IN THE SUPREME COURT OF VIRGINIA

STEVEN KOSKI, in his official capacity as Commisioner of the Virginia Department of Elections, et al. Petitioners/Defendants, v. REPUBLICAN NATIONAL COMMITTEE, et al. Respondents/Plaintiffs.	)	Record No.: 26-_____

Emergency Motion to Stay Circuit Court Order Pending Appeal

Petitioners Steven Koski, John O'Bannon, Rosalyn R. Dance, Georgia Alvis-Long, Christopher P. Stolle, and J. Chapman Petersen, in their official capacities, as well as the Virginia Department of Elections and Virginia State Board of Elections ("State Election Officials"), by counsel, move this Honorable Court to immediately Stay the February 19, 2026, Order of the Circuit Court for Tazewell County. Petitioners have informed counsel for Respondents of their intent to file this motion. Rule 5:4(a)(1).

Introduction

This emergency motion arises from an extraordinary order that halts a statewide constitutional election and silences the electorate at the very moment Article XII assigns it a decisive role. Under the Constitution of Virginia, the ultimate authority to ratify or reject a proposed amendment rests not with courts or litigants, but with the people themselves. By enjoining any preparation for the April 2026 referendum, the circuit court has suspended that constitutionally prescribed stage of governance and prevented Virginians from exercising the franchise in the amendment process.

The injunction stops the State Election Officials from "administering, preparing for, taking any action to further the procedure of the referendum, or otherwise moving forward with causing an election to be held on the proposed constitutional amendment." Exh. A at 5. It does not explain how *preparing for* the referendum harms anyone or otherwise justify such sweeping restrictions. The injunction rests on three contested legal conclusions: that the November 4, 2025 general election cannot qualify as the required intervening election because early voting had begun when the General Assembly passed the first resolution;

that early voting for the April 2026 referendum must begin more than ninety days after the January 16, 2026 legislative passage; and that the legislatively prescribed ballot language violates Article XII's requirements. None of those theories finds support in the constitutional text.

This case also arises against the backdrop of ongoing Supreme Court review of parallel constitutional challenges concerning the same October 2025 legislative session and the same intervening-election requirement. See Order, *Scott v. McDougle*, Record No. 260127 (Va. Feb. 13, 2026) (certifying case as one of "imperative public importance"). By adopting constitutional interpretations already under active review and using them to suspend preparation for a statewide referendum, the circuit court has taken the extraordinary step of stopping the amendment process before it reaches the voters.

The equitable stakes are immediate and profound. The special election is scheduled for April 21, 2026. 2026 Acts ch. 6. And early absentee voting is set to begin on March 6, 2026. *Upcoming Elections*, Va. Dep't of Elections (2026), perma.cc/4MUN-B568. A stay is necessary to preserve the constitutional process while appellate review proceeds. The

State Election Officials are likely to prevail on the merits, and preventing Virginia voters from casting ballots in a constitutionally prescribed referendum will inflict irreparable democratic harm that cannot be remedied after the fact.

Background

Pursuant to Article XII of the Constitution of Virginia, the General Assembly approved a proposed constitutional amendment on October 31, 2025, and following the November 4, 2025, general election of members of the House of Delegates, approved the amendment again in the subsequent session on January 16, 2026. The amendment was thereafter duly scheduled for submission to Virginia voters at a special election set for April 21, 2026. 2026 Acts ch. 6.

Plaintiffs filed this action in the Circuit Court of Tazewell County challenging the constitutional validity of the amendment's referral to the electorate two days ago. Plaintiffs alleged that the amendment process did not comply with Article XII's intervening-election requirement, that statutory timing provisions required a ninety-day interval before early voting could occur, and that the legislatively prescribed ballot language violated the Constitution's Submission Clause.

Yesterday, following a hearing, the circuit court granted Plaintiffs' request for a temporary injunction pending further proceedings. Exh. A at 5-6. The court concluded that Plaintiffs were likely to succeed on multiple grounds, including that no valid intervening general election occurred, that the referendum violated a purported ninety-day timing requirement, and that the ballot language was constitutionally deficient. Exh. A at 3-4. The court enjoined the Commonwealth from administering, preparing for, or taking further action to submit the proposed amendment to voters. Exh. A at 5-6. The temporary injunction is set to remain in effect until March 18, 2026, unless extended or modified. Exh. A at 6.

