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 COMMONWEALTH DEFENDANTS' PLEA IN BAR OF SOVEREIGN IMMUNITY

INTRODUCTION

Despite their repeated insistence that they are sovereignly immune from claims against their constitutionally infirm efforts to amend the fundamental charter of the Commonwealth's liberties and deprive the citizens of the Commonwealth of the deal they struck with the Commonwealth in the order of their liberties and revisions to them, and regardless of the universal rejection that assertion of sovereign immunity has met at each turn in recent decisions on proposed constitutional amendment challenges, Defendants G. Paul Nardo, Steven Koski, Virginia State Board of Elections, Virginia Department of Elections, and Barbara Gunter (collectively, "the Commonwealth Defendants") nevertheless trot out this tired argument with the hopes that it might do better this time. *It won't*. "[S]imply repeating an assertion does not make it true." *Sec. Walls, LLC v. NLRB*, 80 F.4th 1277, 1291 n.16 (11th Cir. 2023). The Commonwealth Defendants try it again here, asserting that the Court is without jurisdiction over Plaintiff's claims because they are cloaked in sovereign immunity. (Plea in Bar of Sovereign Immunity, "Department Plea in Bar," at 2.) *They aren't*. Just as it has failed each time in the recent challenges to proposed constitutional amendments, so, too, must it fail here.

For one, despite having an unquestioned responsibility and duty to ensure itself of its own subject-matter jurisdiction to hear a case, the Supreme Court of Virginia recently ruled (twice) on a constitutional and statutory challenge to Virginia's efforts at a proposed constitutional amendment concerning redistricting and adjudicated that claim without even mention of the Commonwealth being

immune from such claims. *See Scott v. McDougle*, 2026 WL 1261598 (Va. 2026). And *Scott* follows over a century of precedent in which the Supreme Court of Virginia adjudicated claims against Commonwealth officials on the subject of proposed constitutional amendment cases. *E.g.*, *Scott v. James*, 114 Va. 297, 76 S.E. 283 (Va. 1912). And in that century of precedent, there has been nary a mention of sovereign immunity for Commonwealth officials in relation to challenges to proposed constitutional amendments. The reason for that is simple: *they have no such immunity*.

Other courts, too, have recently adjudicated challenges to the Commonwealth's efforts to amend the Constitution of Virginia, and not one of them has found it barred by sovereign immunity. *E.g., Republican Nat'l Comm. v. Koski*, 116 Va. Cir. 351, 2026 WL 1396780, *2 (Va. Cir. Ct., Cnty. of Tazewell Feb. 19, 2026); *McDougle v. Nardo*, 116 Va. Cir. 299 (Va. Cir. Ct. Jan. 27, 2026); *McDougle v. Nardo*, 116 Va. Cir. 299, 2026 WL 1396581, *4 (Va. Cir. Ct. Cnty. of Tazewell Jan. 27, 2026); *City of Lynchburg v. Koski*, No. CL26-183 (Va. Cir. Ct. City of Lynchburg Mar. 4, 2026). This Court should likewise reject the Commonwealth Defendants' tired efforts at evading review of their constitutionally infirm process, reject Defendants' Plea in Bar, and permit Plaintiff to proceed to the merits.

Moreover, in Defendants' other moving papers seeking to evade this Court's review of Plaintiff's claims on the basis of purportedly incorrect venue, Defendants all note that challenges to proposed constitutional amendments can, indeed, be brought against the Commonwealth. Had the General Assembly believed that

officials and agencies of the Commonwealth were altogether immune from claims challenging proposed constitutional amendments, what need have they of any venue for purportedly "uniformity of judicial outcomes"? (*See* Defendant Reynolds' Motion to Change Venue, at 6.) If every one of these claims was barred by sovereign immunity, uniformity would be universal and so, too, dismissal. There would be no need to transfer venue of pending claims to the Circuit Court for the City of Richmond only to have all such claims dismissed as barred by sovereign immunity. The tacit recognition of the General Assembly in HB1384, §17 is that there will be such challenges, that there is jurisdiction to hear such challenges, and that venue for them should purportedly be in Richmond. Leaving aside that such law is an unconstitutional special law (*see* Plaintiff's Memorandum in Opposition to Motions to Change Venue), it demonstrates the incorrectness of the Commonwealth Defendants' Plea in Bar. The Court should reject it.

