

VIRGINIA: IN THE CIRCUIT COURT OF BEDFORD COUNTY

CHARLA BANSLEY,)	
)	
Plaintiff,)	
)	Civil Action <u>CL26000931-00</u>
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.)	

**MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO
PROPOSED INTERVENOR’S MOTION TO INTERVENE**

INTRODUCTION

Proposed Intervenor is a syndicate of companies whose sole purpose is purportedly to promote access to abortion across the Commonwealth.¹ It is not a government agency with oversight over the election process and has no role to play in the process. It has no vote in the Virginia legislature to approve either in the first instance or second, a proposed constitutional amendment. It has no authority over the Clerk of the House of Delegates to submit proposed constitutional amendments to the clerks of the Circuit Courts across the Commonwealth. It has no authority to demand the clerks post the Proposed Constitutional Amendment on circuit courthouse doors and websites, or to otherwise comply with the demands of Article XII, Section 1 of the Constitution or Va. Code §30-13 as it existed at the time of the proposed constitutional amendment process at issue here. It cannot require the clerks to make the Proposed Constitutional Amendment available for public inspection. And it has no special knowledge of the process by which these steps are fulfilled. In other words, Proposed Intervenor seeks to intervene into an action in which it has no knowledge, authority, or responsibility. Proposed Intervenor's intervention and the contentions made in support of a proposed constitutional amendment process in which it has no role is unwelcome, unnecessary, duplicate, and not germane to the issues. The Court should deny the motion.

¹ See *Who We Are*, Virginians for Reproductive Freedom, <https://va4reprofreedom.org/> (last visited June 13, 2026)

LEGAL ARGUMENT

I. Proposed Intervenor does not meet the requirements of Rule 3:14 because it fails to identify any right, personal to itself, in seeing a constitutionally flawed process allowed to stand.

Rule 3:14 of the Rules of the Supreme Court of Virginia prescribes the standard courts use to grant or deny a motion to intervene: “A new party may by leave of court file a pleading to intervene as a plaintiff or defendant to assert any claim or defense germane to the subject matter of the proceeding.” Va. Sup. Ct. Rule 3:14. The history behind Rule 3:14 (and its predecessor Rule 3:19), “includes a *strong adherence to limiting intervention* to those parties who are *legitimately plaintiffs or defendants* in litigation because the nature of their claim includes some right that is involved in the litigation.” *Hudson v. Jarrett*, 269 Va. 24, 34, 606 S.E.2d 827, 832 (Va. 2005) (emphasis added). Importantly, and contrary to its federal counterpart in the Federal Rules of Civil Procedure, there is no intervention as of right, and it is solely “within the discretion of the trial court.” *Id.*, 606 S.E.2d at 832.

“In order for a stranger to become a party by intervention, he must ‘*assert some right involved in the suit.*’” *Eads v. Clark*, 272 Va. 192, 196, 630 S.E.2d 502, 504 (Va. 2006) (quoting *Layton v. Seawall Enterprises, Inc.*, 231 Va. 402, 406 (1986)). But, importantly, the right must be the right of the intervenor itself, not a duplicative assertion of the rights of another. *See, e.g., Norfolk Div. of Social Servs. v. Unknown Father*, 2 Va. App. 420, 436, 345 S.E.2d 533, 542 (Va. Ct. App. 1986) (interpreting a different intervention statute but announcing general principles applicable to intervention).

Proposed Intervenor identifies no “right involved in the suit,” and particularly not one personal to Proposed Intervenor. The issues pertaining to Plaintiff’s claims are whether Defendants complied with the requirements of Article XII, Section 1 of the Constitution of Virginia and Va. Code §30-13. (See Complaint, ¶¶84–158.) 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 procedures that are violative of that process. Proposed Intervenor has neither a right to have a proposed constitutional amendment on the ballot, nor a right to have it placed there regardless of Defendants’ failures to comply with the requirements of the Constitution of Virginia and Virginia Code.

