IN THE SUPREME COURT OF VIRGINIA

Record No. 26_____

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

v.

REPUBLICAN NATIONAL COMMITTEE, et al.,
Respondents/Plaintiffs

PETITION FOR REVIEW PURSUANT TO CODE § 8.01-626

JAY JONES
Attorney General

TRAVIS H. HILL
Chief Deputy Attorney General

PEBBLES L. BURGESS (#74817)
Assistant Attorney General

Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219
(804) 786-2071 – Telephone
(804) 786-1991 – Facsimile
SolicitorGeneral@oag.state.va.us

TILLMAN J. BRECKENRIDGE (#85647)
Solicitor General

MIKAELA A. PHILLIPS (#97164)
Triston Chase O'Savio (#100111)
Assistant Solicitors General

Counsel for Petitioners

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INTRODUCTION

This petition arises from an extraordinary judicial order halting officials from even "*preparing for*" a statewide constitutional referendum and preventing the citizens of the Commonwealth from exercising the role the Constitution of Virginia assigns to them in the amendment process. Article XII entrusts voters—not courts—with the ultimate decision of whether to ratify a proposed constitutional amendment. By enjoining the scheduled referendum and restraining election officials from even preparing to administer it correctly, the circuit court's injunction will silence the electorate and interrupt the constitutional sequence prescribed by the Constitution.

Such a sweeping injunction must be appropriately tailored to remedying a serious deprivation of constitutional rights. That did not happen here. In this case, the plaintiffs asserted a constitutional right to *feelings*—in their words: "Plaintiffs have a constitutionally protected 'right' to 'act on proposed constitutional amendments with confidence, secure in the knowledge that the proposals have been put to them for final action only after careful analysis' with all '[d]efects and errors' removed." R. 54. Putting aside, for the moment, that *Coleman* does not

support the plaintiffs' position, it is self-evident that the Board of Elections and Registrars' background preparation for an election do not violate such a right and cannot be fully enjoined just to support such right. It does just the opposite. Preventing the Board of Elections and Registrars from timely working through their processes to provide a fair election presumably would only engender a *lack* of confidence for voters.

This purported right apparently is derived from a real right: "the right to participate in an amendatory process that complies with the Constitution," R. 61, but the plaintiffs presumably relied on feelings because they cannot muster even a suggestion that this right is injured by properly preparing for the April 21 election. This extraordinary relief is unwarranted and unlawful.

Moreover, the injunction is baseless on the merits. The circuit court's ruling rests on a series of atextual interpretations of Article XII and related statutes—including the conclusion that no constitutionally valid intervening general election occurred, that early voting must begin more than ninety days after legislative passage, and that the legislatively prescribed ballot language violates the Submission Clause. None of those theories is grounded in constitutional text.

Temporary injunctive relief is an extraordinary remedy. It is not a vehicle for judicial control of the constitutional amendment process. By halting submission of the proposed amendment to the electorate, the circuit court displaced the role the Constitution reserves to the people themselves and failed to preserve the status quo it was required to maintain.

Moreover, the constitutional premises underlying the temporary injunction are presently pending review before this Court in *Scott v. McDougle*, No. 260127, which this Court has designated as a matter of "imperative public importance." Permitting a trial court to suspend a statewide referendum based on constitutional interpretations currently before this Court risks fragmented and inconsistent rulings on issues of statewide significance. Institutional restraint counsels allowing the amendment process to proceed while this Court resolves those questions.

This Court should grant this Petition for Review and vacate the temporary injunction, stay all proceedings below, and consolidate this case with *Scott v. McDougle*, No. 260127.

STATEMENT

Pursuant to Article XII of the Constitution of Virginia, the General Assembly approved a proposed constitutional amendment during one session and, following the next general election of members of the House of Delegates, approved the amendment again in a subsequent session. The amendment was thereafter scheduled for submission to Virginia voters at a special election set for April 21, 2026. 2026 Acts ch. 6.

On February 18, 2026, Plaintiffs filed suit in the Circuit Court of Tazewell County challenging the constitutional validity of the amendment's referral to the electorate. R. 1-48. The complaint alleged that the intervening-election requirement of Article XII was not satisfied because early voting for the November 2025 general election had begun before legislative passage; that statutory timing provisions required a ninety-day interval before early voting for the referendum could begin; and that the legislatively prescribed ballot language violated Article XII's Submission Clause. R. 22-33.

