene the session if it is supported by "two-thirds" of each house. *Id*.

The "application" that a two-thirds supermajority submits to the Governor thus limits the scope and subject matter of the special session. "There can be no doubt that unless a law passed at a special session is germane to some subject within the call, the Legislature is without power to pass it." *State ex rel. Conway v. Versluis*, 120 P.2d 410, 413 (Ariz. 1941). "[T]he Legislature must confine itself to the matters submitted." *Commonwealth ex rel. Schnader v. Liveright*,

161 A. 697, 703 (Pa. 1932). By requiring that a two-thirds supermajority apply to the Governor to convene a special session, the constitution limits the special session's subject-matter to the items that the two-thirds supermajority approves of placing in the "application." Va. Const. art. IV, §6.

Petitioners argue the subject-matter limit must be explicit in the constitution. Scott Br. 22 n.22. It is. A "special session" is "[a] legislative session, [usually] called by the executive, that meets outside its regular term to consider a specific issue or to reduce backlog." *Special Session*, *Black's Law Dictionary* (12th ed. 2024). The General Assembly's Legislative Information Service even defines "special session" as "[a] special meeting of the legislature that is called by the governor (or the legislature itself) and *limited to specific matters*." *Glossary of Legislative Terms*, Va. Legis. Info. Service (2024), perma.cc/99WX-54KD (emphasis added). The constitution would not use the phrase "special session" as distinct from a "regular session" if they meant the same thing. *Cf. Ex parte Lawhorne*, 59 Va. 85, 93 (1868) ("[T]he constitution ought to be so construed, if it can reasonably be done, as to give effect to every word which it contains, and especially words of plain and unambiguous import."). Special sessions are "special" because they "consider a specific issue." *Black's Law Dictionary*, *supra*.

Context confirms the plain meaning of a "special session." "That the Constitution contains no express provision on the subject is not in itself controlling;

for with the Constitution, as with a statute or other written instrument, what is reasonably implied is as much a part of it as what is expressed." *Dillon v. Gloss*, 256 U.S. 368, 373 (1921). The Governor's power to convene the General Assembly in special session necessarily implies "the lesser power" to condition the scope of that session. *Cf. Staples v. Gilmer*, 183 Va. 613, 625 (1945). Even if the Governor couldn't condition the scope of a special session, the General Assembly can, since *those* conditions receive support from "two-thirds of the members elected to each house." Va. Const. art. IV, §6. Other conditions (or no conditions at all) did not receive a two-thirds majority. Only the *limited* application to the Governor passed that constitutional threshold. Matters outside the "application" to the Governor don't have the two-thirds support necessary under Article IV, §6. The proposed redistricting amendment thus bypassed the two-thirds supermajority requirement, making it an "invalid expansion of the General Assembly's own call to the Governor for the 2024 Special Session." R.598-99.

The Commonwealth responds that the General Assembly's call for a special session is merely a matter of its own "internal operating procedures." Va. Br. 31. But under Article IV, §6 of the constitution, the matters specified in the "application" or call for a special session are constitutional conditions. Because the constitution requires "the written request of two-thirds of the members of each house" to "convene a special session," that written request "limit[s]" the "special

session convened by the legislature" to "the particular topics included" in the request. *See In re Interrogatory on House Joint Resol. 20-1006*, 500 P.3d 1053, 1068-69 (Colo. 2020). Those "particular topics" are found in the "application" approved by two-thirds of both houses. Va. Const. art. IV, §6.

Departing from the plain meaning of "special session," the Commonwealth argues that Article IV, §6 authorizes a super-session in which any and all matters proposed by a simple majority can be considered. It relies on a 1982 Attorney General opinion that addressed an instance where the Governor "at his discretion" and "in his opinion" convened a special session. Va. Br. 24 (citing 1982 Op. Va. Att'y Gen. 188 (Apr. 1, 1982)). That argument contradicts the Commonwealth's position in the Circuit Court, where it explained that the "Attorney General Opinion did not consider black-letter principles such as that '[i]n issuing a call for a special session of the legislature, the governor may confine legislation to the subjects specified in the governor's proclamation.'" Va. Amicus Br. at 4 n.1 (reproduced at R.369-387) (quoting Mason's Manual of Legislative Procedure §780 (2010)). Regardless, that opinion didn't confront the issue presented here, where the General Assembly applied to the Governor on a two-thirds vote. That distinction is critical, as it gives "legislators" the opportunity

to "withhold support for a special session until particular bill subjects" are "included in, or excluded from, the call." *Interrogatory on House Joint Resol. 20-1006*, 500 P.3d at 1069.

No one disputes that the General Assembly's supermajority application to the Governor lacked any proposal for a constitutional amendment. Rather, the application provided that the special session would consider only "such matters as are provided for in the procedural resolution adopted to govern the conduct of business coming before such Special Session." *See* HJR 428. And the resolution provided that "except with unanimous consent of the house in which the legislation is offered," the special session could consider only budget bills, "commending and memorial resolutions," bills "affecting the rules of procedure or schedule of business," the "election of judges and other officials," or "appointments subject to the confirmation of the General Assembly." HJR 6001.

The "application" for the special session was thus confined to those five items, or other items that received "unanimous consent" of "the house" in which the joint resolution was offered for consideration. *Id*. The proposed redistricting amendment wasn't one of those five items. And it never received unanimous consent. *Cf*. HJR 6006, Gen. Assemb., Spec. Sess. (Va. 2025), perma.cc/28QX-B6JR. The proposed amendment thus falls outside the scope of the "application"

that two-thirds of the General Assembly voted in favor of submitting to the Governor to convene a special session. Va. Const. art. IV, §6.

Petitioners misdirect by styling the "application" requirement of Article IV, §6 as merely an "internal" legislative procedure. Scott Br. 19. But that the General Assembly employed a "procedural resolution" to limit its business is a matter of form, not substance. *Contra* Va. Br. 26. Its Article IV, §6 application to the Governor referenced that resolution. HJR 428. So the resolution "limit[s]" the scope of legislation at the special session to the topics approved by "unanimous consent." *Interrogatory on House Joint Resol. 20-1006*, 500 P.3d at 1069. Indeed, not long ago the shoe was on the other foot, when Governor McAuliffe argued that "the Constitution of Virginia imagines a special session to focus on a specific issue or set of issues," and thus the General Assembly was "not currently in [special] session in 2015," despite the House purporting to continue that session. Gov. Terry McAuliffe, *Letter to Speaker of the House of Delegates and Majority Leader of the Senate* 2, 4 (Sept. 15, 2015), perma.cc/U9N3-ZQ3E.