The State Election Officials moved for a stay pending appeal at the hearing, and the circuit court denied that request. Exh. A at 5. The State Election Officials will file a petition for review from the injunction order under Code § 8.01-626 imminently, and seeks a stay pending that decision and ultimately, a decision on the merits.

Argument

A stay pending appeal is an exercise of the Court's equitable discretion. See *Primov v. Serco, Inc.*, 296 Va. 59, 67 (2018). In

determining whether to grant a stay, Virginia courts consider the totality of the circumstances, including: (1) the movant's likelihood of success on the merits; (2) whether the movant will suffer irreparable harm absent a stay; (3) whether issuance of the stay will substantially injure other parties; and (4) where the public interest lies. *Jeffrey v. Commonwealth*, 77 Va. App. 1, 11–16, 884 S.E.2d 225 (2023) (citing *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

The purpose of a stay is to preserve the status quo and protect the effectiveness of appellate review. A stay is particularly appropriate where denial would render the appeal ineffectual or permit consequences that cannot later be undone. See *Primov*, 296 Va. at 67; *Jeffrey*, 77 Va. App. at 12–14. These equitable principles carry particular weight where an injunction halts a scheduled election and alters the constitutional process assigned to Virginia voters.

I. The State Election Officials are likely to succeed on appeal.

A. The injunction is not appropriately tailored to the purported constitutional harm.

The circuit court's injunction does not address the harm it purports to remedy and rests on interpretations of Article XII that depart from the

Constitution's plain text. Even if the circuit court were correct that the April 21 referendum failed to meet Constitutional requirements—it is not—enjoining *preparing for* the election is an inappropriate remedy. An injunction must be appropriately tailored to the harms it is meant to prevent, and it should not overbroadly inhibit conduct that causes no harm. See *Tran v. Gwinn*, 262 Va. 572, 585 (2001); see also *Dayton Bd. of Ed. v. Brinkman*, 433 U.S. 406, 420 (1977) (courts must tailor "the scope of the remedy" to fit "the nature and extent of the constitutional violation"); *Crawford v. Dep't of Corr. Educ.*, 2011 U.S. Dist. LEXIS 136833, at *14 (E.D. Va. Nov. 29, 2011) (emphasizing that equitable relief must match the injury to be remedied).

The circuit court issued a temporary injunction that does not enjoin the election itself. The April 21 election occurs after the injunction expires on March 18. Exh. A at 6. Instead, the circuit court's temporary injunction halts "administering" and "preparing for" the election. Exh. A at 5. But the circuit court's order gives no indication of how the Board of Elections and the Registrars preparing for an election violates anyone's rights.

The right at issue here asserted by Plaintiffs and accepted by the circuit court is a right to feel good about the constitutional amendment process. As Plaintiffs put it, they have a right to feel "confident" that the constitutional amendment process had no errors. Exh. B at 38. This, apparently, is an outgrowth of the right to have a constitutional amendment "process that fully complies with article XII." Exh. B. at 13. Neither purported right is implicated by the Board of Elections preparing for the election by printing and sending ballots to Registrars, checking the voter rolls, and performing their myriad tasks essential to ensuring the integrity of Virginia's voting system. Just the opposite. It is self-evident that stopping the Board of Elections and Registrars from ensuring the voting system's integrity is anathema to engaging in a process that instills confidence.

For its part, the circuit court did not carry this purported constitutional right over to its order—it resolved that Virginians would be "irreparably harmed by their districts changing at this juncture." Exh. A at 4. But it is indisputable that *nothing* Defendants are doing will change anyone's district during the term of this temporary injunction. Indeed, *nothing* the State Election Officials are doing currently will

change anyone's district at all. Districts will change only if the people so choose when the amendment is submitted on April 21. In light of the sweeping scope of this temporary injunction to halt conduct that is not harming anyone, Defendants are likely to succeed on that ground alone.

B. The intervening election requirement was satisfied.

Additionally, the circuit court is wrong on the merits. Article XII establishes a straightforward sequence: majority passage by each house, an intervening general election of members of the House of Delegates, second passage, and submission to the voters. That sequence was followed here.

The court's contrary conclusion depends on redefining the constitutionally fixed "general election" to include the administrative mechanics of early voting, importing an unwritten ninety-day waiting period into the amendment process, and constitutionalizing objections to ballot language that fall outside Article XII's text. None of those theories is supported by the Constitution.