Though the people of the Commonwealth “have a nearly unlimited power to control and amend the Constitution, subject only to the limitations imposed by the United States Constitution . . . one of the two amendatory processes specified in the Virginia Constitution must be followed if a valid amendment is to be effectuated.” *Coleman*, 219 Va. at 152, 246 S.E.2d at 619. “The power to amend and revise in whole

or in part the Virginia Constitution resides in the people, not in the State legislature.” *Staples v. Gilmer*, 183 Va. 613, 623, 33 S.E.2d 49, 53 (Va. 1945). The people of the Commonwealth of Virginia have placed limits on the mechanism by which any amendments to their charter of ordered liberties may be amended, and “[t]hey must be followed if a valid revision or amendment is to result.” *Id.*, 33 S.E.2d at 52. Proposed Intervenor has no personal right to see that irreducible constitutional minimum ignored and have its favorite amendment placed on the ballot despite failures to comply.

II. Proposed Intervenor may not intervene for mere concerns about the decisions of the trial court and its effect on its preferred amendment.

In Virginia, Rule 3.14 “does not allow a party to intervene because of concerns, legitimate or unfounded, about what might result from a trial court’s decision in a case.” *Mitchell Mtn. v. Madison Ctny. Bd. of Supervisors*, 70 Va. Cir. 294, 294 (Va. Cir. Ct. 2006) (citing *Huson v. Harrett*, 269 Va. 24, 606 S.E.2d 827 (Va. 2005)). Proposed Intervenor can only establish a concern about having to advocate for a new process that complied with the constitutional requirements, but cannot and does not “advance or identify any independent right that would accrue to [it] if [it] became a party to the case.” *Id.* at 294. Specifically, Proposed Intervenor claims that the Court requiring adherence to the strict requirements of the Constitution of Virginia and Va. Code §30-13, as it was operative at the time of Defendants’ violations, “would undermine” its ability to advocate for an abortion amendment. (Proposed Intervenor Mot. at 5.) Agreeing, of course, that Proposed Intervenor has a First Amendment right to advocate for whatever constitutional amendments it desires, that right is

simply not at issue here. In other words, “[t]he claims asserted by [Proposed Intervenor] was not a right involved in th[e] proceeding.” *Eads*, 272 Va. at 197, 630 S.E.2d at 505. Regardless of the outcome of Plaintiff’s claims in this case, Proposed Intervenor is permitted and constitutionally free to advocate for its proposed abortion amendment without limitation. What it may not do, however, is assert a non-existent right to have a proposed constitutional amendment placed on the ballot when the process giving rise to it was constitutionally and statutorily deficient. Proposed Intervenor have—at best—articulated a concern about the impact of the litigation, *Mitchell Mtn.*, 70 Va. Cir. at 294, but have not articulated a right that it could assert in the matter. Simply put, “[t]he allegations of [proposed] intervenors here fall far short of showing any claim that they could assert as a plaintiff or defendant that is germane to the issues.” *Hudson*, 269 Va. at 34, 606 S.E.2d at 831. Indeed, “[a] party is not entitled to intervene in litigation merely because one byproduct of the [outcome] may be that he is adversely affected.” *Cluverius v. McGraw, Inc.*, 44 Va. Cir. 426, 1998 WL 972109, *2 (Va. Cir. Ct. Feb. 11, 1998). *See also Aquia Harbour Prop. Owners Assoc., Inc. v. Stafford Cnty. Bd. of Supervisors*, 12 Va. Cir. 114 (Va. Cir. Ct. 1987) (same). That Proposed Intervenor has concerns about the impact of the outcome of the litigation is not sufficient alone to justify its intervention in this matter, particularly where—as here—it has failed to alleged any right at issue in Plaintiff’s claims. The Motion should be denied.

III. Regardless of Proposed Intervenor’s concerns, whether legitimate or unfounded, about the topic of the litigation, Proposed Intervenor has not and cannot demonstrate claims germane to the litigation.

Proposed Intervenor is only permitted to intervene if it can demonstrate a “claim or defense germane to the subject matter of the proceeding.” Va. Sup. Ct. Rule 3:14. Proposed Intervenor does not and cannot satisfy that requirement.

Black’s Law Dictionary defines the term “germane” as “[r]elevant; pertinent.” *Germane*, *Black’s Law Dictionary* (12th ed. 2024). *See also Cluverius v. McGraw, Inc.*, 44 Va. Cir. 426, 426 (Va. Cir. Ct. 1998) (defining “germane” as “relevant to or closely allied”); *League of United Latin Am. Citizens, N.M. v. Ferrera*, 792 F. Supp. 2d 1222, 1233 (D.N.M. 2011) (noting “germane” as being “closely akin” and “being at once relevant and appropriate”). Therefore, in order to intervene in this action under Rule 3:14, the Proposed Intervenor must assert a legal right that is appropriately relevant to the process Defendants neglected to follow for the Proposed Constitutional Amendment. It has not done so.