In any event, the General Assembly can, as an "incident of its power" as a legislature, limit its own agenda or impose conditions on legislation, particularly when it comes to constitutional amendments. *Dillon*, 256 U.S. at 376. That's why an Act of the General Assembly can "limit the powers" of a constitutional

convention to "amend a portion of the Constitution" even though the constitution does not explicitly contemplate that procedure. *Staples*, 183 Va. at 628-30. And it's why the Equal Rights Amendment is not part of the U.S. Constitution, since "Congress conditioned ratification on a deadline" that "came and went" without the support of three-fourths of the States. *Ratification of the Equal Rights Amendment*, 44 Op. O.L.C. 1, 25-26 (2020), perma.cc/WYF5-FGDL. Even when "Virginia became the thirty-eighth state to ratify the ERA," it was long after Congress's seven-year deadline had expired. *Illinois v. Ferriero*, 60 F.4th 704, 713 (D.C. Cir. 2023). The D.C. Circuit thus rejected the same argument that Petitioners rely on here, that the legislature "has no power to place any other limitations" on the amendment process. *Id.* at 717.

Petitioners next attack a strawman, arguing that the Circuit Court based its ruling on a "quasi-contract theory" that they believe it raised "*sua sponte*." Nardo Br. 22. They misread the court's ruling, which rests on "Article IV, Section 6" of the constitution. R.598. The court recognized that Article IV "require[s]" a "two-thirds super majority in order to demand a Special Session." R.598. And it construed that provision to allow a specific "limitation" on the business of a special session. R.598. The Circuit Court is in good company. *See Interrogatory on House Joint Resol. 20-1006*, 500 P.3d at 1069. "Without this limitation, the majority can seek a Special Session agreeing to consider limited items in order to

gain the votes necessary to invoke a Special Session, and thereafter by simple majority vote take up ANY ITEM without acquiescence of the two-thirds concurrence necessary to request the same." R.598.

Petitioners attempt to shake the special-session limitations by arguing that the General Assembly has "plenary powers" to legislate on whatever it wants. Scott Br. 24-25. But that general power yields to more specific limitations in the constitution. This brief has already laid out the special-session limits, which the General Assembly can't avoid by legislative fiat. But those general powers also yield to the constitution's amendment procedures. "The power to amend or revise in whole or in part the Virginia Constitution resides in the people, not in the State legislature. The people are possessed with ultimate sovereignty and are the source of all State authority." *Staples*, 183 Va. at 623.

Petitioners' view would empower the General Assembly to circumvent the supermajority required to convene a special session. It would condone a "blatant abuse of power," allowing a simple majority to "trampl[e]" on the "procedural rights of the minority" who provided the votes necessary for the General Assembly to enter into a special session in the first place. R.998. This Court should affirm the Circuit Court's ruling.

B. The proposed amendment is void because it was passed after the 2024 special session had already ended.

Virginia's Constitution entrusts the "legislative power" to the General Assembly. Va. Const. art. IV, §1. That legislative power can be employed only in a valid legislative session. *Id*. §6. "It is only when both houses are lawfully assembled that they constitute the legislature of a state." Mason's Manual, *supra*, §780(12). Unlike other States with full-time legislatures, Virginia has a "citizen legislature" that "meet[s] once each year on the second Wednesday in January" for no "longer than sixty days" absent certain inapplicable exceptions. 1 A.E. Dick Howard, *Commentaries on the Constitution of Virginia* 491, 493 (1974). Virginians have consistently rejected calls for a "full-time legislature," expressing "mistrust" of the legislative power, disapproval of "more frequent changes in the laws," and a fear of "a class of professional legislators." *Id.* at 496-97.

Yet to pass the proposed amendment, the General Assembly unlawfully transformed itself into a full-time legislature. It purported to convene its 2024 special session in continuous fashion for 612 days, more than ten to twenty times longer than the 30- to 60-day annual sessions established by the constitution. By all lights, this 612-day session is longer than any legislative session in Virginia history since at least 1851, when session limits were first introduced. Va. Const. of 1851, art. IV, §8. As Justice Russell observed during oral argument

in another case, that continuous session is "at odds with the structure of Virginia's Constitution." Oral Argument, *Stimson v. Lucas*, No. 250736, at 8:43-9:19 (Va. Oct. 28, 2026) (Russell, J.).

Under Virginia's Constitution, "a special session necessarily ends with the convening of a regular session." *Id*. This rule is well established in States with similar constitutional requirements. *See e.g.*, *Op. of the Justs.*, 152 So.2d 427, 428 (Ala. 1963); Ala. Const. §48 (sixty-day regular session). It is also affirmed by Mason's Manual of Legislative Procedure §781(8) (1979), which the Senate uses to construe its rules, *see* Art. XXII, Rules of the Va. Senate (Jan. 10, 2024). That common-sense rule doesn't impose some arbitrary number of days the General Assembly can meet. Even if some other rule caps "the duration of a special session," Va. Br. 24, here the Court need only recognize that when a regular session convenes, any special session ends by operation of law "irrespective of the absence of a sine die adjournment," *Op. of the Justs.*, 152 So.2d at 428.

Petitioners demand more precise language. *See* Va. Br. 24. And again, they have it. First, it's in the term "special session," which the constitution employs deliberately. *See Mason's 1979 Manual*, *supra*, at §781(8). Second, the constitution mandates that "[t]he General Assembly shall meet once each year on the second Wednesday in January." Va. Const. art. IV, §6. "[T]he legislature is required to meet on that date, and any uncompleted special session is terminated

on that date irrespective of the absence of a sine die adjournment." *Op. of the Justs.*, 152 So.2d at 428. Third, the constitution imposes strict procedures on when and how the General Assembly can "reconvene" a "regular or special session." Va. Const. art. IV, §6. It can reconvene only "for the purpose of considering bills which may have been returned by the Governor." *Id.* "No other business shall be considered at a reconvened session." *Id.* And the reconvened session is limited to "three days" and up to "seven additional days" if a majority of each house agrees. *Id.* These explicit limits lead to the common-sense conclusion that no legislative session (special sessions included) can continue indefinitely. That conclusion is at least "reasonably implied," if not plainly expressed through constitutional structure. *Dillon*, 256 U.S. at 373.

