

IN THE COURT OF APPEALS OF VIRGINIA

RECORD NO. 1475–26–3

CHARLA BANSLEY,
Plaintiff-Appellant,

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; REBECCA C. BROWN, 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-Appellees,

and

VIRGINIANS FOR REPRODUCTIVE FREEDOM,
Intervenor-Defendant-Appellee.

APPELLANT’S OPENING BRIEF

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**Pro hac vice* application forthcoming

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STATEMENT OF THE CASE

I. Introduction.

This appeal arises from the efforts of Appellant, Charla Bansley (“Bansley” or “Appellant”), to hold the Commonwealth to the bargain it reached with its citizens and require it to conform its proceedings to the fundamental charter of the Commonwealth’s ordered liberties. Namely, Bansley charges that the Commonwealth’s efforts to amend the Constitution of Virginia in a few short weeks from now were fundamentally flawed procedurally and that the resulting amendment, if approved, cannot become part of the Constitution of Virginia. The reason for that is simple: despite over two centuries of precedent dictating that any amendment to the Constitution of Virginia must follow a strict and deliberately lengthy process, outlined in Article XII, Section I of the Constitution of Virginia and what was Va. Code §30–13 prior to the legislature’s attempts to cure its procedural deficiencies retroactively, and that the process that occurred during the proposed amendment, House Joint Resolution 1, was inalterably and incurably deficient.

Bansley submitted that the process for proposing amendments to the Constitution of Virginia was not followed, and that once it was

evident that the General Assembly had proposed a host of constitutionally and procedurally deficient amendments, it attempted to retroactively cure its deficiencies by purporting to retroactively repeal the statute by which the process for proposing constitutional amendments was outlined. Bansley's challenge was not the first to question the General Assembly's efforts at repealing the fundamental charter of the Commonwealth's ordered liberties, as the Supreme Court of Virginia heard a similar challenge to the proposed redistricting amendments. Though Bansley's original request for injunctive relief in this matter became clarified by the Supreme Court of Virginia's decisions coming after her Complaint was filed, what remained and remains is the plain ability of the Court to enter declaratory judgment, declaring that the Commonwealth failed to follow the strict process required for amending the Constitution of Virginia and nullifying any vote, if approved, on the November ballot. That is what she seeks in this appeal.

II. Material proceedings below.

Bansley brought her Verified Complaint for Injunctive Relief and Declaratory Judgment on March 2, 2026, seeking *inter alia* an injunction enjoining the relevant defendants from placing the proposed amendment

in House Joint Resolution 1 on the November 2026 ballot and a declaration that the process followed by the General Assembly was incurably flawed. R. 31–34. Defendants and Intervenor-Defendant all moved for a change of venue, R. 88–108, 168–172, 191–210, 260–278, filed demurrers to Bansley’s Complaint. R. 88–108, 174–189, and the Commonwealth Defendants pleaded in bar sovereign immunity. R. 191–210, 260–278. The circuit court set a briefing schedule on the respective responsive pleadings, R. 231–232, and held a hearing on all motions, demurrers, and the plea in bar on July 14, 2026. R. 623–740.

The circuit court took the motions for change of venue under advisement, R. 678, and sustained the demurrers. R. 740. Subsequently, on July 24, 2026, the circuit court entered its written Final Order, memorializing its sustaining of the demurrers. R. 613–616. On August 13, 2026, Bansley timely noticed her appeal to this Court. R. 617–620.

On August 28, 2026, Bansley subsequently moved the Court to motion the Supreme Court of Virginia to certify the appeal for Supreme Court review pursuant to Va. Code §17.1–409. This Court denied that Motion via written order on September 10, 2026. This appeal follows.

ASSIGNMENTS OF ERROR

I. The circuit court erred in finding that Appellant lacked standing to bring her challenges to Defendants-Appellees' failure to follow the procedures of Article XII, Section 1 of the Constitution of Virginia and Va. Code §30–13, as operative at the time of the failures, and by finding that the Supreme Court of Virginia's standing precedents in the voting context, traditional standing context, and challenges to proposed constitutional amendment context did not warrant a finding of Plaintiff-Appellant's standing to bring her claims here. R. 614, R. 740. (Preserved at R. 615, R. 740.)

