VIRGINIA: IN THE CIRCUIT COURT OF BEDFORD COUNTY

CHARLA BANSLEY, Plaintiff, v. G. PAUL NARDO, in his official capacity as Clerk of the Virginia House of Delegates; STEVEN KOSKI, in his official capacity as Commissioner of Elections of the Commonwealth of Virginia; VIRGINIA STATE BOARD OF ELECTIONS; VIRGINIA DEPARTMENT OF ELECTIONS; BARBARA GUNTER, in her official capacity as Registrar of Elections for the County of Bedford; JUDY REYNOLDS, in her official capacity as Clerk for the Circuit Court of Bedford County. Defendants.	)	Civil Action CL26000931-00

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' AND PROPOSED INTERVENOR'S DEMURRERS

INTRODUCTION[1]

In their respective demurrers, Defendants and Proposed Intervenor submit that Plaintiff's complaint is due for dismissal because Plaintiff (a) purportedly lacks standing to bring her claims against Defendants (Reynolds Memorandum, at 19–21; Nardo Responsive Pleading, at 6–9; Department of Elections Responsive Pleading, at 6–10); (b) the Court is purportedly without authority to interfere in an election process regarding a proposed constitutional amendment process (Reynolds Memorandum, at 10–11; Nardo Responsive Pleading, at 11–19; Department of Elections Responsive Pleading, at 6–10); and (c) Plaintiff has failed to state a claim upon which relief can be granted (Reynolds Memorandum, at 9–13; Nardo Responsive Pleading, at 9–11; Department of Elections Responsive Pleading, at 11–20; Proposed Intervenor Br., at 4–14).

The primary thrust of each of these contentions is largely premised on the fact that Virginia Code §30–13 was repealed and the requirements it imposed on the process for any proposed constitutional amendment process retroactively cured by virtue of the repeal. In addition, Defendants and Proposed Intervenor assert that Plaintiff has no basis to obtain relief—in the form of declaratory judgment or injunctive relief—on the basis of recent Supreme Court of Virginia decisions

[1] Though Rule 4:15 limits briefs to 20 pages absent leave of court, in the interest of judicial economy and because all Defendants and Proposed Intervenor raise the same arguments concerning demurrer in this matter, Plaintiff files this consolidated reply as to all Defendants' and Proposed Intervenor's demurrers, rather than the four separate responses of 20 pages each to which she would otherwise be entitled.

concerning proposed constitutional amendments. Defendants and Proposed Intervenors cannot and do not overcome the substantial burden imposed upon them for obtaining the disfavored remedy of a demurrer, and the Court should reject each demurrer.

Plaintiff has standing to bring her claims against Defendants for flagrant violations of the processes in place at the time the proposed constitutional amendment was considered and approved by the General Assembly. Plaintiff has standing to obtain—at minimum—a declaratory judgment holding that Defendants violated the processes in place at the time of the proposed constitutional amendment's consideration and approval. Plaintiff has standing to obtain a declaration of her rights under even the most recent Supreme Court of Virginia decision in *Scott v. McDougle*, 2026 WL 1261598 (Va. 2026). What the Supreme Court held in that matter was—as it openly stated—that the focus was "only on the timing of the exercise of judicial injunctive remedies—not on the court's constitutional power of review." *Scott,* 2026 WL 1261598, at *5 (quoting *Koski v. Republican Nat'l Comm.*, 926 S.E.2d 289, 292 (Va. 2026)). Thus, even Defendants and Proposed Intervenors assertions that Plaintiff has no standing to obtain injunctive relief at all is incorrect.

Finally, Defendants and Proposed Intervenor seek absolution of the General Assembly's constitutionally and statutorily infirm process for proposing the so-called Reproductive Freedom Amendment from a self-serving repeal of the requirements that were unquestionably in place *when the process was followed (or not, as the case*

happens to be). But retroactive curing of a flawed process is impermissible. The law requires more, and so, too, should this Court.

Plaintiff has standing to bring her claims, and the Court should overrule the demurrers.

LEGAL ARGUMENT

"The purpose of a demurrer is to determine whether a [complaint] states a cause of action upon which the requested relief may be granted." *Abi-Najm v. Concord Condo., LLC*, 280 Va. 350, 356–57, 699 S.E.2d 483, 486 (Va. 2010) (quoting *Tronfeld v. Nationwide Mut. Ins. Co.*, 272 Va. 709, 712, 636 S.E.2d 447, 449 (Va. 2006)). "A demurrer tests the legal sufficiency of facts alleged in pleadings, not the strength of proof." *Id.* at 357, 699 S.E. at 487 (quoting *Glazebrook v. Bd. of Supervisors*, 266 Va. 550, 554, 587 S.E.2d 589, 591 (Va. 2003). The Court is thus required to "accept as true all properly pled facts and all inferences fairly drawn from those facts." *Id.* at 357, 699 S.E. at 487. "A demurrer . . . does not allow the court to evaluate and decide the merits of a claim," *Fun v. Virginia Military Inst.*, 245 Va. 249, 252, 427 S.E.2d 181, 183 (Va. 1993), but merely tests whether the facts alleged are sufficient to move a claim forward. *Seymour v. Roanoke Cnty. Bd. of Supervisors*, 301 Va. 156, 164, 873 S.E.2d 73, 77 (Va. 2022). Indeed, "[s]ustaining a demurrer is disfavored since doing so 'short circuits the legal process thereby depriving a litigant of his day in court and depriving appellate courts of an opportunity to review a thoroughly developed record on appeal.'" *G.H. by Rance v. Sotomayor*, 2026 WL 1073503, *2 (Va. Ct. App., Williamsburg Apr. 21, 2026) (quoting *Seyfarth, Shaw, Fairweather & Geraldson v.*

Lake Fairfax Seven Ltd. P'ship, 253 Va. 93, 95, 480 S.E.2d 471, 472 (Va. 1997)). Defendants and Proposed Intervenor have not overcome the substantial burden to demonstrate that Plaintiff's claims are insufficient to state a cause of action, and the Court should overrule the disfavored demurrers.

I. Plaintiff has standing to pursue her claims under every test of standing.

Plaintiff has standing in the voter context cases where the Supreme Court of Virginia has articulated a different standard for standing to challenge laws to impact the fundamental right to the franchise. Plaintiff also satisfies the standing requirements to bring a declaratory judgment action, and Defendants contentions that Article XII, Section 1 is not self-executing are incorrect.

Notably, and correctly, Proposed Intervenor admits that Plaintiff has standing to pursue her claims in this Court. (Proposed Intervenor Br. at 5 n.4 ("[Proposed Intervenor] does not dispute that Plaintiff has adequately alleged a justiciable controversy, nor that, if the Court finds in Plaintiff's favor on the merits of her claims, it can provide at least some of the relief Plaintiff seeks.") On this point, Plaintiff agrees with Proposed Intervenor.