Legislative practice removes any doubt that special sessions are limited. In recent history, no special session has run concurrently with a regular session. In 2001, 2011, and 2014, one or both chambers briefly "reconvene[d]" a special session after an intervening regular session, as Article IV, §6 permits.[4] And in 2022, the Senate purported to keep a special session alive for well over a year, convening in April 2022 and adjourning in December 2023.[5] But because the

[4] *2001 Special Session I Minutes*, perma.cc/3MQG-AY7W (House), perma.cc/X4ZE-ACEA (Senate); *2011 Special Session I Minutes*, perma.cc/6XS2-RUR9 (House), perma.cc/W3VW-7RY6 (Senate); *2014 Special Session I Minutes*, perma.cc/2QVB-5HTB (House).
[5] *2022 Special Session I Senate Minutes* (Apr. 4, 2022), perma.cc/GY99-FL6J; *2022 Special Session I Senate Minutes* (Dec. 11, 2023), perma.cc/JD65-YRM6.

House had adjourned in September 2022,[6] the Senate could enact no legislation. These exceptions are thus no exceptions at all. *Contra* R.596. Never has the General Assembly enacted legislation—let alone a constitutional amendment—in a special session that continued after or ran concurrently with a regular session. Rather, the uniform practice has been to call a *new* special session following adjournment of a regular session. This unbroken legislative practice sheds "light" on constitutional meaning, *Marsh v. Chambers*, 463 U.S. 783, 790 (1983), and shows the General Assembly understood that special sessions are special—until it served their partisan aims to pretend otherwise.

No other interpretation accounts for a special session's unique role, which is "to provide for the convening of the legislature under extraordinary circumstances." *Op. of the Justs.*, 152 So.2d at 428. "If the legislature is already in regular session," then "no reason for any special session can be present." *Id*. "The necessity for the special session" having "disappeared with the convening of the legislature in regular session, the special session should be considered as concluded upon the convening of the regular session." *Id*. at 428-39. As Governor McAuliffe argued, "[i]t simply cannot be the case that the General Assembly may remain in a special session indefinitely." McAuliffe Letter, *supra*, at 4.

[6] *2022 Special Session I House Minutes* (Sept. 7, 2022), perma.cc/745G-Y3PL.

Petitioners' magic-words test would create a forever legislature. And this Court "must avoid any literal interpretation" that "would lead to absurd results." *Commonwealth v. Doe*, 278 Va. 223, 230 (2009). If there really were no "time limit on the duration of a special session," Va. Br. 24, then the General Assembly need not apply to the Governor for another special session ever again. Indeed, the Commonwealth embraces that consequence, which would nullify the Governor's authority to "convene a special session of the General Assembly when, in his opinion, the interest of the Commonwealth may require." Va. Const. art. IV, §6. And it would transform Virginia's part-time "citizen legislature" into a full-time professional legislature. 1 Howard, *supra*, at 493.

Article IV's structure dooms Petitioners' faux textualism. "By placing limits" on how long a "regular" session can last, "it is obvious there was no intent by the people to permit the legislature to remain in continuous session." *Wells v. Riviere*, 599 S.W.2d 375, 384 (Ark. 1980) (Purtle J., concurring). But if this Court "were to approve" Petitioners' boundless interpretation, it "would be holding that the General Assembly can extend itself indefinitely, meet at any and all times, monthly, biannually or annually for any and all reasons. The General Assembly simply does not have that power under the [state] Constitution." *Id*. at 379. It must at some point "finish its business and go home." *Id*. That point is not arbitrary. The General Assembly must meet on "the second Wednesday in

January" each year. Va. Const. art. IV, §6. On that date, when the General Assembly meets in regular session, all special sessions end by operation of law "irrespective of the absence of a sine die adjournment." *Op. of the Justs.*, 152 So.2d at 428; *accord* Mason's 1979 Manual, *supra*, §781(8).

C. The enrolled-bill doctrine does not bar the Court from enforcing constitutional limits on special sessions.

Lacking constitutional authorization, Petitioners urge the Court to defer blindly to the General Assembly. They believe the Court shouldn't "nitpick the procedural rules and conduct of the General Assembly." *E.g.*, Nardo Br. 25. But it is the Court's duty "'to say what the law is.'" *Koski v. RNC*, 926 S.E.2d 289, 290 (Va. 2026) (quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803)). The General Assembly can make law only when assembled in a valid legislative session. When a "legislative session ends by operation of law," the legislature "becomes *functus officio* and ceases to have the legislative power accorded to it while in lawful, constitutional session." *State ex rel. Heck's Disc. Ctrs. v. Winters*, 132 S.E.2d 374, 377-79 (W. Va. 1963). Any legislation "voted upon" after a legislative "session" is "terminated" by "operation of law" is "unconstitutional, void and a nullity." *Id*. at 378-79. For at least three reasons, the federal enrolled-bill doctrine doesn't override that principle.

First, Petitioners admit that the enrolled-bill doctrine applies in federal court to acts of Congress, and only when "determin[ing] whether a law has been properly enacted." Va. Br. 27. The doctrine "concerns 'the nature of the evidence the Court [may] consider in determining whether a bill had actually passed Congress,'" and it establishes that "a law consists of the 'enrolled bill,' signed in open session by the Speaker of the House of Representatives and the President of the Senate." *U.S. Nat'l Bank of Ore. v. Indep. Ins. Agents of Am.*, 508 U.S. 439, 455 n.7 (1993) (cleaned up). But because no one here questions the "evidence" surrounding the General Assembly's vote, *id.*, the enrolled bill doctrine doesn't apply (even if it applied in Virginia courts). In other words, the doctrine prohibits factual inquiries into legislative process, not legal inquiries into constitutional compliance. It does not apply in determining whether the General Assembly is in session. *See Wells*, 599 S.W.2d at 381; *Winters*, 147 W. Va. at 868-70.