Plaintiffs sought immediate emergency relief enjoining election officials from administering, preparing for, or taking any steps to imple-

ment the referendum. R. 50-65. Following expedited proceedings, the circuit court entered a temporary injunction on February 19, 2026. R. 66-72. The court concluded that Plaintiffs were likely to succeed on multiple constitutional grounds, including their claims regarding the intervening-election requirement, the asserted ninety-day timing rule, and the ballot language. R. 68-69.

The court further found that Plaintiffs would be irreparably harmed absent injunctive relief and that the equities weighed in their favor. R. 69. It entered temporary relief "for the limited purpose of preserving the status quo between the parties pending a hearing on a motion for a preliminary injunction." R. 69.

The court enjoined Defendants from administering, preparing for, or taking further action to submit the proposed amendment to voters. The court also denied Defendants' motion to stay the temporary injunction pending appeal, and it remains in effect until March 18, 2026, unless extended or modified. R. 70-71.

ASSIGNMENTS OF ERROR

1. The circuit court erred in concluding that Plaintiffs were likely to succeed on their claims that the constitutional amendment process violated Article XII. (Preserved at R. 68-69, 100-04.).

2. The circuit court erred in finding that Plaintiffs established irreparable harm sufficient to justify enjoining a statewide constitutional referendum and the process for its preparation. (Preserved at R. 69; 105-11).

3. The circuit court abused its discretion in granting temporary injunctive relief where the balance of equities and public interest do not favor halting submission of the proposed amendment to the electorate. (Preserved at R. 69, 104-11).

STANDARD OF REVIEW

This Court reviews a circuit court's decision to grant temporary injunctive relief for abuse of discretion. See *Commonwealth v. Sadler Bros. Oil Co.*, 2023 WL 9693656, at *4 (Va. Oct. 13, 2023). Questions of constitutional interpretation are reviewed de novo. *Id.* The Court will vacate a preliminary injunction that rests on an erroneous legal conclusion or that fails to consider a relevant factor that should have been given significant weight. See *Landrum v. Chippenham & Johnston-Willis Hosps., Inc.*, 282 Va. 346, 352 (2011); *May v. R.A. Yancey Lumber Corp.*, 297 Va. 1, 18 (2019).

ARGUMENT

I. The circuit court erred in concluding that Plaintiffs were likely to succeed on their claims that the constitutional amendment process violated Article XII.

The temporary injunction rests on three flawed constitutional conclusions: (1) that no next ensuing general election of members of the

House of Delegates occurred within the meaning of Article XII; (2) that Article XII imposes a ninety-day timing requirement before early voting may begin; and (3) that the legislatively prescribed ballot language violates the Submission Clause. None of those conclusions finds support in the constitutional text.

Article XII, sec. 1 provides that a proposed amendment must be agreed to by a majority of each house of the General Assembly and, after "the next general election of members of the House of Delegates," be agreed to again before submission to the voters. The Constitution separately fixes when that general election occurs: members of the House of Delegates are elected "biennially by the voters of the several house districts on the Tuesday succeeding the first Monday in November." Va. Const. Art. IV, sec. 3. The November 2025 general election occurred after initial legislative passage. The circuit court nevertheless concluded that the intervening-election requirement was not satisfied because early voting for that election had begun before legislative passage. R. 68 (citing *McDougle v. Nardo*, No. CL-25-1582, 20206 WL 243908, *2-4 (Tazewell Cir. Ct. Jan. 27, 2026)).

But Article XII ties its sequencing requirement to a general election—not to the administrative mechanics of absentee voting (early voting is just another method of absentee voting, in addition to mail-in voting, e.g. Code § 24.2-701.1). The Constitution does not redefine "general election" in the Constitution to mean the first day on which ballots may be cast. Nor does the Constitution condition compliance on the timing of statutory voting procedures. Reading such a contingency into Article XII adds a requirement the text does not contain.