A. Plaintiff has standing under the Supreme Court of Virginia's test for voter context cases.

Defendants claim that Plaintiff lacks standing to pursue her claims against the General Assembly and Defendants' constitutionally infirm process. (*See* Department of Elections Responsive Pleadings, at 6–10; Defendant Reynolds Memorandum, at 19–21; Nardo Responsive Pleadings, at 6–11.). Defendants' primary

contention is that Plaintiff lacks standing because her claims are merely general injuries insufficient to confer standing. (*See* Department of Elections Responsive Pleadings, at 9; Defendant Reynolds Memorandum, at 20–21; Nardo Responsive Pleadings, at 8–9.) The general principles espoused by Defendants are in large measure undisputed, but the implications they draw from them are incorrect.

Where a government official's failure to abide by constitutional and statutory requirements imposes harm in the district where a plaintiff resides, such as Plaintiff in Bedford County here, the Supreme Court of Virginia has stated that standing may be established by mere residency in that district in cases involving alleged voter injuries without further showing of personalized injury. *See, e.g.*, *Wilkins v. West*, 264 Va. 447, 460, 571 S.E.2d 100, 107 (Va. 2002) ("While specific evidence of personal harm in the redistricting context may be difficult to show, we agree that residents of a racially gerrymandered electoral district suffer the special representational harms racial classifications can cause in the voting context. Accordingly, we, like the federal courts, will consider proof of residency in an alleged racially gerrymandered district as sufficient to establish standing to challenge that district without further proof of personalized injury." (cleaned up)). If a defendant fails to abide by the constitutional requirements appurtenant to voting, a plaintiff has standing to challenge it by virtue of residency there. "Residents of that district are directly affected by the legislature's failure to comply with the Constitution of Virginia," *id.* at 460, 571 S.E.2d at 107, and thus have standing to bring such claims.

Wilkins is not limited to mere racial gerrymandering cases, either. *See Howell v. McAuliffe*, 292 Va. 320, 333, 788 S.E.2d 706, 714 (Va. 2016) ("We disagree with respondents' view that *Wilkins* should be sidelined because it included a claim that certain districts were racially gerrymandered. That is true, but beside the point. As previously noted, *Wilkins* also involved a freestanding constitutional claim, conceptually distinct from racial gerrymandering, alleging a violation of [the Virginia Constitution]. *We found that all voters residing within the affected district had standing to assert their claims*. (emphasis added)). In *Howell*, the question involved the compliance of certain Commonwealth officials with the requirements of voter registration and specific provisions of the Virginia Constitution and Virginia Code. *Id.* at 331, 788 S.E.2d at 713. The Court noted that, "in the voting context," "an individual's residency in an affected district was sufficient to confer standing to challenge non-compliance with a constitutional provision . . . without further proof of personalized injury." *Id.* at 332, 788 S.E.2d at 713. Simply put, plaintiffs "have standing to assert that their voting rights have been harmed by an allegedly unconstitutional manipulation of the electorate." *Id.* at 335, 788 S.E.2d at 715.

There, as here, the Court noted that an individual's residency and qualified voter status was sufficient to give it "authority to decide this dispute." *Id.* at 335, 788 S.E.2d at 715. As the Court held, "[t]o not do so would be an inexcusable failure on our part to fulfill our duty to interpret and apply Virginia law in a case where the parties are 'actual adversaries' . . . This is not a case, therefore, in which we are invited to answer 'abstract questions' that may be 'interesting and important to the

public' but lack any real 'errors injuriously affecting' the complaining litigants." *Id.* at 335, 788 S.E.2d at 715. The same is true here.

Plaintiff is a resident affected by Defendants' unlawful actions concerning the Proposed Constitutional Amendment and subject to the harms that it necessarily imposes on voters in Bedford County. As Plaintiff alleged, she is a resident, elected official, and registered voter in Bedford County. (Complaint,¶11.) The failure to follow the procedures outlined in Va. Code §30-13 and Article XII, Section 1 of the Virginia Constitution were effectuated by Commonwealth officials and elected representatives in her own county. (Complaint, ¶¶12–17.) As the Supreme Court of Virginia said in *Coleman v. Pross*, Article XII, Section 1 includes "mandatory provisions" that require "strict adherence" in order for a proposed constitutional amendment to pass muster. 219 Va. 143, 152, 246 S.E.2d 613, 619 (Va. 1978). And a failure to abide by such mandatory procedures necessarily imposes injury on Plaintiff for which this Court can provide redress. *Id.* at 158, 246 S.E.2d at 622–23 ("we hold that in determining whether proposed amendments to the Constitution may properly be referred to the electorate, a standard of strict compliance with all specified prerequisites . . . must be applied.")

Boiled down to their essence, the Supreme Court of Virginia's "voting context" cases establish that a Plaintiff has standing if she alleges: (1) the challenge arises in the context of her fundamental right to vote, (2) that she is a resident and voter of a county in which the injury has been felt, and (3) the defendants violated a provision of the Virginia Constitution or Virginia Code. *See Howell*, 292 Va. at 335, 788 S.E.2d

at 715. Plaintiff easily satisfied each component for standing in a voting context case. Plaintiff plainly alleged that this matter involves a right specifically arising in the voting context. (*See* Complaint, ¶¶1–8.) Plaintiff alleged that she is a resident and voter of a district in which the injuries occurred and would be felt. (Complaint, ¶11; *see also id.* ¶¶16–17). And Plaintiff alleged that Defendants failed to follow the requirements of the Virginia Constitution and Virginia Code. (Complaint, ¶8 ("Defendants failed to follow [the Virginia Constitution's and Virginia Code's] process and have inflicted irreparable constitutional injury on Plaintiff for their failure to follow the constitutionally prescribed process for amending the Commonwealth's agreement with its citizens."); (*See also* Complaint, ¶¶52–82 (alleging violations of the procedural requirements for amending the Virginia Constitution); *id.*, ¶¶83–119 (alleging that Defendants' failure to follow the requisite process for amending the Constitution of Virginia violated Article XII, Section I of the Constitution of Virginia); *id.*, ¶¶120–158 (alleging that Defendants' failure to follow the requisite process for amending the Constitution of Virginia violated the Virginia Code).) Each of these allegations is sufficient to establish standing in a voting context case, such as this one. Defendants' demurrers should be overruled.

B. Even if Plaintiff needed to plead particularized injury, she adequately pled such an injury in her complaint.

Even if Plaintiff was required to plead particularized injury in a voting context case, which she is not, she would still have standing to bring her claims in this Court. In general, to establish standing to seek a declaratory judgment, Plaintiff need only allege that she has "a justiciable interest in the subject matter of the proceeding,"

meaning that she allege "an actual controversy between the plaintiff and the defendant, such that [her] rights will be affected by the outcome of the case." *W.S. Carnes, Inc. v. Bd. of Supervisors of Chesterfield Cnty.*, 252 Va. 377, 383, 478 S.E.2d 295, 299 (Va. 1996). "In asking whether a person has standing, we ask, in essence, whether he has a sufficient interest in the subject matter of the case so that the parties will be actual adversaries and the issues fully and fairly developed. *Cupp v. Bd. of Supervisors of Fairfax Cnty.*, 227 Va. 580, 589, 318 S.E.2d 407, 411 (Va. 1984). Plaintiff easily satisfied this threshold.