Second, federal courts "give full effect to the provisions of the constitution relating to the enactment of laws." *Marshall Field & Co. v. Clark*, 143 U.S. 649, 670 (1892). That's why the Supreme Court has held that "[w]here, as here, a constitutional provision is implicated," the enrolled bill doctrine "does not apply." *United States v. Munoz-Flores*, 495 U.S. 385, 391 n.4 (1990) (emphasis omitted). It applies only in the "absence of any constitutional requirement binding" the legislature. *Id.*; *accord INS v. Chadha*, 462 U.S. 919, 959 (1983) (distinguishing

the enrolled-bill doctrine in holding the one-House veto provision unconstitutional). That "the Constitution 'empowers each house to determine its rules of proceedings'" is beside the point. Scott Br. 17 (quoting *United States v. Ballin*, 144 U.S. 1, 5 (1892)). No doctrine provides cover for a legislature "by its rules" to "ignore constitutional restraints." *Ballin*, 144 U.S. at 5. To hold otherwise would permit legislative clerks to bypass bicameralism, presentment, and a host of other constitutional requirements merely by enrolling a bill on the statute books.

Third, even if the Court were to adopt Petitioners' flawed application of the federal doctrine, "proposed amendments to the [Virginia] Constitution," require a "standard of strict compliance." *Coleman*, 219 Va. at 158. Under *Coleman*, this Court engages in precisely the analysis that Petitioners argue the enrolled-bill doctrine prohibits. It examines "all proposed constitutional amendments" to ensure they receive "the deliberate consideration and careful scrutiny that they deserve." *Id*. at 154. The federal cases Petitioners rely on cannot abrogate the constitutional principles announced in *Coleman*. The Circuit Court resolved a constitutional challenge to the proposed amendment. R.596-99. So the enrolled bill doctrine "does not apply." *Munoz-Flores*, 495 U.S. at 391 n.4.

II. The Circuit Court correctly found that the legislature failed to pass the proposed amendment before an intervening general election.

The constitution requires a proposed amendment to clear the General Assembly twice, with a general election in between. Va. Const. art. XII, §1. The General Assembly claims to have passed the proposed amendment on October 31, 2025. Even if that first passage were otherwise legitimate, the fall 2025 general election was already underway and thus cannot be the "next ensuing general election." 2 Howard, *supra*, at 1172. Voting had already begun in the 2025 general election "some forty-three days" before the General Assembly adopted the proposed amendment. R.989. So the next general election is in 2027.

A. Early voting is part of the "election."

Begin with ordinary meaning—the typical starting point for constitutional interpretation. *See Blount v. Clarke*, 291 Va. 198, 205 (2016). An "election" is "the choice by popular vote of members of a representative body" and "the whole proceedings accompanying such a choice." *Election*, *Oxford English Dictionary* (1978). Those "whole proceedings" encompass early voting.

So it is unsurprising that ordinary English speakers treat early voting as part of the "election." News outlets, for example, announce that once "early votes have been cast, the election has begun." Nick Corasaniti, *Could the Supreme Court's Voting Rights Act Decision Affect the Midterms?*, N.Y. Times (Feb. 28,

2026), perma.cc/UZ3W-4UBE. When early voting began in the 2020 election, then-candidate Joe Biden proclaimed, "The election is underway across the country." Joe Biden, X.com (Oct. 28, 2020), perma.cc/X4JC-K2RR. That common understanding holds in Virginia, where the Governor announced for the 2025 general election, "Virginia early voting starts TODAY! … make your voice heard in this critical election!" Glenn Youngkin, X.com (Sept. 19, 2025), perma.cc/6ALG-EDKJ. Press outlets likewise understood that "[t]he 2025 Virginia gubernatorial election [was] underway with Election Day set for November 4," once "early in-person voting ha[d] already begun." *2025 Virginia Election Guide*, Greater Wash. Bd. of Trade (Sept. 25, 2025), perma.cc/H8J9-XHJD. Even the Department of Elections understands that early voting was part of the 2025 general "election." *See* Va. Dep't of Elections, Facebook.com (Sept. 19, 2025), perma.cc/8SM7-QEJM ("Why wait until November 4 to cast your ballot in the General Election? Early voting has begun.").

This ordinary meaning of "election," encompassing the entire voting period, accords with the word's legal meaning. An "election" "plainly refer[s] to the combined actions of voters and officials meant to make a final selection of an officeholder." *Foster v. Love*, 522 U.S. 67, 71 (1997) (citing N. Webster, An American Dictionary of the English Language 433 (1869)). It is the "[t]he process of selecting a person to occupy an office." *Election*, *Black's Law Dictionary*.

The early voting period is part of the election. That's why the Fourth Circuit held that "the election" was "happening right now" after "[i]n-person early voting began." *Pierce v. N.C. State Bd. of Elections*, 97 F.4th 194, 227 (4th Cir. 2024). The "election" was "ongoing" because "in-person early voting [had] started." *Wise v. Circosta*, 978 F.3d 93, 96 (4th Cir. 2020). And a State is "in the middle of" an "election" once "absentee ballots [have] already [been] printed and mailed." *New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1283 (11th Cir. 2020). Indeed, in *Koski v. RNC*, this Court stayed a TRO that enjoined the early voting period because it "interfer[ed] with the holding of an election." 926 S.E.2d at 292. That early voting and in-person voting are part of the same "election" is obvious to voters, press, election officials, and courts.

Every federal court that has confronted the issue has thus held that "early voting" is part of the election that ends on election day. *Voting Integrity Project v. Bomer*, 199 F.3d 773, 774 (5th Cir. 2000); *accord Voting Integrity Project v. Keisling*, 259 F.3d 1169, 1176 (9th Cir. 2001); *Millsaps v. Thompson*, 259 F.3d 535 (6th Cir. 2001). As these cases explain, the "election" is an event that is "'consummated'" or completed on a November Tuesday, though the "federal election" need not "begin" that day. *E.g.*, *Bomer*, 199 F.3d at 776. *Contra* Va. Br. 34. Under this ordinary and legal definition, the early voting period that began

on September 19 was part of the 2025 "general election." *Early Voting Begins on Sept. 19*, Va. Dep't of Elections (Sept. 11, 2025), perma.cc/62LE-Q76U.