II. The circuit court erred in relying upon the *dissenting* opinion in *Scott v. McDougle*, 930 S.E.2d 332 (Va. 2026) to find that Va. Code §30–13, as operative at the time of the procedures relevant to the proposed constitutional amendment at issue here, was directory rather than mandatory and thus a failure to follow its strict requirements would not form a sufficient basis to invalidate the proposed constitutional amendment at issue in this case. R. 613–614, R. 739–740. (Preserved at R. 615, R. 740.)

III. The circuit court erred in finding that the General Assembly could retroactively repeal Va. Code §30–13 and thus cure and attach new legal consequence to the General Assembly’s failure to follow Section 30–13’s strict procedural requirements, which failure was completed before the legislative repeal, without impacting the substantive rights of Plaintiff-Appellant and other voters in the Commonwealth. R. 614, R. 740. (Preserved at R. 615–616, R. 740.)

STATEMENT OF THE FACTS

I. The constitutional amendment process outlined in Article XII, Section I and Va. Code §30–13.

Article XII, Section 1 of the Constitution of Virginia and Va. Code §30–13 set forth a specific, intentional, and deliberate process for amending the Constitution of Virginia.¹ See R. 6–8 (quoting Va. Const. Art. XII, §1; Va. Code §30–13). Specifically, Article XII, Section 1 states as follows:

Any amendment or amendments to this Constitution may be proposed in the Senate or House of Delegates, and if the same

¹ Bansley recognizes that the General Assembly purported to retroactively repeal Va. Code §30–13, but submits—as the Supreme Court of Virginia noted—that it was “in effect in October 2025,” *Scott v. McDougle*, 930 S.E.2d 332, 348 n.31 (Va. 2026), and thus describes its requirements that were operative at the time of the proposed constitutional amendment at issue in this appeal.

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.

Va. Const. Art. XII, §1.

Article XII, Section 1 “mandates a detailed process governing the *lawful adoption of constitutional amendments.*” *Scott v. McDougle*, 930 S.E.2d at 338 (emphasis added). Each step must be followed meticulously and precisely to effectuate the amendment process and propose a valid constitutional amendment to the citizen voters of the Commonwealth. A failure at any step necessarily means the Constitution cannot be amended. “Strict compliance with these mandatory requirements of a deliberatively lengthy, precise, and balanced procedure is required in order that all proposed constitutional amendments shall receive the

deliberate consideration and careful scrutiny they deserve.” *Id.* (quoting *Coleman v. Pross*, 219 Va. 143, 154, 246 S.E.2d 613, 620 (Va. 1978)). These threshold requirements are not procedural niceties, but form the “ambition of a constitution[.]” *Scott v. McDougle*, 930 S.E.2d at 338. Thus, though the process may seem arduous or “laborious to some, perhaps even painstakingly so,” the purpose is “[t]o guard against hasty changes to the Commonwealth’s organic law.” *Id.* at 339.

The process involves a balanced approach, providing a measured division of authority between the Commonwealth’s citizens and its elected officials. *See id.* (“[T]he General Assembly can propose amendments but cannot adopt them. The inverse is also true. Virginia voters can adopt or reject amendment but cannot propose them.”). Though arduous, Article XII, Section 1 of the Constitution of Virginia intentionally “slow-walks the constitutional-amendment process” with the deliberate purpose of “giv[ing] voters two opportunities—one indirect, the other direct—to voice their views on the proposed amendment.” *Scott v. McDougle*, 930 S.E.2d at 339. First, Article XII, Section 1 provides an “intervening-election period between two legislative sessions,” so that voters can “support or defeat candidates for the House of Delegates who

either endorse or oppose the proposed amendment.” *Id.* Second, if the General Assembly approves the proposed constitutional amendment during the second consideration, “voters get a second direct opportunity to vote the proposed amendment up or down at the ballot box.” *Id.* Importantly, “[t]he efficacy of the second popular vote depends in part upon the reliability of the first.” *Id.*

Section 30–13 of the Virginia Code serves as and provides “such manner” as the General Assembly “shall prescribe.” Va. Const. Art. XII, §1. *See also McDougle v. Nardo*, 116 Va. Cir. 299, 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.”). It states:

In addition to such duties as may be prescribed by the rules of the House of Delegates, the Clerk of the House of Delegates shall at the end of the session of the General Assembly prepare a well-arranged index to the journal of the House and the documents printed during the session by order of the House. He shall have published, with the acts and joint resolutions proposing amendments to the Constitution: joint resolutions providing for studies for legislation of each session of the General Assembly; the unadjusted United States decennial census counts for the Commonwealth’s counties, cities, and towns; and a carefully prepared and well-arranged index of the acts and joint resolutions.