In *Morgan v. Board of Supervisors of Hanover County*, the Supreme Court of Virginia found that "[a] claimant 'assuredly can' seek to enforce 'procedural rights' that affect the public at large 'so long as the procedures in question are designed to protect some threatened concrete interest of his that is the ultimate basis of his standing.'" 302 Va. 46, 65, 883 S.E.2d 131, 142 (Va. 2023) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 573 n.8 (1992)). Of course, "no litigant can protest 'a procedural right in vacuo,'" *id.* at 66, 883 S.E.2d at 142 (quoting *Summers v. Earth Island Inst.*, 555 U.S. 488, 496 (2009)), but the Plaintiff may plead standing where a procedural right is accorded to protect her concrete interests. *Id.*

Plaintiff has done just that. Article XII of the Constitution of Virginia and Virginia Code §30-13 impose strict procedural requirements that require "strict adherence." *Coleman*, 219 Va. at 152, 246 S.E.2d at 619. Those procedural requirements were designed with one thing in mind: to provide registered voters intending to vote in the general election of the members of the House of Delegates

adequate notice and information as to any constitutional amendments the state legislature will be voting on in the following term. *See McDougle v. Nardo*, 2026 WL 243908, at *3 (Va. Cir. Ct. Jan. 27, 2026). Again, Plaintiff's allegations suffice to demonstrate that she has a vested interest and right in compliance with those procedures that makes her interest concrete. Plaintiff alleged that she is a resident and voter of a district in which the injuries occurred and would be felt. (Complaint, ¶11; *see also id.* ¶¶16–17). And Plaintiff alleged that Defendants failed to follow the requirements of the Virginia Constitution and Virginia Code. (Complaint, ¶8 ("Defendants failed to follow [the Virginia Constitution's and Virginia Code's] process and have inflicted irreparable constitutional injury on Plaintiff for their failure to follow the constitutionally prescribed process for amending the Commonwealth's agreement with its citizens."); (*See also* Complaint, ¶¶52–82 (alleging violations of the procedural requirements for amending the Virginia Constitution); *id.*, ¶¶83–119 (alleging that Defendants' failure to follow the requisite process for amending the Constitution of Virginia violated Article XII, Section I of the Constitution of Virginia); *id.*, ¶¶120–158 (alleging that Defendants' failure to follow the requisite process for amending the Constitution of Virginia violated the Virginia Code).)

C. Defendants do not cite a single case involving a constitutional amendment where the plaintiff lacked standing.

None of the demurrers submitted by the Defendants cite a *single* case where a Plaintiff challenging a constitutional amendment was found without standing. The reason is simple: there aren't any. In fact, the Supreme Court of Virginia's century-old precedent proves the opposite and plainly demonstrates Plaintiff's standing to

bring her claims here. *See Scott v. James,* 114 Va. 297, 298, 76 S.E. 283, 283 (1912). There, the plaintiff bringing a challenge to an allegedly constitutionally infirm proposed constitutional amendment was an individual, "J. A. Scott, in his capacity as a citizen and taxpayer of the state of Virginia," who "instituted this suit of enjoin the resubmission to a vote of the people of the proposed amendments of sections 119 and 120 of the Constitution." *Id.* at 298, 76 S.E. at 283. In fact, the plaintiff in *Scott* purported to be "suing for himself and on behalf of all other citizens and taxpayers of the state." *Id.* at 299, 76 S.E. at 283.

The Supreme Court of Virginia did not dismiss or reject Scott's claims on the basis of standing, even though it has an independent duty to assess a party's standing *sua sponte*. *E.g.*, *Appalachian Voices v. State Corp. Comm'n*, 277 VA. 509, 515, 675 S.E.2d 458, 460 (Va. 2009) (noting that the court will test a party's standing to bring her claims *sua sponte* to ensure it is not issuing an impermissible advisory opinion); *Martin v. Ziherl*, 269 Va. 35, 40, 607 S.E.2d 367, 369 (Va. 2005) (same). The reason the court must test *sua sponte* a party's standing is to ensure it has jurisdiction over the matter, that an actual controversy exists, and that the party is entitled to bring such claims. Indeed, the Supreme Court of Virginia "do[es] not sit to give opinions on moot questions or abstract matters, but only to decide actual controversies injuriously affecting the rights of some party to the litigation." *Hallmark Personnel Agency, Inc. v. Jones*, 207 Va. 968, 971, 154 S.E.2d 5, 7 (Va. 1967). Thus, had the Supreme Court of Virginia found a problem with Scott's standing, it would have been required *sua sponte* to address it and ensure that it was not rendering a prohibited advisory

opinion on the issues surrounding Article XII, Section 1. The fact that it did not eviscerates Defendants' contentions that Plaintiff lacks standing here.

D. Article XII, Section 1 of the Constitution of Virginia is self-executing, and Plaintiff has standing to bring her claims under it.

The Commonwealth Defendants contend that Article XII, Section 1 is not self-executing so Plaintiff lacks standing to bring a declaratory judgment action against the Commonwealth. (Department of Elections Responsive Pleading, at 2–3; Defendant Nardo Responsive Pleading, at 2–3.) This is incorrect.

> A constitutional provision may be said to be self-executing if it supplies a sufficient rule by means of which the right given may be employed and protected, *or the duty imposed may be enforced*; and it is not self-executing when it merely indicates principles, without laying down rules by means of which those principles may be given the force of law.

Gray v. Va. Sec'y of Transp., 276 Va. 93, 103–04, 662 S.E.2d 66, 72 (Va. 2008) (quoting *Robb v. Shockoe Slip Found.*, 228 Va. 678, 681—82, 324 S.E.2d 674, 676 (Va. 1985)) (emphasis added).

Article XII, Section 1 of the Constitution of Virginia plainly satisfies the self-executing analysis and thus necessarily indicates Plaintiff's standing to challenge a process that failed to comply with its mandatory provisions. It states in full:

> Any amendment or amendments to this Constitution may be proposed in the Senate or House of Delegates, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, the name of each member and how he voted to be recorded, and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates. If at such regular session or any subsequent special session of that General Assembly the proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the

> General Assembly to submit such proposed amendment or amendments to the voters qualified to vote in elections by the people, in such manner as it shall prescribe and not sooner than ninety days after final passage by the General Assembly. If a majority of those voting vote in favor of any amendment, it shall become part of the Constitution on the date prescribed by the General Assembly in submitting the amendment to the voters.

Virginia Const. art. XII, §1.