The court further concluded that the referendum violated a "timing requirement" of Article XII because early voting for the April 2026 referendum was scheduled to begin fewer than ninety days after legislative passage. R. 68. Article XII, however, prescribes a sequence of legislative approval, an intervening general election, second legislative approval, and submission to the voters. It requires that the General Assembly "submit such proposed amendment or amendments to the voters . . . not sooner than ninety days after final passage by the General Assembly." Va. Const. Art. XII, sec. 1. Again, the only reasonable interpretation of that provision is that an amendment is submitted to the voters on election day—here, April 21, 2026. It does not impose a ninety-day interval

governing when early voting may commence. Nothing in Article XII supports transforming a statutory absentee voting schedule into a constitutional barrier to submission.

Finally, the court held that the legislatively prescribed ballot language violates the Submission Clause because the phrase "restore fairness" is purportedly misleading. R. 69. Article XII requires that a proposed amendment be submitted to the electorate; it does not constitutionalize a particular phrasing standard or authorize pre-election invalidation absent a clear textual violation. Disagreements over wording do not justify suspending the constitutional amendment process itself.

This Court has long recognized that although courts may review compliance with constitutional amendment procedures, they may not "arrest or interfere with the process" while it is underway. *Scott v. James*, 114 Va. 297, 299–301 (1912). The relief entered here does precisely what *Scott* cautioned against: it halts the amendment process at the moment it reaches the electorate.

The circuit court's analysis also rests on the premise that the October 2025 legislative action was "void ab initio." That premise is presently under review before this Court in *Scott v. McDougle*, No. 260127. The

existence of ongoing Supreme Court review underscores that Plaintiffs' theory is, at minimum, debatable and does not justify halting the election preparation process by a trial court.

In sum, each of the court's conclusions depends on reading additional requirements into Article XII. Because those requirements do not appear in the constitutional text, Plaintiffs cannot demonstrate a likelihood of success on the merits sufficient to justify halting submission of the proposed amendment to the voters.

II. The circuit court erred in finding that Plaintiffs established irreparable harm sufficient to justify enjoining a statewide constitutional referendum.

To issue a temporary injunction, the court must "first determine[] that the movant will more likely than not suffer irreparable harm without the. . . injunctions." Rule 3:26(c). This is a threshold requirement. *Id.* A plaintiff must demonstrate irreparable harm that is actual and imminent—not speculative—and that cannot be remedied through ordinary judicial review. *Winter v. NRDC, Inc.*, 555 U.S. 7, 22 (2006) ("Our frequently reiterated standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is *likely* in the absence of an injunction."); *May*, 297 Va. at 17–18 ("In general, a court may not grant

injunctive relief unless . . . the party has no adequate remedy at law."). The circuit court concluded that Plaintiffs would suffer irreparable harm if the referendum proceeded. R. 69. That conclusion rests on the premise that the amendment process itself was constitutionally defective and the Board of Elections and Registrars continuing to prepare for the election somehow violates a constitutional right to *feel* confident in the process.

But where the asserted harm depends entirely on a disputed legal theory, irreparable injury is not established simply by allowing the challenged action to proceed. *Hogge v. Ellenson*, 212 Va. 403, 404-405 (1971) (dissolving injunction because "[plaintiff] had an adequate remedy of law by following the judicial processes of the courts in the City of Hampton."). If Plaintiffs ultimately prevail on the merits, appropriate judicial relief remains available—as established by this Court accepting review of the underlying issues presented here and setting the case for briefing. See Order, *Scott v. McDougle*, No. 260127 (Va. Feb. 13, 2026). The mere conduct of an election, even one later determined to be unlawful, does not itself foreclose meaningful review.

By contrast, enjoining a scheduled statewide referendum imposes concrete and immediate consequences. Election administration halts.

Statutorily prescribed timelines are disrupted. And most significantly, voters are prevented from exercising the role Article XII assigns to them in the constitutional amendment process.

The injunction also disrupts fixed statutory deadlines governing ballot preparation, absentee and overseas ballot transmission, military voting obligations, poll worker training, funding allocations, and compliance timelines established by election law. See, *e.g.*, *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."); *Perry v. Judd*, 471 F. App'x 219, 225 (4th Cir. 2012) (per curiam) (unpublished) (holding that challenges to the process of state elections that come "immediately before or immediately after the preparation and printing of ballots [are] particularly disruptive and costly for state governments"). Election administration proceeds according to statutory schedules that cannot be retroactively reconstructed. Halting the referendum midstream magnifies administrative disruption and compounds harm to voters.