B. Context and history prove that 2027 is the "next election."

Context removes any doubt about the meaning of "election." The proposed amendment must be referred to the General Assembly "after the *next* general election." Va. Const. art. XII, §1 (emphasis added). The "next" election refers not to the current election, but to the one that follows it. *See State v. Breaw*, 78 P. 896, 896 (Or. 1904) ("'the next term of the court' … clearly means the next following term, and not the current one"); *Schrom v. Cramer*, 275 P.2d 979, 981-82 (Idaho 1954) ("[T]he phrase 'the next term of the court' … excludes the term of court then current and means the next ensuing term."). The "next general election" is the one in 2027—not the one that had already begun.

Constitutional history confirms that the "intervening House of Delegates election" is part of the amendment process "to get the sentiment of the people on an amendment [the House] had acted upon previously." *Proceedings and Debates of the Virginia House of Delegates Pertaining to Amendment of the Constitution*, 498 (1971). It also disciplines the General Assembly which, depending on how the populace votes in the intervening election, "upon reflection … might decide not to submit the amendment." *Id.* Petitioners' contrary reading would eviscerate these purposes. It would empower a runaway General Assembly to

avoid the scrutiny of the voters, which is precisely what happened here. Plaintiff Simon, one of the more than a million Virginian early voters, voted early for her House delegate, receiving confirmation on October 21 that her ballot had been cast. R.129. A week later, her delegate introduced the redistricting amendment and then proceeded to push it through the legislature. R.129-30. She was shocked by her delegate's actions to pass the controversial amendment and immediately wanted to change her vote. R.129-130.

Petitioners dismiss this as just another "October Surprise." Va. Br. at 20. But their flippant dismissal of Virginia voters' right to participate in the constitutional amendment process is not a defense. Article XII establishes a process that demands "strict compliance" on the part of the General Assembly. *Coleman*, 219 Va. at 154. That constitutional requirement is worlds away from the leaked text messages or public scandals that constitute an "October surprise." Before the legislature can consider a proposed amendment for the second time, the electorate must have the opportunity to weigh in. That won't happen until 2027.

C. Petitioners' counterarguments don't change the meaning of "election" in the amendment process.

Petitioners point to Article IV of the constitution, which sets the date known as election day. Va. Br. 16-18; Scott Br. 31-32. According to Petitioners,

the "election" itself is only that "single day," Scott Br. 31, "the Tuesday succeeding the first Monday in November," Va. Const. art. IV, §3. But when Article IV says that House delegates are "elected … on the Tuesday," *id.*, it refers to the election's "culmination," Va. Op. Att'y Gen. No. 25-029, 2025 WL 3046240, at *2 (Oct. 28), or its "consummation," *Foster*, 522 U.S. at 72 n.4, but not its commencement.

Nor does it rewrite the constitution to observe that when citizens submit ballots, they're participating in an *ongoing* "election." *Contra* Va. Br. 19-20, 23; Scott Br. at 34-35. The early-voting statute cannot change the constitution. *See City of Richmond v. Richmond Mem'l Hosp.*, 116 S.E.2d 79, 84 (1960). Nor does a statute alter the constitution just because it has constitutional consequences. The "mode" by which the constitution operates must "be provided by legislative action" setting the length of the election. *City of Newport News v. Elizabeth City Cnty.*, 189 Va. 825, 832 (1949). "[T]he legislature has proceeded to provide" it by creating a 46-day election period. *Id.*

Statutory references to the November Tuesday as "election day" or the like do not undermine the fact that the "election" encompasses the entire voting period. *Contra* Scott Br. 32-33 (citing Code §§24.2-101, 24.2-603, 24.2-712(D)); Va. Br. 22 (similar). "Election day" is the day that the election is "consummated," not the only day on which the election takes place. *Foster*, 522 U.S. at 72 & n.4. So although the general election is "held … on the Tuesday" in November, Code

§24.2-101, it is also held throughout the 45 days prior to election day, *id.* §24.2-701.1(A). Early voters are not voting in some other election. All of those votes are part of the "general election of members of the House of Delegates" referenced in Article XII.

Moore v. Pullem, 150 Va. 174 (1928), does not suggest otherwise. *Contra* Scott Br. 21; Va. Br. 30. That case was about "the qualifications of the voters," not "the conduct of elections." *Moore*, 150 Va. at 188-89. And to the extent that it was about elections themselves, it was about *where* voters could cast their ballots, not *when* the election took place. There, local officials contested the validity of absentee voting on the "sole … argument" that then-operative constitutional language required "the personal presence of the voter at the precinct." *Id.* at 189. In approving the practice of out-of-town voting under the now-defunct provision, this Court never said the "election" was limited to a single day. And even if the "election" were a single day under the highly restrictive out-of-town voting scheme described in *Moore*, *see id.* at 179-82, that is no longer true today, when any voter can vote in person for six weeks.

"Approximately one million Virginians had voted by the time the General Assembly passed House Joint Resolution 6007 regarding the proposed redistricting Constitutional Amendment." R.989. By the standards of an ordinary English speaker, the "election" was well underway when the amendment first

passed. And history confirms what the text makes clear: the intervening election requirement gives the people a chance to vote an amendment's backers out of office before it passes the legislature again. Petitioners urge a strained reading that contorts the plain text and ignores the history. The Circuit Court rightly rejected it—and this Court should do the same.

III. The Circuit Court correctly found that the rushed amendment process violated Code §30-13.

The proposed amendment is flawed for a third reason. By ramming the proposed amendment through 42 days after voting in the 2025 election began, the General Assembly deprived the electorate of the three months' publication required for constitutional amendments. Under Article XII, the General Assembly "prescribe[d]" the "manner" that proposed constitutional amendments must be submitted to qualified voters by requiring publication of those amendments. Virginia Code §30-13 requires the clerk of each circuit court to publish a copy of proposed amendments on the courthouse doors and make another copy available for public inspection at least "three months prior to the next ensuing general election." The purpose of that publication—found in the amendment processes of many States—is to "protect[] the integrity" of the constitutional amendment process "by requiring" that an amendment's proponents "notify, at an early stage, all those concerned—including future voters—about

a proposed [amendment's] purpose and effect." *E.g.*, *Nevadans for Nev. v. Beers*, 142 P.3d 339, 347-48 (Nev. 2006).