The amendment process provision plainly lays down rules by which the Constitution of Virginia may be amended. As the Supreme Court of Virginia recognized in *Gray*, if "no further legislation is required to make it operative," "a constitutional provision is self-executing." *Gray*, 276 Va. at 103, 662 S.E.2d at 71. *See also DiGiacinto*, 281 Va. at 138, 704 S.E.2d at 371. Indeed, "mandatory requirements of the Constitution," such as the process required to propose an amendment, "are self-executing." *Gill v. Nickels*, 197 Va. 123, 129, 87 S.E.2d 806, 810 (Va. 1955).

To the extent the Commonwealth claims that Article XII, Section 1 is not self-executing because it may require enabling legislation to make it operative (*see* Department of Elections Responsive Pleadings, at 7–8; Nardo Responsive Pleadings, at 6–8), the Commonwealth's own actions and purported defenses demonstrate that is incorrect. Article XII, Section 1 states that submission to the voters may be in the manner that the General Assembly provides, but the Commonwealth Defendants' have at least tacitly acknowledged that no enabling legislation is necessary to make the amendment provision operative *by purporting to repeal the Virginia Code section pertinent to it*. If Article XII, Section 1 required enabling legislation, then a repeal of Va. Code §30–13 would not be possible. But, under the Commonwealth's own

construction, repeal of the statutory section means that further legislation is not necessary "to make it operative," *DiGiacinto*, 281 Va. at 138, 704 S.E.2d at 371, or "given force of law." *Gray*, 276 Va. at 103–04, 662 S.E.2d at 72. The reason is simple: there is not any required legislation. The provision was mandatory, Defendants failed to comply with it, and Plaintiff has standing to seek declaratory relief concerning that failure. Defendants' contentions to the contrary are incorrect.

That Article XII, Section 1 lays down "mandatory provisions of the Constitution," *Gill*, 197 Va. at 129, 87 S.E.2d at 810, "which specifically prohibit[s] particular conduct," *Gray*, 276 Va. at 103–04, 662 S.E.2d at 72, cannot seriously be questioned. As the Supreme Court of Virginia said in *Coleman v. Pross*, Article XII, Section 1 includes "mandatory provisions" that require "strict adherence" in order for a proposed constitutional amendment to pass muster. 219 Va. 143, 152, 246 S.E.2d 613, 619 (Va. 1978). And that compliance is mandatory and the rules firmly established by which amendments may be made are indisputable. *Id.* at 158, 246 S.E.2d at 622–23 ("we hold that in determining whether proposed amendments to the Constitution may properly be referred to the electorate, a standard of strict compliance with all specified prerequisites . . . must be applied."). Article XII, Section 1 sets the parameters and firm rules for any amendment process, and it strictly prohibits certain conduct. It is therefore self-executing.

Nevertheless, that "does not end the inquiry." *Sch. Bd. of Stafford Cnty.*, 303 Va. at 256, 903 S.E.2d at 245. " A declaratory judgment action, even one based on a self-executing provision of the Virginia Constitution, must be justiciable under

longstanding principles that govern the Declaratory Judgment Act." *Id.*, 903 S.E.2d at 245. Plaintiff's claims under the Declaratory Judgment Act are plainly justiciable, and she has standing to bring them before this Court and seek declaratory relief concerning Defendants' failure to comply with the requisite process.

The Declaratory Judgment Act, Virginia Code § 8.01-184, provides that "circuit courts within the scope of their respective jurisdictions shall have power to make binding adjudications of right," which includes "[c]ontroversies involving . . . instances of actual antagonistic assertion and denial of right." Va. Code § 8.01-184. It is indisputable that Plaintiff alleges an actual controversy arising from Defendants' failure to follow the strict procedures in the constitutional amendment process. (*See* Complaint, ¶¶83–158.) In essence, Plaintiff has alleged that Defendants failed to abide by the "standard of strict compliance with all specified prerequisites." *Coleman*, 219 Va. at 158, 246 S.E.2d at 622–23. This is plainly an antagonistic assertion of a right and an actual controversy over which the Court has jurisdiction to enter "binding adjudications of right." *Sch. Bd. of Stafford Cnty.*, 303 Va. at 256, 903 S.E.2d at 245.

The Declaratory Judgment Act "is to be liberally interpreted and administered with a view to making the courts more serviceable to the people." Va. Code § 8.01-191. *See also Patterson's Ex'rs v. Patterson*, 144 Va. 113, 122, 131 S.E. 217, 219 (Va. 1926) (noting that the Declaratory Judgment Act is to be construed liberally). Specifically pertinent to Plaintiff's claims here, declaratory judgment is plainly the proper mechanism for obtaining relief when there is no other adequate or alternative

means of receiving relief or an adjudication of right. *See, e.g.*, *Mosher Steel-Va. v. Teig*, 229 Va. 95, 100–01, 327 S.E.2d 87, 93 (Va. 1985) (holding that declaratory judgment is the proper mechanism to challenge the "constitutional validity" of the Commonwealth's actions where it is "the only method by which [a plaintiff] can obtain judicial scrutiny"); *Jackson v. Va. Dep't of Soc. Servs.*, 10 Va. Cir. 294, 1987 WL 488788, at *4 (Va. Cir. Ct. Dec. 7, 1987) ("[D]eclaratory relief is proper where a claim of constitutional limitation is asserted and no other adequate remedy is available[.]") (citing *Mosher Steel-Va.*, 229 Va. 95, 327 S.E.2d 87).

Here, as in *Scott* and the many other recent proposed constitutional amendment cases, Plaintiff may obtain a remedy in declaratory relief. Plaintiff has no remedy at law but certainly has an antagonistic assertion of a right afforded her under the Constitution of Virginia. That is the entire purpose of declaratory relief.

It bears repeating that in nearly identical cases, courts, including the Supreme Court of Virginia, have liberally construed the Declaratory Judgment Act to permit challenges against proposed constitutional amendments. Against most of these very same Defendants, the Supreme Court of Virginia ruled that the declaratory judgments rendered at the circuit court were valid and required review by the high court on the merits. *Koski v. Republican Nat'l Comm.*, 926 S.E.2d 289, 292 (Va. 2026); *see also id.* at 292 n.4. In *Scott v. McDougle*, again featuring many of these same defendants, the Supreme Court heard oral arguments, received briefing on the merits, and did not discuss any purported lack of standing one time. *See Scott*, 2026 WL 1261598. Even in the authorities relied upon by the Department of Elections

Defendants, the Circuit Court of the City of Lynchburg denied many of these Defendants' standing arguments and recognized that the plaintiffs in that matter had standing. *See City of Lynchburg v. Koski*, No. CL26-183, slip op. at 1 (Va Cir. Ct. Mar. 4, 2026). And Judge Hurley, again, in *Republican National Committee*, specifically held that the plaintiffs there "all . . . have standing to obtain the declaratory judgment and permanent injunction sought in the Verified Complaint." 116 Va. Cir. 351. And, in *McDougle v. Nardo*, the court permitted the claims to go forward with no objections to the plaintiffs' standing. *McDougle*, 116 Va. Cir. 299.