Article XII provides that a proposed constitutional amendment must be agreed to by a majority of each house and, after "the next general election of members of the House of Delegates," agreed to again before

submission to the voters. The constitutional requirement is tied to a fixed electoral event—the "general election"—not to the commencement of absentee or early in-person voting.

Early in-person voting exists solely because the General Assembly enacted statutory provisions permitting voters to cast ballots before Election Day. See Code § 24.2-701.1 (authorizing "absentee voting in person" with specified dates and procedures). Statutory early voting is part of the absentee voting framework, not a separate constitutional event, and does not transform the constitutional date on which a general election occurs.

The Constitution separately specifies when that election occurs: members of the House of Delegates are elected "on the Tuesday succeeding the first Monday in November." Va. Const. art. IV, § 3. In 2025, that date was November 4. That election occurred after the General Assembly's initial passage of the proposed amendment. The intervening-election requirement was therefore satisfied.

The circuit court concluded otherwise because early and absentee voting had begun prior to the amendment's passage. But nothing in Article XII conditions compliance on whether ballots have been cast

before Election Day, and nothing in the Constitution contemplates that a legislatively created absentee procedure alters the fixed constitutional event. Plaintiffs' theory effectively constitutionalizes a statutory administrative mechanism and makes a "general election" depend upon the start date of in-person absentee voting—an interpretation that has no textual basis. The Constitution fixes the relevant benchmark; it does not redefine a general election based on statutory voting mechanisms adopted for administrative convenience.

Virginia courts interpret constitutional text according to its plain meaning and decline to add requirements not contained in the text. See *May v. R.A. Yancey Lumber Corp.*, 297 Va. 1, 6–8 (2019) (plain meaning controls; courts may not render statutory language meaningless). Plaintiffs' interpretation would make the timing of a "general election" fluctuate depending on statutory adjustments to early-voting windows or absentee-ballot procedures. Nothing in Article XII contemplates such variability. The Constitution provides certainty by tying the requirement to a fixed electoral event.

C. The purported ninety-day timing requirement is atextual.

The circuit court further concluded that Plaintiffs were likely to succeed because early voting for the April 2026 referendum was scheduled to begin fewer than ninety days after legislative passage of House Joint Resolution 4. But Article XII, § 1 does not impose a waiting period "after passage" before early voting may begin. The Constitution requires that a proposed amendment be published for a specified period preceding the election at which it is submitted. That election is the April 21, 2026 special election designated by law—not the opening of early voting on March 6.

The Constitution and Virginia's election statutes consistently distinguish between "the election" and the period during which absentee ballots may be cast. Early voting is a statutory accommodation that permits ballots to be cast in advance of Election Day; it does not redefine when the election occurs. Measuring a constitutional publication period from the start of early voting rather than from the election date improperly converts an administrative mechanism into the controlling constitutional event.

Article XII contains no ninety-day waiting period governing the commencement of absentee or early voting following second passage. It specifies only the sequence of legislative approval, an intervening general election, and submission to the voters. It does not impose an additional timing interval between second passage and early voting.

To the extent Plaintiffs rely on Virginia Code § 30-13 or other statutory provisions, those statutes cannot expand or modify the constitutional amendment process. See *Coleman v. Pross*, 219 Va. 143, 154 (1978) (requiring "strict compliance" with the express prerequisites of Article XII before submission of a proposed amendment to the electorate); see also *Strout v. City of Va. Beach,* 43 Va. App. 99, 101–02 (2004) (explaining that local enactments must conform to the Constitution and state law and may not conflict with or expand beyond governing legal requirements). Where the Constitution prescribes the necessary steps for proposing and submitting an amendment, those steps are exclusive and controlling. See *Coleman*, 219 Va. at 154. A statutory timing provision cannot be transformed into a constitutional prerequisite authorizing the suspension of a statewide referendum.

Even if a timing question were debatable, such disputes are subject to ordinary judicial review. They do not justify the extraordinary remedy of halting the electorate's opportunity to vote on a proposed amendment.

D. The ballot-language ruling does not justify enjoining the referendum.

The circuit court also concluded that Plaintiffs were likely to succeed on their claim that the legislatively prescribed ballot language violates Article XII's Submission Clause. But Article XII requires only that the proposed amendment be "submitted" to the voters; it does not constitutionalize a particular phrasing standard or authorize pre-election invalidation absent a clear constitutional defect.