All agree that strict compliance with each step in the amendment process is required. *See* Nardo Br. 32-33; Va. Br. 31; Scott Br. 43. Petitioners nevertheless maintain that §30-13 is an exception to that rule. They have four theories: (A) because §30-13 is a statute, not a constitutional requirement, it isn't binding; (B) Section 30-13 was rendered dead letter by a constitutional amendment that didn't remove it from the Code; (C) the proposed amendment can still comply with §30-13 if it is published three months before the 2027 general election, long after the amendment would be ratified; and (D) Section 30-13 was repealed during this litigation with retroactive effect. Each argument fails.

A. Section 30-13 is mandatory.

Petitioners try to distinguish §30-13 because it is statutory, not constitutional. But the constitution requires "strict compliance" with "all specified prerequisites." *Coleman*, 219 Va. at 158. And "[a]ll means all." *Fauber v. Town of Cape Charles*, 79 Va. App. 660, 672 (2024) (emphasis omitted). Defendants' made-up statutory–constitutional distinction makes little sense for three reasons.

First, as already discussed, the General Assembly must "prescribe" the "manner" in which "to submit such proposed amendment or amendments to the voters." Va. Const. art. XII, §1. And as the Circuit Court concluded, §30-13 is

just such a prescription. R.600. "[W]hen the Legislature prescribed the manner of the publication, to ignore its requirement is to ignore the constitutional provision itself." *McCreary v. Speer*, 162 S.W. 99, 103-04 (Ky. 1914). Statutes require strict compliance if they "carry into effect the constitutional provision," *id*., a principle reinforced for amendment requisites by *Coleman*.

Second, statutes such as §30-13 often constrain the amendment process. This Court has held that legislation can "restrict[]" a constitutional convention to specific subjects. *Staples*, 183 Va. at 630. And "to fix a definite period for the ratification" of a proposed amendment is an ordinary tool of legislation. *Dillon*, 256 U.S. at 375-76. At the federal level, Congress regularly conditions the ratification of amendments on a time limit by legislative enactment. *See* 44 Op. O.L.C. at 12-13 (the last five proposed amendments to the U.S. Constitution included ratification deadlines in the proposing clause). It's no different in the States, where many courts have invalidated proposed constitutional amendments for statutory infirmities. *Beers*, 142 P.3d at 351 n.51 (collecting cases). The Circuit Court's order followed these examples and this Court's binding precedent in *Coleman* when it ruled that compliance with §30-13 was mandatory.

Third, legislatures cannot ignore statutes by calling them "directory" and then assuming they are "the sole judges of whether or not they have complied with this provision." *Graham v. Jones*, 3 So.2d 761, 770, 795-96 (La. 1941). This

Court has held that all prerequisites to constitutional amendment require strict compliance, which means they cannot be directory. *Coleman*, 219 Va. at 158. But even beyond the constitutional amendment process, Petitioners' interpretation would render every supposedly "directory" statute in the Virginia Code unenforceable. But that a statute is directory "does not mean that the legislature intended it to be ignored." *Reyes v. Commonwealth*, 297 Va. 133, 142 (2019). When a directory statute is violated, "the legislature left to the court the decision of how to remedy a violation. When a court does so, it should undertake a 'commonsense balancing' of the harm resulting from the violation." *Id.* (citation omitted). And here, *Coleman* requires "strict compliance." 219 Va. at 158. So the Circuit Court fashioned the appropriate remedy by declaring the first reference to the proposed amendment void, since strict compliance applies. Indeed, this is only way to remedy the harm to Virginia voters.

If the Court "were to adopt a substantial compliance standard, it would apply only if the Legislature *tried* to comply with the Publication Clause but fell short." *League of Women Voters v. Utah,* 559 P.3d 11, 41 (Utah 2024); *see also Op. of the Justs.*, 275 A.2d 558, 562 (Del. 1971) (explaining that "substantial compliance may not be predicated upon no compliance"); *Mayer v. Adams*, 186 S.E. 420, 424 (Ga. 1936) (similar). The General Assembly never tried to comply with §30-13. Its attempt to make the repeal retroactive admits that failure.

Statutory publication is all the more important here because the ballot question submitted to voters does not describe the amendment in any objective manner. Instead, the ballot asks whether the constitution's redistricting process should be amended "to restore fairness in the upcoming election." HB 1384, §14, Gen. Assemb., Reg. Sess. (Va. 2026). By ignoring Section 30-13 and submitting misleading language to the voters,[7] a bare majority of the General Assembly is obscuring the content of the proposed amendment. They are skirting these requirements because they know that properly informing the voters of the amendment would likely doom their political gerrymander. But politics cannot justify these constitutional violations. The Court should enforce the constitutional "prerequisites" to ratifying a constitutional amendment and ensure voters receive the notice they are due. *Coleman*, 219 Va. at 158.

B. The 1971 constitutional amendment did not render §30-13 unenforceable.

Petitioners next claim that §30-13 cannot be enforced because it was rendered a dead-letter by the 1971 Virginia Constitution. It is true that the Virginia Constitution once required a ninety-day publication period for proposed amendments by its own terms, and that this publication requirement was not included in the 1971 constitution. *See* Commission on Constitutional Revision,

[7] The misleading language is yet another constitutional violation raised in *Koski v. RNC*, 926 S.E.2d 289.

Report of the Commission on Constitutional Revision 75, 324-25, 450 (1969), perma.cc/AAB6-HJMZ. But that change does not invalidate legislation prescribing the manner in which the proposed amendment must be submitted to voters.