LEGAL ARGUMENT

I. The Supreme Court of Virginia's adjudication of a challenge to a proposed constitutional amendment in *Scott v. McDougle* demonstrates that Defendants have no sovereign immunity from Plaintiff's claims.

All courts in the Commonwealth, including the Supreme Court of Virginia, have an independent duty to *sua sponte* assess their subject-matter jurisdiction and dismiss a claim when it is found lacking. The fact that the Supreme Court of Virginia did not dismiss the proposed redistricting amendment case in *Scott v. McDougle* is fatal to Defendants' contentions of sovereign immunity here. The host of other Supreme Court of Virginia decisions reviewing and adjudicating challenges to

proposed constitutional amendments against Commonwealth officials also demonstrates that they have no sovereign immunity, and over a century of precedent confirms there is no such immunity.

A. The Courts in the Commonwealth, including the Supreme Court of Virginia, have an independent duty to *sua sponte* assess their subject-matter jurisdiction and dismiss a claim when it is found lacking.

"Subject matter jurisdiction is a threshold question." *Parrish v. Fed. Nat'l Mortgage Ass'n*, 292 Va. 44, 49, 787 S.E.2d 116, 120 (Va. 2016). "Subject matter jurisdiction is the authority granted to a court by constitution or by statute to adjudicate a class of cases or controversies," *Earley v. Landsidle*, 257 Va. 365, 371, 514 S.E.2d 153, 156 (Va. 1999), "it cannot be waived," *Nelson v. Warden of Kenn Mtn. Correctional Ctr.*, 262 Va. 276, 281, 552 S.E.2d 73, 75 (Va. 2001), and "any judgment rendered without it is void *ab initio*." *Id.*, 552 S.E.2d at 75. Indeed, every court in the Commonwealth, including the Supreme Court of Virginia, is required to assess whether it possesses subject matter jurisdiction over a claim pending before it. "As a threshold matter, we *must determine* whether this appeal is within the category of cases that this Court may consider; that is to say, does this Court have subject matter jurisdiction?" *Spencer v. City of Norfolk*, 271 Va. 460, 462, 628 S.E.2d 356, 257 (Va. 2006) (emphasis added). "Neither the consent of the parties, nor waiver, nor acquiescence can confer it. Nor can the right to object for a want of it be lost by acquiescence, neglect, estopel or in any other manner." *Humphreys v. Commonwealth*, 186 Va. 765, 772-73, 43 S.E.2d 890, 894 (Va. 1947). Simply put, the Court has an independent obligation to test its own subject matter jurisdiction "*ex*

mero mutu." *Id.* at 773, 43 S.E.2d at 894. *See also Earley*, 257 Va. at 371, 514 S.E.2d at 156 ("The lack of subject matter jurisdiction may be raised at any time during a proceeding, even by this Court *sua sponte*."); *Morrison v. Bestler*, 239 Va. 166, 169–70, 387 S.E.2d 753, 755 (Va. 1990) (noting that courts have the independent obligation to assess subject matter jurisdiction because it "alone cannot be waived or conferred on the court by agreement of the parties.").

The Commonwealth Defendants' Plea in Bar of sovereign immunity falls within this category of claims. "[I]f sovereign immunity applies, the court is without subject matter jurisdiction to adjudicate the claim." *Afzall ex rel. Afzall v. Commonwealth*, 273 Va. 226, 230, 639 S.E.2d 279, 281 (Va. 2007). *See also Commonwealth v. Mattocks*, 925 S.E.2d 710, 713 (Va. 2026) ("It nevertheless remains true that sovereign immunity is a part of a court's subject matter jurisdiction. If sovereign immunity applies, the court does not have jurisdiction to hear the case."). And the Supreme Court is required to independently assess the question of whether a plea in bar of sovereign immunity prohibited adjudication of the claims because it goes directly to its nonwaivable subject matter jurisdiction limitations. *See id.* at 713.