The only relevant and germane issue in this matter is whether Defendants complied with the requirements of Article XII, Section 1 of the Constitution of Virginia and Va. Code §30-13. (*See* Complaint, ¶¶84–158.) That is all. Proposed Intervenor’s First Amendment rights to advocate are not at issue or implicated at all. Proposed Intervenor’s desire to have a proposed amendment on the ballot is not sufficient to make its purported claims relevant or germane to the proceeding.

Proposed Intervenor does not allege or contend any rights at all pertaining to the process by which the proposed constitutional amendment was approved in the

General Assembly. The sole question and sole relief sought is a finding that Defendants failed to follow the constitutionally and statutorily proscribed methods of submitting a proposed constitutional amendment to the voters. (*See* Complaint, at 31–34.)

The Virginia Court of Appeals decision in *Turner Ashby Camp No. 1567 v. County of Clarke*, 2023 WL 3183604 (Va. Ct. App. May 2, 2023), is particularly instructive. Much like Proposed Intervenor here, the Sons of Confederate Veterans there sought to intervene to assist with defending against a plaintiff's claims brought in the litigation. *Id.* at *4. The Court of Appeals upheld the denial of intervention for the same reasons this Court should: “[a]lthough [the proposed intervenor’s] desire to receive the [property] is relevant generally speaking, it does not reflect ‘a significant and demonstrable bearing on the matter at issue,’” which was “the County’s claim of ownership by adverse possession.” *Id.* In other words, the interest asserted by the proposed intervenor must have some *significant* and *demonstrable* bearing on the issues in the case, and Proposed Intervenor’s desire to advocate for certain proposed constitutional amendments does not count.

IV. As a prudential matter, Proposed Intervenor does not aid the Court’s determination of this issue as it does not raise any different concerns from the named Defendants.

Even where a proposed intervenor meets the requirements of Rule 3:14, which it does not in this case, intervention is still “within the discretion of the trial court.” *Hudson v. Jarrett*, 269 Va. 24, 34, 606 S.E.2d 827, 832 (Va. 2005). Importantly, and contrary to its federal counterpart in the Federal Rules of Civil Procedure, there is no

intervention as of right, and it is solely “within the discretion of the trial court.” *Id.*, 606 S.E.2d at 832 *Hudson v. Jarrett*, 269 Va. 24, 33 (2005). And this discretion is given a high level of deference. *See Mattaponi Indian Tribe v. Virginia Marine Resources Commission*, 45 Va. App. 208, 213, 609 S.E.2d 619, 621 (Va. Ct. App. 2005) (Kelsey, J.) (noting that intervention is “a matter within the sound discretion of the circuit court,” and “the trial court has considerable discretion in deciding intervention”). This Court should deny Proposed Intervenor’s motion because its participation is entirely redundant, duplicative, and only adds to the Parties’ burdens. Proposed Intervenor does not identify one unique defense that is not raised by the parties. Proposed Intervenor does not offer any independent right that the Court must adjudicate. Proposed Intervenor offers no unique perspective of the claims at issue here. Simply put, it merely added to Plaintiff’s burden in responding to multiple motions. Proposed Intervenor’s motion should be denied.

CONCLUSION

Because Proposed Intervenor identifies no right at issue in this matter, offers no claim germane to the issues before the Court, and presses issues that are entirely redundant and adequately represented by the parties to this matter, Plaintiff respectfully requests this Court to deny Proposed Intervenor’s Motion to Intervene.

DATED this 17th day of June, 2026

/s/ Daniel J. Schmid
Mathew D. Staver*
Daniel J. Schmid (VA Bar No. 84415)
Richard L. Mast (VA Bar No. 80660)
Stephen J. Nast (VA Bar No. 101642)
LIBERTY COUNSEL
P.O. Box 540774
Orlando, FL 32854
(407) 875-1776
Email: dschmid@lc.org
*Pro hac vice forthcoming
Attorneys for Plaintiff

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