Temporary injunctive relief is designed to preserve the status quo pending further proceedings. Here, the status quo following legislative approval and an intervening general election is preparation for a fair election by the Board of Elections and Registrars and submission of the proposed amendment to the electorate. Preventing that submission—or even prudent preparation—alters the baseline. See *May*, 297 Va. at 18 (2019) (central purpose of a preliminary injunction is "to preserve the status quo between the parties while litigation is ongoing.").

Because Plaintiffs failed to demonstrate irreparable harm sufficient to justify interrupting the constitutional amendment process, the TRO cannot stand.

III. The circuit court abused its discretion in granting temporary injunctive relief where the balance of equities and the public interest do not favor halting submission of the proposed amendment to the electorate.

Even where a plaintiff demonstrates some likelihood of success and irreparable harm, a court must consider the balance of equities and the public interest before granting extraordinary relief. Rule 3:26(d)(ii)-(iii). Those considerations weigh heavily against enjoining a scheduled statewide referendum.

On Plaintiffs' side of the ledger is a legal theory regarding the interpretation of Article XII and the wording of ballot language, all questions that remain subject to judicial review. On the other side are the interests of the Commonwealth in administering elections in accordance with constitutional and statutory timelines, the orderly functioning of election administration, and the public's interest in voting on proposed amendments as Article XII contemplates.

Enjoining submission of a proposed amendment prevents Virginia voters from performing the role the Constitution assigns to them. Preventing Virginia voters from casting their ballots on a proposed amendment is not a neutral act of preservation; it is instead an affirmative intervention in the constitutional process.

Courts have long recognized that elections occupy a unique place in the constitutional structure. See, *e.g.*, *Mazo v. New Jersey Sec'y of State*, 54 F.4th 124, 136 (3d Cir. 2022) ("Elections occupy a special place in our constitutional system, as do election laws."). Judicial intervention that halts an election or referendum is an extraordinary measure that should be undertaken only where the legal violation is clear and the harm unmistakable. See, *e.g.*, *Scott*, 114 Va. at 306–307 (declining to grant an

injunction "because to do so would be interfering with the process of legislation or constitution-making, and would be using the authority of the judiciary department to prevent the holding of an election" and noting that "courts have not, with few exceptions, the power to interfere with elections"); *Ely v. Klahr*, 403 U.S. 108, 113 (1971) (upholding district court's decision not to enjoin an election even under an unconstitutional apportionment plan because the election was "close at hand" and an injunction delaying the vote would "involve serious risk of confusion and chaos"); *Scott v. Mich. Dir. of Elections*, 804 N.W.2d 551, 552 (Mich. 2011) (affirming denial of injunction and holding that "[t]he granting of an injunction constitutes an extraordinary judicial power" and "[t]o halt an election by an injunction is an even more extraordinary action"). Where, as here, the dispute concerns the interpretation of constitutional sequencing provisions and ballot phrasing, the balance of equities and the public interest favor allowing the referendum to proceed while legal questions are resolved through ordinary appellate review.

Where overlapping constitutional questions are already under active review before this Court as matters of "imperative public importance," see Order ¶¶1-2, *Scott v. McDougle*, No. 260127 (Va. Feb. 13,

2026) the public interest favors stability and uniformity while allowing Virginia voters to exercise their constitutional role.

Because the TRO halts a statewide election based on contested interpretations of Article XII, the circuit court abused its discretion in concluding that the equities and public interest favor temporary injunctive relief.

IV. Judicial economy warrants granting the petition for review

Judicial economy further warrants granting review in light of this Court's pending appeal in *Scott v. McDougle*, No. 260127. As noted above, in granting the injunction, the circuit court relied, in part, on its recent decision in *McDougle v. Nardo*, No. CL25-1582-00, which concluded that House Joint Resolution 6007 is void ab initio and violates Va. Const. Art. XII, § 1. R. 68 (citing 2026 WL 243908, *2-4 (Tazewell Cir. Ct. Jan. 27, 2026)). But this Court already certified that case for review pursuant to Code § 17.1-409. Order ¶¶ 1-2, *Scott v. McDougle*, No. 260127 (Va. Feb. 13, 2026). In doing so, this Court recognized that "the case is of such imperative public importance as to justify the deviation from normal appellate practice and to require a prompt decision of this Court." *Id.* ¶ 1.