B. The Supreme Court of Virginia, despite having an unquestioned duty to assess its subject matter jurisdiction, did not dismiss proposed redistricting amendment case in *Scott v. McDougle* on the basis of sovereign immunity, but rather said it was *required* to adjudicate it.

The Commonwealth Defendants contend that they are all immune from Plaintiff's claims because the Commonwealth is immune from suit arising for actions at law and suits in equity. (Department of Elections Responsive Pleading, at 2–3;

Defendant Nardo Responsive Pleading, at 2–3.) The Commonwealth Defendants are incorrect. Neither the Commonwealth Defendants here, nor the same Commonwealth defendants who were parties to claims at issue in *Scott v. McDougle*, 2026 WL 1261598 (Va. May 8, 2026), are entitled to sovereign immunity from challenges to proposed constitutional amendments. As demonstrated *supra*, the Supreme Court of Virginia had an independent duty to assess whether it had subject matter jurisdiction over the challenge to the Commonwealth's proposed redistricting amendment, *supra* Section I.A, and the Court said nothing of its purported lack of subject matter jurisdiction on the basis of sovereign immunity.

In fact, far from finding itself in want of subject matter jurisdiction, the Supreme Court of Virginia held that it was constitutionally responsible for adjudicating claims arising from challenges to proposed constitutional amendments. "Consistent with this Virginia tradition, the judiciary has the power, *and it is its duty*, to pass upon the validity of a constitutional enactment when put in force by legally questionable means." *Scott*, 2026 WL 1261598, at *4 (quoting *Scott v. James*, 114 Va. 297, 304, 76 S.E. 283, 285 (1912)) (emphasis added). Indeed, "[a] constitution by its very nature declares under what circumstances, and in what manner it shall be amended, and it is the supreme law of the land, to which all persons, rulers, as well as citizens, must bow in obedience." *Id.* (quoting 3 Joseph Story, *Commentaries on the Constitution of the United States*, §1609, at 473 (1833)). "It follows that *the judiciary* has the ultimate authority to determine the validity of the proposal, submission, or ratification of constitutional amendments." *Id.* (quoting *Harrison v. Day*, 201 Va. 386,

393, 111 S.E.2d 504, 509 (Va. 1959)) (emphasis added). The reason for this is simple: "[w]here restrictions are imposed in the Constitution by express language or necessary implication upon the power of the General Assembly, the restrictions may not be ignored." *Id.* (quoting *Carlisle v. Hassan*, 199 Va. 771, 776, 102 S.E.2d 273, 277 (Va. 1958)).

Thus, contrary to the Commonwealth Defendants' suggestion that the Court is barred from considering Plaintiff's claims on the basis of sovereign immunity, the Supreme Court of Virginia has held that it has a constitutional *obligation* to exercise its jurisdiction to adjudicate such claims. *Scott*, 2026 WL 1261598, at *4 (noting the Supreme Court of Virginia's "duty" to review proposed constitutional amendments). There, as here, the Commonwealth pressed the Court to refrain from exercising its jurisdiction over the constitutional validity of the process leading to the proposed constitutional amendment. *Id.* at *4–5. The Court refused. "If this supposition were true – that *Scott* forbids pre-election challenges and that 'the will of the people' forbids post-election challenges – then judicial review of allegedly unconstitutional procedures used to adopt a constitutional amendment would not exist in the Commonwealth of Virginia." *Id.* at *5. Such is not the law, and the Supreme Court of Virginia exercised its subject matter jurisdiction and its constitutional duty to review the constitutionality of the proposed amendment. *Id.* As the Court said in *Scott*, it is required to adjudicate such alleged procedural infirmities. *Id.* ("*we then must exercise our constitutional duty to review lower courts' declaratory judgments before us on appeal and address de novo what equitable remedies, if any, are appropriate*." (quoting

Koski v. Republican Nat'l Comm., 305 Va. ---, 926 S.E.2d 289, 292 (Va. 2026) (per curiam)) (emphasis original).