The General Assembly enacted the ballot language through duly adopted legislation. Legislative enactments are presumed constitutional, and reasonable doubts are resolved in favor of validity. See *Finn v. Va. Ret. Sys.*, 259 Va. 144, 152 (2000). That principle carries particular weight at the temporary injunction stage, where injunctive relief is an extraordinary remedy. See *Levisa Coal Co. v. Consolidation Coal Co.*, 276 Va. 44, 60 (2008). Disagreements over clarity or framing do not convert the Submission Clause into a vehicle for suspending the referendum altogether.

Plaintiffs' notice theory fares no better. Article XII contains no advance voter-notice requirement tied to the intervening election. The Constitution does not provide that an amendment must be enacted before early voting begins, nor does it require that voters be informed of a proposed amendment prior to casting ballots in the intervening election. To graft such requirements onto Article XII would expand the amendment process beyond the text adopted by the people of Virginia.

At minimum, any dispute over ballot language presents a debatable legal question that can be addressed through judicial review if necessary. It does not justify preventing Virginia voters from casting ballots.

E. The injunction improperly expands judicial authority over the amendment process.

Courts may review compliance with constitutional amendment procedures, but they have long recognized limits on pre-ratification intervention. The Supreme Court of Virginia has cautioned that courts may not "arrest or interfere with the process of legislation" or enjoin the holding of an election while the amendment process is underway. *Scott v. James*, 114 Va. 297, 298 (1912).

Those separation of powers concerns are heightened because the Supreme Court of Virginia is already reviewing parallel constitutional

challenges arising from the same October 2025 legislative session and the same Article XII sequencing requirement. Allowing a circuit court to suspend a statewide referendum based on interpretations presently under active Supreme Court review risks fragmented and inconsistent rulings on matters of public importance.

The order characterizes itself as preserving the "status quo." But under Article XII, once the General Assembly has complied with the prescribed sequence, the constitutional process moves toward submission to the voters. Halting that process does not preserve the constitutional status quo; it interrupts it.

Where compliance with Article XII is debatable, extraordinary relief preventing submission to the voters is wholly unjustified. Because Plaintiffs' theories rely on requirements not found in the constitutional text, the injunction is unlikely to withstand appellate review.

II. Virginia voters will suffer irreparable harm absent a stay.

Article XII entrusts the people of Virginia—not courts or litigants—with the ultimate decision whether to ratify a proposed constitutional amendment. The referendum election is the point at which the amendment process reaches the voters and the sovereign will of the

people is expressed. By halting the scheduled election, the injunction does not merely regulate procedure—it prevents voters from participating in a constitutionally prescribed stage of governance.

The loss of the opportunity to vote in such a referendum constitutes irreparable harm. A cancelled or delayed constitutional vote cannot be recreated retroactively once statutory deadlines pass and electoral processes lapse. While courts may review the validity of an amendment after ratification if necessary, they cannot restore a lost opportunity for the electorate to cast ballots and register their will. Once that opportunity is denied, the injury is complete and irreversible.

At present, no ballots have been cast in the April 2026 referendum, no amendment has been ratified, no district boundaries have shifted, and no legal consequences have attached. All that is underway are routine administrative steps required to conduct a statewide election, *e.g.*, ballot formatting, printing timelines, voter-information dissemination, absentee/transmission compliance, poll worker training, and other preparations mandated by statute and regulation. Suspending these administrative steps enjoins the functioning of election machinery

without any present injury to Plaintiffs; it prevents ordinary election preparations based on speculative future harms.

The injunction also disrupts the extensive administrative machinery required to conduct a statewide election. Ballot preparation, absentee and overseas ballot transmission, compliance with federal voting obligations, poll worker training, funding allocations, and statutory deadlines are all underway. Suspending these preparatory actions midstream, when no actual injury has occurred, collapses timelines that cannot be restored later and jeopardizes the orderly administration of the referendum itself. The harm therefore extends beyond abstract institutional concerns. It falls directly on Virginia voters, who are deprived of their constitutional role, and on the election infrastructure designed to facilitate that participation. Because the injunction halts a constitutionally mandated stage of the amendment process and prevents voters from acting within the framework prescribed by Article XII, the resulting injury is immediate and irreparable.

A. Plaintiffs will not be irreparably harmed by a stay.

In contrast to the irreversible injury imposed on Virginia voters, Plaintiffs will suffer no comparable harm if a stay is granted. Their

claims concern alleged procedural defects in the amendment process—notice timing, legislative sequencing, and their theory of electoral accountability. These are legal disputes about the meaning of Article XII. They remain fully reviewable on appeal and, if necessary, subject to judicial remedy after the election.