Virginia Code §8.01-184 provides circuit courts with the "power to make binding adjudications of right" "[i]n cases of actual controversy[.]" Va. Code §8.01-184. As plainly demonstrated in Plaintiff's Verified Complaint and in the foregoing discussion, Plaintiff has plainly alleged an actual controversy and an antagonistic assertion of a right. She thus has standing to bring her claims in this Court.

II. The purported repeal of Virginia Code §30-13 does not undermine, moot, or otherwise diminish Plaintiff's claims or her ability to obtain declaratory relief under Defendants' failure to comply with that provision.

Defendants contend that the General Assembly's purported repeal of Virginia Code §30-13 renders all Plaintiff's claims that Defendants violated its provisions during the process of proposing the challenged proposed constitutional amendment have astoundingly been immediately, automatically, and retroactively cured. (Department Responsive Pleadings, at 16; Nardo Responsive Pleadings, at 15–16; Reynolds Memo, at 9–12.) Defendants' suggestion appears to be "that these constitutional deficiencies can all be swept under the rug and forgotten," *North v.*

Russell, 427 U.S. 328, 345 (1976) (Stewart, J., dissenting), because the repeal of Section 30-13 gives Defendants a constitutional do-over—as if a repeal of a mandatory obligation that was not complied with can be deemed proper *nunc pro tunc*. But similar to a *nunc pro tunc* order in court, it cannot create a condition that never existed. "The purpose of an order nunc pro tunc is to correct mistakes or omissions in the record so that the record properly reflects *the events that actually took place*. . . . Orders entered nunc pro tunc *cannot retroactive record an event that never occurred, or have the record reflect a fact that never existed*." *Antisdel v. Ashby*, 279 Va. 42, 50–51, 688 S.E.2d 163, 168 (Va. 2010) (emphasis added). Defendant would have this Court dismiss Plaintiff's claims on the basis that the General Assembly can run roughshod over a mandatory obligation concerning an amendment to the Constitution of Virginia, violate the Virginia Code existent at the time of its actions, be called to account on those violations, and then retroactive make it as though it never happened. Contrary to Defendants' suggestion, retroactive legislation is not permitted to be deployed as some constitutional ServePro, making it "like it never even happened."[2] That is not how retroactivity works, and it is not how this Court should adjudicate Plaintiff's claims.

A. Defendants do not contest that they failed to comply with the mandatory requirements of Virginia Code §30-13.

Neither Defendants nor Proposed Intervenor contest that the proposed constitutional amendment at issue here was the result of a process that violated

[2] *See Servpro Indus. Inc. v. Zerorez of Phoenix LLC*, 339 F. Supp. 3d 898, 901 (D. Az. 2018)

Virginia Code §30-13. In fact, not one word is allocated to a defense that the "mandatory provisions" that require "strict adherence" in order for a proposed constitutional amendment to pass muster, *Coleman v. Pross*, 219 Va. 143, 152, 246 S.E.2d 613, 619 (Va. 1978), were complied with by Defendants or the Commonwealth. The reason for that is simple: *they were not*. But, even if Defendants and Proposed Intervenor had contested such contentions, they would necessarily fail at the demurer stage anyway, *see Abi-Najm v. Concord Condo., LLC*, 280 Va. 350, 356–57, 699 S.E.2d 483, 486 (Va. 2010), because all Plaintiff's allegations must be taken as true at this stage and the inferences drawn therefrom in her favor. *Id.* at 357, 699 S.E. at 487.

B. Defendants do not contest that Virginia Code §30-13 was a mandatory requirement for constitutional amendment processes at the time Defendants failed to comply with it.

Not only do Defendants and Proposed Intervenor not contest that the proposed constitutional amendment was put forward under a process that failed the constitutional and statutory requirements, *supra* Section II.A, but Defendants and Proposed Intervenor likewise do not contest that the requirements of Va. Code §30-13 were in effect and mandatory at the time of the process that resulted in the proposed constitutional amendment at issue here. The reason for this is simple: *they cannot*. Virginia House Bill 1384, House Bill 1384 Reg. Sess. (Va. enacted Feb. 6, 2026), 2026 Va. Acts ch. 6, §§15–16, was first introduced in the House of Delegates on January 21, 2026.[3] It was subsequently passed in the Senate on January 29, 2026,

[3] Virginia State Legislative Information System, *HB1384*, https://lis.virginia.gov/bill-details/20261/HB1384 (last visited June 17, 2026).

and approved by the Governor on February 6, 2026.[4] Buried in that bill was the following: "[t]hat § 30-13 of the Code of Virginia is repealed," and such repeal "shall be retroactive effective beginning July 1, 1971."[5] All of this occurred *after* the purported final passage of the Proposed Constitutional Amendment on January 16, 2026. (V. Compl., ¶80.) And, Defendants concede—as they must—that Virginia Code §30-13 was operative and mandated a specific process for proposing constitutional amendments at the time of its failures. (Nardo Responsive Pleading, at 16; Department of Elections Responsive Pleadings, at 17.) Of course, it was operative and imposed upon Defendants mandatory obligations that they failed to comply with respecting the proposed constitutional amendment at issue in this litigation.

C. The General Assembly's attempted retroactive cure of its failure to comply with Virginia Code §30-13 and thus Article XII, Section 1 of the Constitution of Virginia, is not permitted to interfere with antecedent substantive rights existent at the time of the violation.

Defendants contend that the General Assembly's repeal of Virginia Code §30-13 was intended to merely "clean up vestigial remnants from the past," (Nardo Responsive Pleading, at 16; Department of Elections Responsive Pleadings, at 17), rather than what it actually did—attempt to cure a constitutionally and statutorily flawed process for proposed constitutional amendments. No one disputes that the General Assembly has authority to enact retroactive legislation. *Berner v. Mills*, 265 Va. 408, 413, 579 S.E.2d 159, 161 (Va. 2003). But there is a critical prudential

[4] *See supra* note 2.

[5] *Supra* note 2.

limitation that applies to retroactivity in that "[i]t has long been the law of the Commonwealth that retroactive application of statutes is disfavored and that statutes are to be construed to operate prospectively only unless a contrary intention is manifest and plain." *City of Charlottesville v. Payne*, 299 Va. 515, 528, 856 S.E.2d 203, 209 (Va. 2021). No doubt, the General Assembly explicitly claimed to make its repeal of Section 30-13 retroactive. Thus, unless the repeal of Section 30-13 affected some substantive right, its repeal would be effective to cure Defendants' constitutional and procedural failures. This is where Defendants and Proposed Intervenors' contentions fall off the rails.