The constitutional duty and the subject matter jurisdiction of the Court to adjudicate challenges to procedural infirmities of a proposed constitutional amendment are established by binding precedent from the Supreme Court of Virginia, affirmed as recently as last month. And the holding of *Scott* mandates rejection of the Commonwealth Defendants' Plea in Bar here.

C. The Commonwealth conceded in *Scott v. McDougle* that the Court has subject matter jurisdiction to review the constitutionality of the process leading to proposed constitutional amendments.

Contrary to the assertions put forward in the Commonwealth Defendants' Plea in Bar here, the Commonwealth—itself—*conceded* in *Scott v. McDougle* that the tribunals of the Commonwealth have subject matter jurisdiction and a constitutional duty to review proposed constitutional amendments. In a colloquy with the Court in *Scott*, the Supreme Court of Virginia pressed the Commonwealth about this jurisdictional issue, and the Commonwealth said the Supreme Court had jurisdiction to entertain the suit.

> We respect and accept the representation of the Commonwealth's counsel that no such assertion can be made. At oral argument in this case, the Court asked the Commonwealth's counsel: "I don't understand that as a legal argument given that you asked us to invoke our, ironically enough named, *Scott* decision from over 100 years ago that specifically says you don't deal with any potential procedural irregularities before the people have voted. So saying that the people have voted yes after having said you don't even look as to whether there is any procedural irregularity until after the people have voted doesn't add anything to the equation, does it?" Oral Argument Audio at 3:49 to 4:16. Counsel replied: "No. *And to be perfectly clear, we are not arguing that this Court lacks*

> *jurisdiction to review whether the constitutional requirements of Article XII have been complied with. It does*. Instead, I'm saying that on the merits this Court should not accept the challengers' arguments." *Id.* at 4:17 to 4:31. The Court again asked: "But the fact that there is a yes vote doesn't tell us anything about those merits?" *Id.* at 4:32 to 4:35. Counsel correctly answered: "No. It does not." *Id.* at 4:35 to 4:36.

Scott, 2026 WL 1261598, at *5 n.14 (emphasis added).

The Commonwealth's concession in *Scott* is fatal to its claims here, and the Court should hold the Commonwealth to it. The Court plainly has subject matter jurisdiction to review whether the procedural requirements of a proposed constitutional amendment have been complied with, and the Commonwealth has conceded as much. That *alone* requires rejection of the Plea in Bar.

D. The host of other Supreme Court of Virginia decisions reviewing and adjudicating challenges to proposed constitutional amendments against Commonwealth officials demonstrates that they have no sovereign immunity.

Notwithstanding the binding precedent from last month in *Scott v. McDougle* and the binding precedent from the Supreme Court of Virginia in March 2026 in *Koski v. Republican National Committee*, and leaving aside for the moment the Commonwealth's concession of subject matter jurisdiction over Plaintiff's claims in *Scott*, the host of precedent dating back over a century demands rejection of the Commonwealth Defendant's Plea in Bar. In *Scott v. James*, the Supreme Court of Virginia—over a century ago—acknowledged that it has subject matter jurisdiction over challenges to proposed constitutional amendments. 114 Va. 297, 304, 76 S.E. 283, 285 (Va. 1912) ("The judiciary department has the power, and it is its duty, to pass upon the validity of a constitutional enactment when put in force.").

In 1940, the Supreme Court of Virginia again reviewed a challenge to the constitutionality of the process by which a proposed constitutional amendment was placed on the ballot. *City of Danville v. Ragland*, 175 Va. 27, 7 S.E.2d 121 (Va. 1940). There, again, no mention was made of any subject matter jurisdiction problem on the basis of sovereign immunity, and the Court adjudicated the merits of the challenge.