Section 30-13 is law. It has been on the books for more than 50 years after the 1971 amendments. And since then, §30-13 "has been amended four times." R.600; *see* 1976 Va. Laws ch. 170; 1993 Va. Laws. ch. 399; 1994 Va. Laws. ch. 623; 2005 Va. Laws ch. 839. Each time, the General Assembly could have repealed the statute if it were truly "a vestige of an earlier constitutional regime." Va. Br. 36. But it did not—just as when the constitution was amended in 1971, the General Assembly continued to prescribe that three months' publication be part of the manner of submission to voters. Constitutional amendments have followed this process since 1971, without issue or objection.

That the code commission recommended repealing §30-13 only confirms that until that repeal is effective (*see infra* Section III.D.1), the statute is law. *See Eberhardt v. Fairfax Cnty. Employees' Ret. Sys. Bd. of Trs.*, 283 Va. 190, 194 n.3 (2012) (the law is "the language actually adopted by the General Assembly"). Indeed, *until this case*, the legislative clerk defendants viewed "compliance with the provisions of the law" of §30-13 as mandatory. *E.g.*, G. Paul Nardo, *Letter to Clerks of the Circuit Courts* (April 9, 2019), perma.cc/2ATA-KLMT. That's why

they directed all circuit clerks to post proposed amendments three months before the election "[i]n fulfillment of that statutory requirement." *E.g.*, Suzette Denslow, *Letter to Clerks of Circuit Courts* (July 28, 2021), perma.cc/K3D7-73VW. It is only now, when it suits these Petitioners, that they ignore it.

C. Section 30-13 required the proposed amendment to be posted three months before the 2025 General Election.

Unable to get around the text, Petitioners claim the General Assembly can satisfy §30-13 by providing belated notice three months before the *next* general election in 2027—long after the proposed amendment is voted on. Nardo Br. 33. The Circuit Court rightly called this argument "insane." R.1489. It "makes zero sense" that circuit clerks "could comply with the statute by posting notice of it a year and a half after the referendum is voted on by the public." R.1490.

Besides tossing aside any reasonable understanding of "notice," Petitioners conflate two provisions of §30-13. The first paragraph requires the Clerk of the House of Delegates to prepare an index to the Journal of the House. The clerk is instructed to prepare this index "at the end of the session of the General Assembly." Code §30-13. The second paragraph concerns a different duty on different timing. The clerks of the circuit courts must post copies of the proposed amendment "not later than three months prior to the next ensuing general election of members of the House of Delegates." *Id*. Nothing ties the publication duty

in the second paragraph to the "end of the session" trigger in the first paragraph. *Contra* Nardo Br. 33. The title removes any doubt that the duties are separate: "Other duties of Clerk of House of Delegates; publication of proposed amendments to the Constitution." Code §30-13.

Petitioners' reading is also incompatible with Article XII. Provisions addressing the same subject should generally be read in harmony, and terms should be given consistent meaning. *Va. Polytechnic Inst. & State Univ. v. Interactive Return Serv.*, 271 Va. 304, 310-11 (2006). But under Petitioners' theory, the "next general election" in Article XII refers to the 2025 general election, while "next ensuing general election" in §30-13 refers to the 2027 general election. *See* Nardo Br. 33; Va. Br. 17. That interpretation cannot be correct, as it divorces publication to the voters (under §30-13) from the opportunity to hold their delegates accountable (under Article XII).

Nor does Petitioners' interpretation accord with the text. Section 30-13 requires posting "*proposed* amendments" before the next election, not final amendments already in force. Code §30-13 (emphasis added). Publication after ratification would not "protect[] the integrity of the initiative process" because it would inform voters about their choice after it's already made. *Beers*, 142 P.3d at 347-48. Belated publication of an amendment already in effect does not sat-

isfy the procedural requirements "prior to submission of the proposed amendments." *Coleman,* 219 Va. at 152. Even Petitioners' preferred cases hold that posting duties must come before an election. *See Scott v. James,* 114 Va. 297, 305-06 (1912) (describing posting copies of proposed amendments as "preliminary" to holding the election).[8]

Petitioners rely on an Attorney General opinion from less than two months ago. Va. Br. 32. They ignore the prior Attorney General's opinion, which advised that the next general election after the proposed amendment was passed "will occur in 2027." Va. Op. Att'y Gen. No. 25-029, at *1. Regardless, an executive opinion cannot rewrite the constitution or repeal a statute. So the new Attorney General opinion, contradicted by the old one, does not help Petitioners. The amendment process must meet the requirements of §30-13.

D. Section 30-13's repeal does not apply to this case.

While litigation was ongoing, the General Assembly sought to repeal §30-13 and make that appeal retroactive to moot this case. That effort should be

[8] Only the legislative clerks still argue that *Scott v. James* bars "adjudication." Nardo Br. 36. But as the Court recently explained, *Scott* "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." *RNC*, 926 S.E.2d at 291; *accord Carlisle v. Hassan*, 199 Va. 771, 774 (1958) (declining to enforce law because underlying referendum violated the Constitution). It's also not true that the Circuit Court granted "permanent injunctive relief against the legislative clerks." *Contra* Nardo Br. 25. Rather, it dismissed them from the case. R.1663.

seen for what it is: a concession that the process here did not comply with §30-13. But that repeal cannot affect this case both because H.B. 1384 cannot become effective until July under Article IV, §13, and because it cannot overcome the constitutional presumption against retroactivity.

1. The repeal becomes effective in July.

The constitution requires a several-month gap between when a law is passed and when it goes into effect. "All laws enacted at a regular session … but excluding a general appropriation law, shall take effect on the first day of July following the adjournment of the session of the General Assembly at which it has been enacted." Va. Const. art. IV, §13. This gap "give[s] the people a fair opportunity to acquaint themselves with the provisions of the statutes enacted at a given session, in order that they might institute and prosecute appropriate proceedings for the enforcement of any claims affected thereby." *Bank of Chatham v. Waldron*, 188 Va. 68, 71 (1948); *see* 1 Howard, *supra*, at 531-32.

The default July effective date has two exceptions. Neither applies. First, the constitution exempts "emergenc[ies]" where four-fifths of each chamber can vote to enact an earlier effective date. Va. Const. art. IV, §13. But H.B. 1384 doesn't contain an emergency clause, and it came nowhere near the four-fifths threshold. Second, the constitution exempts "a general appropriation law." *Id.* H.B. 1384 is not a general appropriation law for at least two reasons.