The General Assembly's retroactive cure to Defendants' failure to comply with then-existent demands of proposing a constitutional amendment runs headlong into the other critical limitation on retroactivity. "[S]ubstantive rights, as well as vested rights, are including within those interests protected from retroactive application of statutes." *Shiflet v. Eller*, 228 Va. 115, 120, 319 S.E.2d 750, 753 (Va. 1984). *See also Sch. Bd. of City of Norfolk v. U.S. Gypsum Co.*, 234 Va. 32, 38, 360 S.E.2d 325, 328 (Va. 1987) (same); *City of Norfolk v. Kohler*, 234 Va. 341, 345, 362 S.E.2d 894, 896 (Va. 1987) (same). The reason the retroactive application of statutes is prohibited when impactive of substantive rights is of constitutional dimension. Indeed, the General Assembly is constitutionally limited in retroactive "cure" here because to sweep its failures under the rug would violate the Constitution of Virginia's due process protections for Plaintiff. *Sch. Bd. of City of Norfolk*, 234 Va. at 38, 360 S.E.2d at 328 ("This Court has consistently held that the due process clause of the Virginia

Constitution protects not only rights that have vested, but also substantive [rights]. . . . We held that substantive rights as well as vested rights are included within those interests protected from retroactive application of statutes *because such retroactive application would violate due process and would be invalid*." (emphasis added) (cleaned up)).

Defendants contend that there is no substantive right at issue here, so the General Assembly's attempt to cure its failures is of no moment. (Nardo Responsive Pleading, at 16; Department of Elections Responsive Pleadings, at 17; Reynolds Br. at 12.) This is incorrect. "Substantive rights, which are not necessarily synonymous with vested rights, are included within that part of the law dealing with *the creation of duties, rights, and obligations*, as opposed to procedural or remedial law, which prescribes the *methods of obtaining redress or enforcement of rights*." *Shiflet*, 228 Va. at 120, 319 S.E.2d at 754 (emphasis added). *See also In re Brown*, 289 Va. 343, 348, 770 S.E.2d 494, 496 (Va. 2015) (same); *Bd. of Supervisors of Fairfax Cnty. v. FCS Bldg. Ass'n*, 254 Va. 464, 467, 492 S.E.2d 634, 636 (Va. 1997) (same). Indeed, "remedial laws do not create rights but merely operate in furtherance of already existing rights." *Id.* at 467, 492 S.E.2d at 635.

Defendants plainly concede that Va. Code §30-13 is no mere "remedial law, which prescribes the methods of obtaining redress or enforcement of rights." *Shiflet*, 228 Va. at 120, 319 S.E.2d at 754.[6] Indeed, Defendants contend that the very statute

[6] Plaintiff will leave aside the impossibility of Defendants' arguments. A right is either substantive or procedural/remedial, but it cannot be simultaneously neither. "A [government] that does both A and not-A at the same time is engaged in self-

they claim is not a substantive provision provides no remedial right either. (Department of Elections Responsive Pleadings, at 12; Nardo Responsive Pleadings, at 11–12.) That admission is fatal, as it demonstrates that Va. Code §30-13 was not enacted as a mechanism to enforce substantive rights already in existence. Rather, it creates duties, obligations, and responsibilities on the government, and therefore rights on Plaintiff, regarding the proper method of proposing a constitutional amendment.

As the Supreme Court of Virginia said in *Coleman v. Pross*, Article XII, Section 1 includes "mandatory provisions" that require "strict adherence" in order for a proposed constitutional amendment to pass muster. 219 Va. 143, 152, 246 S.E.2d 613, 619 (Va. 1978). Under the Supreme Court of Virginia's definition of substantive rights as those creating duties and obligations, *Shiflet*, 228 Va. at 120, 319 S.E.2d at 754, there is no question that a "mandatory provision" imposed on Defendants a duty and an obligation to validly propose a constitutional amendment. Article XII of the Constitution of Virginia and Virginia Code §30-13 impose strict requirements that require "strict adherence." *Coleman*, 219 Va. at 152, 246 S.E.2d at 619. Those requirements were designed with one thing in mind: to provide registered voters intending to vote in the general election of the members of the House of Delegates adequate notice and information as to any constitutional amendments the state

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contradiction," *Ho v. Donovan*, 569 F.3d 677, 681 (7th Cir. 2009), and "like it or not, we are governed by the law of non-contradiction. [Rights] must either be [substantive], or [procedural]—but they cannot be both." *FTC v. ZAAPPAAZ, LLC*, 140 F.4th 675, 683 (5th Cir. 2025) (Engelhardt, J., concurring).

legislature will be voting on in the following term. *See McDougle v. Nardo*, 2026 WL 243908, at *3 (Va. Cir. Ct. Jan. 27, 2026). Again, Plaintiff's allegations suffice to demonstrate that she has a substantive right in Defendants' compliance with that provision, and a vested interest and right in compliance with those procedures that makes her interest concrete. Plaintiff alleged that she is a resident and voter of a district in which the injuries occurred and would be felt. (Complaint, ¶11; *see also id.* ¶¶16–17). And Plaintiff alleged that Defendants failed to follow the requirements of the Virginia Constitution and Virginia Code. (Complaint, ¶8 ("Defendants failed to follow [the Virginia Constitution's and Virginia Code's] process and have inflicted irreparable constitutional injury on Plaintiff for their failure to follow the constitutionally prescribed process for amending the Commonwealth's agreement with its citizens."); (*See also* Complaint, ¶¶52–82 (alleging violations of the procedural requirements for amending the Virginia Constitution); *id.*, ¶¶83–119 (alleging that Defendants' failure to follow the requisite process for amending the Constitution of Virginia violated Article XII, Section I of the Constitution of Virginia); *id.*, ¶¶120–158 (alleging that Defendants' failure to follow the requisite process for amending the Constitution of Virginia violated the Virginia Code).) She has thus plainly demonstrated that Va. Code §30-13 created duties, obligations, and responsibilities on Defendants, and thus created substantive rights that cannot be deprived by retroactive application of a statute whose sole purpose is to attempt to cure admitted failures.

Moreover, the entirety of Plaintiff's claims are premised on the fact that Defendants' failures negatively impact the bargain the citizens of the Commonwealth reached with their government, and that such failures negatively impact the right to vote. "[I]t is self-evident in the light of our system of jurisprudence [that] the political franchise of voting is . . . regarded as a fundamental political right, because preservative of all rights." *Yick Wo. v. Hopkins*, 118 U.S. 356, 370 (1886). *See also Etheridge v. Medical Ctr. Hosps.*, 237 Va. 87, 98 (1989) ("Those interests that have been recognized as fundamental include . . . the right to vote."). "Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights." *Reynolds v. Sims*, 377 U.S. 533, 561 (1964). Thus, "any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." *Reynolds*, 377 U.S. at 561. The reason for this is simple: "the right to vote is too precious, too fundamental" to be burdened and infringed by a government that fails to follow the basic requirements of its own Charter. *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966). As the foundation upon which all other rights are preserved, the right to vote is certainly a substantive and vested right.