In 1945, the Supreme Court of Virginia again reviewed a challenge to a proposed constitutional amendment process. *See Staples v. Gilmer*, 183 Va. 613, 33 S.E.2d 49 (Va. 1945). There, again, the Court held that it was authorized to review the proceedings leading up to the amendment process to ensure compliance with the amendment requirements of the Constitution of Virginia. 183 Va. at 623, 33 S.E.2d at 53 ("The people of Virginia have placed sections 196 and 197 in the Constitution to define the means by which it may be revised and amended. They must be followed if a valid revision or amendment is to result."). Again, no prohibition on the adjudication of the challenge was found because of alleged sovereign immunity.

In 1978, the Supreme Court of Virginia again reviewed a challenge to the constitutionality of the process by which certain constitutional amendments were proposed. *See Coleman v. Pross*, 219 Va. 143, 246 S.E.2d 613 (Va. 1978). There, again, the Supreme Court of Virginia held that "it is incumbent upon us to determine whether the proposed constitutional amendments incorporated into the Act were themselves properly approved for submission to the voters in accordance with the provisions in the Constitution." 219 Va. at 154, 246 S.E.2d at 619–20.

Plaintiff could go on, but "[t]here is no point in beating a dead horse." *United States v. Brown*, 500 F.3d 48, 55 (1st Cir. 2007). For over a century, and as recently as last month in *Scott v. McDougle*, the Supreme Court of Virginia has found itself vested with subject matter jurisdiction to adjudicate challenges to the constitutionality of the process leading to proposed constitutional amendments. In not one of those cases has the Court found such jurisdiction lacking, and it is not lacking here. The Commonwealth Defendants' Plea in Bar should be rejected.

II. Notwithstanding the Supreme Court of Virginia's rejection of Defendants' contentions of sovereign immunity, Defendants would not be cloaked in sovereign immunity here.

Virginia, of course, recognizes sovereign immunity. *Messina v. Burden*, 228 Va. 301, 307, 321 S.E.2d 657, 660 (Va. 1984). "It is an established principle of sovereignty, in all civilized nations, that a sovereign State cannot be sued in its own courts . . . without its consent and permission." *Gray v. Va. Sec'y of Transp.*, 276 Va. 93, 101, 662 S.E.2d 66, 70 (Va. 2008) (cleaned up). But, importantly, claims brought under a self-executing constitutional provision are not barred by sovereign immunity. *Sch. Bd. of Stafford Cnty. v. Sumner Falls Run, LLC*, 303 Va. 253, 256, 903 S.E.2d 242, 245 (Va. 2024) ("When a constitutional provision is self-executing, sovereign immunity does not preclude declaratory and injunctive relief." (quoting *DiGiacinto v. Rector & Visitors of George Mason Univ.*, 281 Va. 127, 137, 704 S.E.2d 365, 371 (Va. 2011)).

The Commonwealth Defendants contend that Article XII, Section 1 is not self-executing so sovereign immunity even bars 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, 276 Va. at 103–04, 662 S.E.2d at 72 (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 precludes a bar in sovereign immunity. 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 proposed 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.

That Article XII, Section 1 lays down "mandatory requirements 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.

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 sovereign immunity one time. *See McDougle*, 2026 WL 1261598. The Circuit Court of the City of Lynchburg denied many of these Defendants' plea in bar asserting sovereign immunity. *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*, 116 Va. Cir. 351, denied the Defendants' plea in bar for sovereign immunity, and in *McDougle*, 116 Va. Cir. 299, he did not find a lack of subject matter jurisdiction.

Simply put, the Commonwealth Defendants' claim of sovereign immunity is incorrect, and their Plea in Bar should be rejected.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests this Court reject Defendants' Pleas in Bar of Sovereign Immunity.

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