First, H.B. 1384 is a *specific* appropriation law, not a general one. Where a "sum is earmarked for a precise or limited purpose," an appropriation bill is "a specific appropriation." *Appropriation*, *Black's Law Dictionary*, *supra*. In contrast to a general appropriation bill, a specific (or special) appropriation bill "makes special appropriations to fund a particular aspect of state government." 63C Am. Jur. 2d Public Funds §27. That is, "[a] special appropriation bill makes appropriations to fund only one agency or to support only one state governmental purpose," as opposed to a "general appropriation bill," which funds the government. *Fent v. State ex rel. Off. of State Fin.*, 184 P.3d 467, 476 (Okla. 2008) (applying Okla. Const. art. V, §56). H.B. 1384 does not fund the state government. Instead, it provides specific funding for the April 21, 2026 special election.

Second, H.B. 1384 is not a general appropriations law because it deals with matters far afield of appropriations. "[A]n appropriation bill cannot change or amend existing law on subjects other than appropriations." 63C Am. Jur. 2d Public Funds §27. The statute's changes to the posting requirements of proposed constitutional amendments and to venue are "substantive law provisions that are not appropriations." *Fent*, 184 P.3d at 476. Those provisions make it "not a general appropriation bill." *Id.* Other courts thus agree that when state constitutions contain exceptions for "[g]eneral appropriation bills," "any bill that purports to combine appropriations with the enactment or amendment of

general or substantive law … does not fall within the exception for 'general appropriation bills.'" *Planned Parenthood of St. Louis Region v. Dep't of Soc. Servs.*, 602 S.W.3d 201, 207 (Mo. 2020); *see also Bengzon v. Sec'y of Philippine Islands*, 299 U.S. 410, 412-13 (1937) ("The term 'appropriation act' obviously would not include an act of general legislation…."); *Commonwealth v. Dodson*, 176 Va. 281, 290 (1940) (applying *Bengzon*). So even if H.B. 1384's *appropriations* take immediate effect, its "provisions of general law" cannot. *Bengzon*, 299 U.S. at 413.

These limitations are common sense. The constitution makes it easier for appropriations bills to go into immediate effect because of the urgency of keeping the government funded—and because providing funding for the government does not affect the rights and duties of citizens. Under Petitioners' position, the General Assembly could always make a law immediately effective by slipping it into a funding bill. The Court should decline Petitioners' invitation to eviscerate the constitution's limits on effective dates.

2. The repeal cannot apply retroactively to this case.

Even if the §30-13 repeal could take immediate effect, it cannot take retroactive effect. Courts strongly disfavor retroactive application of laws, particularly new laws applied to pending litigation. "As a general rule, laws existing at the time a suit is filed govern the case." *Gaynor v. Hird*, 11 Va. App. 588, 590 (1991). This is especially so when it comes to laws that change *substantive*

rights, because "'the retroactive application of a statute impairing a 'substantive' right violates due process and is therefore unconstitutional.'" *Bartholomew v. Bartholomew*, 233 Va. 86, 88 (1987). "[S]ubstantive provisions of laws … cannot be applied retroactively," whereas "procedural or remedial statutes, which may be applied retroactively where a retroactive legislative intent is demonstrated." *Berner v. Mills*, 38 Va. App. 11, 17 (2002), *aff'd*, 265 Va. 408 (2003). So "[i]n order … to apply retroactively, [the statute] must be procedural in nature and affect remedy only, disturbing no substantive or vested rights. The statute must also contain an expression of retrospective legislative intent." *Pennington v. Superior Iron Works*, 30 Va. App. 454, 459 (1999). It is not enough that the statute includes "an express statement of intended retroactive application." Nardo Br. 35; Scott Br. 39 (conceding that only "a purely procedural statute" may be given retroactive effect). A new statute must be purely procedural *and* be clearly intended to apply retroactively to pending litigation.

H.B. 1384 is substantive because it affects legal "duties, rights, and obligations, as opposed to … methods of obtaining redress or enforcement of rights." *In re Brown*, 289 Va. 343, 348 (2015). It abolishes §30-13, which imposes "duties" on the Clerk of the House of Delegates to prepare and publish the text of a proposed amendment, and on each circuit court clerk to post the amendment. H.B. 1384 also impairs the rights of Virginians to exercise their

vote in the amendment process. Even if publication under §30-13 could be described as a procedural hurdle for the General Assembly, it is a substantive right of Virginians in the amendment process. *See City of Norfolk v. Kohler*, 234 Va. 341, 345 (1987) (statute prohibiting city employees from being "discharged except 'for cause and upon written charges, and after an opportunity to be heard'" was a "a substantive right" that could not "affected by the enactment of the new law"). Likewise, just as conferring benefits is substantive, *Pennington*, 30 Va. App. at 458-59, so too is taking away the benefit of publication that had previously been provided. And forbidding certain conduct, even when combined with evidentiary rules for enforcement, goes to substance. *Hogle v. Commonwealth*, 75 Va. App. 743, 751-52 (2022).

Even if the statute were not wholly substantive, "[i]n circumstances where a statutory amendment effects a change in *both* substance and remedy (or procedure), courts will not give the statute retroactive effect." *McCarthy v. Commonwealth*, 73 Va. App. 630, 647 (2021). Changes that affect "both substantive and procedural rights … are not to be applied retroactively." *Commonwealth v. McWain*, 110 Va. Cir. 258 (2022). Retroactivity is a feeble attempt to erase the General Assembly's mistakes and gain an advantage in this litigation. §30-13 does not and cannot apply retroactively.

CONCLUSION

The Court should affirm the Circuit Court's judgment.

Dated: April 13, 2026

Respectfully submitted,

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CERTIFICATE

Under Rule 5:17(i), I certify that this brief was filed with the Court via the VACES system. This brief is in size 14-point Cambria font and complies with the length requirement set forth in Rule 5:26(b) because it does not exceed the longer of 8,750 words or 50 pages, excluding the cover page, table of contents, table of authorities, and certificate. A copy of this brief was served by email to all counsel of record.

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/s/ Thomas R. McCarthy
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