And, importantly here, the existence of substantive rights "are to be determined by the law which existed" at the time of the violation, *not now after the General Assembly's attempt to cure Defendants' failures*. *See Bartholomew v. Bartholomew*, 233 Va. 86, 91, 353 S.E.2d 752, 755 (Va. 1987). Because the rights at

issue here were substantive at the time of the violations, "[t]he application of the statute to these facts, therefore, is constitutionally invalid." *Id.* at 91, 353 S.E.2d at 755. Simply put, "this Court is unwilling to agree to a rule that would permit the destruction of vested or substantive rights by retrospective application of legislation. *Indeed, we follow a different rule*." *Lake of the Woods Ass'n, Inc. v. McHugh*, 238 Va. 1, 9, 380 S.E.2d 872, 876 (Va. 1989). Because the General Assembly's repeal of Section 30-13 attempted to "materially change the substantive rights of a party," *Shiflet*, 228 Va. at 120, 319 S.E.2d at 754, its repeal is prohibited from operating to bar Plaintiff's claims here. Defendants and Proposed Intervenor's demurrer should be overruled.

D. Plaintiff's claims against Defendant Reynolds are not moot because declaratory relief necessarily looks backwards and would preclude allowing a constitutionally flawed proposed constitutional amendment from being adopted.

Defendant Reynolds claims that any claims against her are moot because the repeal of Va. Code §30-13 no longer requires posting and inspection, and thus the Court can order her to do nothing. (Reynolds Memorandum, at 12.) This may have some merits as to an injunction to post the proposed constitutional amendment on the courthouse door, but it tells only half the story. The Declaratory Judgment Act plainly provides that this Court may "make binding adjudications of right, whether or not consequential relief is, or at the time could be, claimed." Va. Code §8.01–184. Indeed, "[t]he purpose of a declaratory judgment proceeding is the adjudication of rights." *Charlottesville Area Fitness Club Operators Ass'n v. Albermarle Cnty. Bd. of Supervisors*, 285 Va. 87, 98, 737 S.E.2d 1, 6 (Va. 2013). The Court plainly has the authority and duty to issue a binding adjudication of right where—as here—there

has been a violation of mandatory processes. *See Coleman v. Pross*, 219 Va. 143, 152, 246 S.E.2d 613, 619 (Va. 1978).

Defendant Reynolds's contentions are largely based on a claim that because an injunction cannot issue under the now-repealed Va. Code §30-13, no relief whatsoever can be obtained. (Reynolds Memorandum, at 12.) This is incorrect. As the Supreme Court of Virginia just recently opined in a proposed constitutional amendment case, the Court "has the duty to decide the appropriateness and the merits of a declaratory request *irrespective of its conclusions as to the propriety of the issuance of an injunction*." *Koski v. Republican Nat'l Comm.*, 926 S.E.2d 289, 292 n.4 (Va. 2026) (quoting *Zwicker v. Koota*, 389 U.S. 241, 254 (1967)) (emphasis added). Indeed, as the Supreme Court stated further, "*Scott*'s limitation on enjoining the holding of an election does not foreclose the court's duty to issue a declaratory judgment regarding the validity [of the proposed constitutional amendment process]." *Id.* Notably, that is precisely what the Supreme Court of Virginia did in *Scott v. McDougle*, 2026 WL 1261598, *6 (Va. May 8, 2026). Defendant Reynolds' contentions regarding mootness are simply incorrect, and her demurrer on that ground must be overruled.

III. Because Defendants violated the mandatory procedures of Va. Code §30-13, their failures necessarily reach constitutional dimension because they seek to amend the Constitution of Virginia under flawed constitutional processes.

Defendants contend that Plaintiff's cause of action under Count II fails because the Constitution of Virginia did not include the requirements of Va. Code §30-13. (Department of Elections Responsive Pleadings, at 18–19; Nardo Responsive Pleadings, at 18–19.) In essence, Defendants contend that Plaintiff's constitutional

claim is largely premised on an alleged violation of Va. Code §30-13, and since it has been repealed, there can be no constitutional violation. This is incorrect factually and legally. Plaintiff's claim under Article XII, Section 1 is certainly premised on compliance with the statutory requirements enacted in conformance with that provision, but Defendants failure to comply with Va. Code §30-13 does reach constitutional dimension under the plain language of the Constitution of Virginia.

Article XII, Section 1 of the Constitution of Virginia plainly satisfies the self-executing analysis. It states in full:

> Any amendment or amendments to this Constitution may be proposed in the Senate or House of Delegates, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, the name of each member and how he voted to be recorded, and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates. If at such regular session or any subsequent special session of that General Assembly the proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, *then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the voters qualified to vote in elections by the people, in such manner as it shall prescribe* and not sooner than ninety days after final passage by the General Assembly. If a majority of those voting vote in favor of any amendment, it shall become part of the Constitution on the date prescribed by the General Assembly in submitting the amendment to the voters.

Virginia Const. art. XII, §1 (emphasis added).

Article XII, Section 1 plainly dictated that the proposed constitutional amendment be submitted to the voters in a manner that the General Assembly prescribed. *Id.* At the time of the proposed constitutional amendment, the "manner in which it shall prescribe" was Va. Code §30-13. *McDougle v. Nardo*, 2026 WL

1396581, at *4 (Va. Cir. Ct. Jan. 27, 2026) ("VA Code Section 30-13 does exactly THAT. It prescribes how the vote can take place, and what steps must be taken prior to such vote.").Neither Defendants nor Proposed Intervenor contests that fact, and they cannot. Thus, for the same reason that the purported repeal of Va. Code §30-13 cannot retroactively cure Defendants fundamental failures statutorily, it cannot cure it constitutionally either. The reason is simple: to do so would violate the due process protections articulated in the Constitution of Virginia. *See Sch. Bd. of City of Norfolk*, 234 Va. at 38, 360 S.E.2d at 328 ("This Court has consistently held that the due process clause of the Virginia Constitution protects not only rights that have vested, but also substantive [rights]. . . . We held that substantive rights as well as vested rights are included within those interests protected from retroactive application of statutes *because such retroactive application would violate due process and would be invalid*." (emphasis added) (cleaned up)).

The best Defendant Reynolds could muster on this point is to suggest that Plaintiff's reading of the procedural requirements for proposed constitutional amendments in the Commonwealth was purportedly "diminished" by "*the dissenting justices*" in *Scott v. McDougle*. (Reynolds Memorandum, at 18.) And, Defendant Reynolds suggests that questions of a single Justice undermine her claims in this Court. Neither is true. First, it is axiomatic that dissenting opinions are neither precedential, nor binding. Indeed, "it goes without saying" that "views in dissent, of course, are not binding authority." *Brzonkala v. Va. Polytechnic Inst. & State Univ.*, 169 F.3d 820, 878 (4th Cir. 1999). Indeed, a "dissenting opinion *shows what is not the*

law." *State v. Batson*, 107 S.C. 460, 460, 93 S.E. 135, 135 (S.C. 1917) (emphasis added). *See also Western Fire Ins. Co. v. Moss*, 11 Ill.App.3d 802, 812, 298 N.E.2d 304, 312 (Ill. Ct. App. 1973) ("the fact that language is taken from his dissent . . . therefore demonstrates *precisely what is Not the law*." (emphasis added). Moreover, "stray commentary" given during oral argument is not to be given "precedential effect." *Gamble v. United States*, 587 U.S. 678, 755 (2019) (Gorsuch, J., dissenting). Indeed, a question or argument that something is incorrect does not make it precedent. *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 412 (2024).