That same fundamental principle counsels in favor of granting the

petition for review. *McDougle* and this case are not merely related—they are parallel challenges to the same constitutional amendment, based on the same facts, and invoking the same constitutional provisions. The only significant difference is the procedural posture.

Furthermore, this Court should exercise its discretion to consolidate this case with the appeal in *Scott v. McDougle*, No. 260127, because it would promote judicial economy, avoid inconsistent rulings, and ensure coherent treatment of the constitutional questions surrounding mid-decade redistricting. See, *e.g.*, *Faison v. Hudson*, 243 Va. 413, 420 n.* (1992) (noting that a court may exercise its discretion to consolidate cases "to avoid the possibility of inconsistent decisions and in the interest of judicial economy"). Additionally, the Court should stay all proceedings below as it resolves these questions so that the circuit court does not entertain and enter any preliminary or permanent injunction (as requested in the plaintiffs' complaint) or other relief while this Court reviews the issues here and resolves the constitutionality of the underlying process.

CONCLUSION

For the foregoing reasons, this Court should grant the petition, vacate the temporary injunction, stay all proceedings below, and consolidate this case with *Scott v. McDougle*, No. 260127.

Respectfully submitted,

Steven Koski, Commissioner of the Virginia Department of Elections

Virginia Department of Elections

John O'Bannon, Chairman of the Virginia State Board of Elections

Rosalyn R. Dance, Vice-Chairman of the Virginia State Board of Elections

Georgia Alvis-Long, Secretary of the Virginia State Board of Elections

Christopher P. Stolle, Board Member of the Virginia State Board of Elections

J. Chapman Petersen, Board Member of the Virginia State Board of Elections

Virginia State Board of Elections

By: /s/ *Tillman J. Breckenridge*
TILLMAN J. BRECKENRIDGE
(#84657)
Solicitor General

JAY JONES
Attorney General

TRAVIS G. HILL
Chief Deputy Attorney General

PEBBLES L. BURGESS (#74817)
Assistant Attorney General

Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219
(804) 786-2071 – Telephone
(804) 786-1991 – Facsimile
SolicitorGeneral@oag.state.va.us

TILLMAN J. BRECKENRIDGE (VSB #84657)
Solicitor General

MIKAELA A. PHILLIPS (#97164)
TRISTON CHASE O'SAVIO (#100111)
Assistant Solicitors General

Counsel for Petitioners

February 20, 2026

CERTIFICATE

Pursuant to Rule 5:17A(c), I certify that:

1. The petitioners are Steven Koski, Commission of the Virginia Department of Elections; Virginia Department of Elections; John O'Bannon, Chairman of the Virginia State Board of Elections; Rosalyn R. Dance, Vice-Chairmen of the Virginia State Board of Elections; Georgia Alvis-Long, Secretary of the Virginia State Board of Elections; Christopher P. Stolle, Board Member of the Virginia State Board of Elections; J. Chapman Petersen, Board Member of the Virginia State Board of Elections; and Virginia State Board of Elections.

2. Counsel for the petitioners are:

Jay Jones
Attorney General
Travis G. Hill
Chief Deputy Attorney General
Pebbles L. Burgess (#74817)
Senior Assistant Attorney General
Tillman J. Breckenridge (#84657)
Solicitor General
Mikaela A. Phillips (#97164)
Triston Chase O'Savio (#100111)
Assistant Solicitors General

OFFICE OF THE ATTORNEY GENERAL
202 North Ninth Street
Richmond, VA 23219
Tel: (804) 786-2071
SolicitorGeneral@oag.state.va.us

3. The respondents are Republican National Committee; National Republican Congressional Committee; Ben Cline, U.S. Representative for Virginia's Sixth Congressional District; and

Morgan Griffith, U.S. Representative for Virginia's Ninth Congressional District

4. Counsel for the respondents are:

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

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

5. On February 20, 2026, this petition was filed via VACES, and copies were delivered to counsel for the respondents via email at the addresses listed above.

6. This petition complies with Rule 5:17(c)(i) because it does not exceed 20 pages.

7. The copy of the record being filed with this petition is an accurate copy of the record of the circuit court and contains everything necessary for a review of the petition.

/s/ *Tillman J. Breckenridge*
Tillman J. Breckenridge (#84657)
Solicitor General