Plaintiffs do not allege that they are being denied the right to vote, nor that any legally cognizable injury has yet occurred. They cannot point to a single ballot cast, a vote denied, or a legal consequence triggered by the administrative preparations that are the only events that have transpired at this time. Their asserted injuries depend entirely on hypothetical procedural objections that are remediable if Plaintiffs prevail on appeal. Permitting the referendum to proceed does not extinguish those claims; it simply allows the electorate to exercise its constitutional role while legal disputes about Article XII are resolved. And if Plaintiffs ultimately prevail, courts retain authority to grant appropriate relief at that time. See *Cangiano v. LSH Bldg. Co.*, 271 Va. 171, 179 (2006) (grant of equitable relief lies within the court's discretion upon a finding of entitlement); *Fund for Animals, Inc. v. Va. State Bd. of Elections*, 53 Va. Cir. 405, 408–10 (Cir. Ct. 2000) (declining to enjoin

submission of a proposed constitutional amendment and permitting the electoral process to proceed notwithstanding pre-election constitutional objections).

The circuit court also relied on the asserted interests of certain Members of Congress whose districts could change if the amendment is ratified. But speculative future electoral consequences do not constitute present irreparable harm. Cf. *Lafferty v. Sch. Bd.*, 293 Va. 354, 358–62 (2017) (rejecting standing where alleged injury rested on speculative future applications of a policy rather than present facts); *City of Fairfax v. Shanklin*, 205 Va. 227, 229–30 (1964) (controversies must be "based upon present rather than future or speculative facts"). Any redistricting effects would occur only *if* voters ratify the amendment and the amendment is later implemented pursuant to law. That contingent possibility does not justify preventing the electorate from voting in the first instance.

Moreover, statutes and constitutional enactments are presumed valid, and the burden rests on the challenger to demonstrate unconstitutionality. See *Finn*, 259 Va. at 152. Plaintiffs' procedural objections—however framed—do not transform a debatable

constitutional question into an injury that becomes irreparable merely because the electorate is permitted to act.

A stay preserves the constitutional framework established by Article XII by allowing the amendment process to reach the voters while appellate review proceeds. Plaintiffs seek the opposite: to prevent the electorate from exercising its constitutional role based on legal theories that remain fully remediable after the election. The balance of equities therefore weighs decisively in favor of a stay.

III. The public interest overwhelmingly favors a stay.

The public interest strongly favors allowing the referendum to proceed while appellate review continues. Article XII assigns the final authority to ratify or reject constitutional amendments to the people of Virginia. The referendum is the mechanism through which constitutional legitimacy is conferred. Preventing that vote based on contested interpretations of constitutional procedure displaces the electorate from the role the Constitution assigns to it.

Courts have long recognized that elections should proceed where possible, particularly where the alleged defects are subject to judicial review after the fact. See, *e.g., Purcell v. Gonzalez,* 549 U.S. 1, 4–6 (2006)

(allowing election to proceed without an injunction "[g]iven the imminence of the election," and recognizing that "[c]ourt orders affecting elections . . . can themselves result in voter confusion" and that this risk increases "[a]s an election grows closer"); *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring in grant of applications for stays) ("Late judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others."). Blocking a scheduled constitutional referendum is not a neutral act of preservation; it is an affirmative intervention in the democratic process. Absent a clear and unmistakable violation of Article XII—which Plaintiffs have not established—the public interest favors permitting the electoral process to unfold.

The public interest in restraint is especially strong here because parallel constitutional challenges arising from the same October 2025 legislative session and the same intervening-election requirement are already under review by this Court as matters of imperative public importance. Allowing a circuit court injunction to suspend a statewide referendum based on interpretations presently under active appellate

review risks fragmentation and instability in the Commonwealth's constitutional processes.

Conclusion

For these reasons, Petitioners respectfully request that this Court issue an emergency stay of the circuit court's February 19, 2026 order and the underlying action pending the appeal. Pursuant to Rule 5:4(a)(2), Petitioners ask this Court waive the 10-day response period and enter the stay as soon as possible.

Respectfully submitted,

STEVEN KOSKI, in his official capacity as the Commissioner of the Virginia Department of Elections, et al.

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CERTIFICATE OF SERVICE

On February 20, 2026 this document was electronically filed with the Court via VACES and transmitted by email to:

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