Whether the Court finds that injunctive relief is available to Plaintiff, there is no question that Plaintiff may obtain a declaratory judgment for violation of Virginia law. The Supreme Court of Virginia could not have been clearer:

> *Scott* [*v. James*] counsels that we stay the circuit court's de facto preliminary injunction. *Our appellate stay, however, implies no rejection of the circuit court's declaratory judgments in Scott v. McDougle*, Record No. 260127, which are still pending review in our Court, nor of the legal challenges asserted by complainants in the present case that have yet to be ruled upon by the lower court. *It would be a perilous mistake to infer from our application of Scott that these holdings and claims fail any aspect of the "likelihood of success" criterion in Rule 3:26(d)(i).* In the absence of *Scott*, the de facto preliminary injunction may have survived our review solely under Rule 3:26(d).

Koski, 926 S.E.2d at 292 (emphasis added). In other words, under no circumstances is Plaintiff unable to pursue declaratory relief for a violation of state law even if a preliminary injunction is not available.

As the Supreme Court of Virginia made clear, the Court "has the duty to decide the appropriateness and the merits of a declaratory request *irrespective of its conclusions as to the propriety of the issuance of an injunction*." *Koski v. Republican*

Nat'l Comm., 926 S.E.2d 289, 292 n.4 (Va. 2026) (quoting *Zwicker v. Koota*, 389 U.S. 241, 254 (1967)) (emphasis added). Plaintiff has requested a declaration that Defendants failed to comply with the statutory requirements of Va. Code §30-13, which "was in effect" at the time of their failure, *Scott*, 2026 WL 1261598, at *16 n.31, and concomitantly failed to comply with the demands of Article XII, Section 1. Plaintiff properly pleaded both, has standing to pursue relief for both, and the Court should overrule the demurrers. If, as Plaintiff alleged, "the Commonwealth [intends to] submit[] a proposed constitutional amendment to Virginia voters in an unprecedented manner that violated . . . Article XII, Section 1 of the Constitution of Virginia," *id.* at *16, then declaratory relief and a permanent injunction are available to Plaintiff because "[t]his violation irreparably undermines the integrity of the resulting referendum vote and renders it null and void." *Id.*

IV. Plaintiff's claims are not barred by laches because there was no prejudicial delay in bringing her claims.

Defendant Reynolds' and the Proposed Intervenor's claim Plaintiff's Complaint is barred by the doctrine of laches. (Reynolds Memorandum, at 21–22; Proposed Intervenor Br. at 12–13.) This, too, is incorrect.

First, Plaintiff struggles to understand how her claims can be prejudicially "too late" (Reynolds Memorandum, at 22) and improvidently "too early" (Reynolds Memorandum, at 14), at the same time. Plaintiff's claims cannot be both early and late at the same time. As Plaintiff articulated *supra*, Defendants cannot proffer deficiencies in the "A and not-A" inconsistencies at the same time without violating the law of non-contradiction. *Ho v. Donovan*, 569 F.3d 677, 681 (7th Cir. 2009).

Leaving that aside, Plaintiff's claims are not barred by laches. The doctrine of laches is applicable only where a plaintiff "neglect[s] or fail[s] to assert a known right or claim for an unexplained period of time under circumstances prejudicial to the adverse party." *Princess Anne Hills Civic League, Inc. v. Susan Constant Real Est. Tr.*, 243 Va. 53, 58, 413 S.E.2d 599, 602 (1992). "The application of the doctrine of laches depends upon the circumstances of each particular case. It is not mere lapse of time, but a change of situation during neglectful repose which renders it inequitable to afford relief." *Strickland v. Ayers*, 159 Va. 311, 327, 165 S.E. 387, 393 (Va. 1932) (citing *O'Brien v. Wheelock*, 184 U.S. 450 (1902). The burden of proving laches and prejudice is upon the litigant asserting that defense." *Princess Anne Hills Civic League*, 243 Va. at 58, 413 S.E.2d at 602. There must be prejudice to the party asserting the defense of laches resulting from unreasonable delay. *Masterson v. Bd. of Zoning Appeals of Va. Beach*, 233 Va. 37, 48, 353 S.E.2d 727, 735 (Va. 1987). Bare assertions with no evidence of prejudice will not sustain a defense of laches. *See id.* at 48, 353 S.E.2d at 735.

Here, Plaintiff struggles to see how Defendants can claim any prejudice whatsoever from her assertion of a right a mere four months after the intervening election took place and in which Defendants failed to comply with their constitutional and statutory obligations in effect at the time of that election. But, even that does not tell the full story. As Defendants concede, Plaintiff filed suit a mere month after the Proposed Constitutional Amendment was approved by the General Assembly for the requisite second time. (Reynolds Memo., at 22.) Had Plaintiff brought her claims prior

to the second approval by the General Assembly, her claims would be entirely speculative, which would foreclose any declaratory relief. *See Lafferty v. Sch. Bd. of Fairfax Cnty.*, 293 Va. 354, 361, 798 S.E.2d 164, 168 (Va. 2017) (holding that declaratory relief claims must be based on "present rather than future or speculative facts [to be]ripe" for adjudication). No concrete evidence would occur until the General Assembly's second approval, and thus Plaintiff was required to wait until that event occurred to bring her claims.

More fatal to Defendants' and Proposed Intervenor's claims of laches is that they do not even allege, let alone mention the word prejudice. The burden of proving laches and prejudice is upon the litigant asserting that defense." *Princess Anne Hills Civic League*, 243 Va. at 58, 413 S.E.2d at 602. Defendants utterly fail to satisfy that burden because they did not even mention, let alone demonstrate, any prejudice from Plaintiff's purported (albeit, non-existent) delay. That alone requires overruling the demurrer on laches.

Proposed Intervenor, for its part, claims that it suffered prejudice in the form of expended resources. (*See* Proposed Intervenor Br., at 19.) That, too, fails because the expenditure of resources is insufficient to prove the prejudice under the doctrine of laches. *See, e.g.*, *Russakoff v. Scruggs*, 241 Va. 135, 142, 400 S.E.2d 529, 534 (Va. 1991) (holding that an expenditure of funds on its own was not sufficient to prove a claim for laches). Thus, neither Defendants nor Proposed Intervenor satisfy their burden to demonstrate prejudice. The demurrer on laches grounds must be overruled.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests this Court to overrule the Demurrers.

DATED this 17th day of June, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of June, 2026, I filed the foregoing electronically with the Court and also sent service to all counsel of record via electronic mail at the addresses of record.

/s/ Daniel J. Schmid
Daniel J. Schmid