The Clerk of the House of Delegates shall have published all proposed amendments to the Constitution for distribution from his office and to the clerk of the circuit court of each county and city two copies of the proposed amendments, one of which shall be posted at the front door of the courthouse and the other shall be made available for public inspection. Every clerk of the circuit court shall complete the posting required not later than three months prior to the next ensuing general election of members of the House of Delegates and shall certify such posting to the Clerk of the House of Delegates. The Clerk of the House of Delegates shall report to the General Assembly at its next regular session the action taken by him under this section, including the costs incurred in the printing and distribution of the amendments. The report shall be published in the Journal of the House of Delegates.

Va. Code §30-13.

The combination of the constitutionally prescribed process of Article XII, Section I of the Virginia Constitution and Va. Code §30-13 set an irreducible constitutional minimum standard process for amending the Commonwealth's charter. The process can thus be described as follows:

(1) The respective chamber of the General Assembly must propose an amendment to the Constitution of Virginia. R. 8, ¶28.

(2) A majority of members elected to each of the two houses in the General Assembly must approve of the proposed constitutional amendment in one session of the General Assembly. R. 8, ¶29.

(3) The proposed constitutional amendment must be entered on the journals of the houses of the General Assembly. R. 8, ¶30.

(4) The name of each member of the General Assembly and how that member voted must be recorded. R. 8, ¶31.

(5) The Clerk of the House of Delegates must publish for distribution two copies of the proposed constitutional amendment to the clerks of every circuit court in the Commonwealth, one copy for posting on the courthouse door and the other made available for public inspection. R. 8–9, ¶32.

(6) The clerk of *every* circuit court in the Commonwealth must then post those proposed constitutional amendments on the courthouse door² *and* make the proposed constitutional amendment available for inspection by the voting populace. R. 9, ¶33.

(7) The clerk for *every* circuit court in the Commonwealth must post and make available for inspection the proposed constitutional

² Bansley recognizes that the General Assembly has provided that “posting to the Courthouse door” under Va. Code §30–13 may be satisfied by a clerk if the document required to be posted is placed on the circuit court’s website. Va. Code §1-211.1.

amendment by a very specific time, namely at least three months prior to the next general election of the House of Delegates. R. 9, ¶34.

(8) The clerk of *every* circuit court in the Commonwealth must then certify the posting to the Clerk of the House of Delegates. R. 9, ¶35.

(9) The next election (the intervening election) of the House of Delegates must then take place after the voters have had at least three months to review and consider the proposed constitutional amendment that is to be considered for the second time by the General Assembly. R. 9, ¶36.

(10) The General Assembly must then convene for a second regular session to consider and approve of the proposed constitutional amendment. R. 9, ¶37.

(11) At the convening of the next regular session of the General Assembly, the Clerk of the House of Delegates must report to the General Assembly that he has taken the actions required by Va. Code §30–13 and include a description of the costs incurred in printing and distributing the proposed amendment. R. 10, ¶38.

(12) The report to the General Assembly of the Clerk of the House of Delegates concerning his compliance with Va. Code §30–13 must be published in the Journal of the House of Delegates. R. 10, ¶39.

(13) The General Assembly must again propose and approve of the proposed constitutional amendment in the second session. R. 10, ¶40.

(14) The General Assembly must wait 90 days after the second passage of the proposed constitutional amendment. R. 10, ¶41.

(15) The General Assembly must submit the proposed constitutional amendment to the voters qualified to vote in elections by the people of the Commonwealth, including a prescription of the date the proposed constitutional amendment shall be effective. R. 10, ¶42.

(16) The voters of the Commonwealth must be given the opportunity to vote to approve or disapprove of the proposed constitutional amendment. R. 10, ¶43.

(17) If a majority of voters approve of the proposed constitutional amendment, then it shall become part of the Virginia Constitution on the date prescribed by the General Assembly. R. 10, ¶44.

Each step has a firm mandate of “strict compliance.” *Coleman*, 219 Va. at 154, 246 S.E.2d at 620. The purpose behind the posting

requirement is so that Commonwealth voters are properly informed of the proposed changes to their Constitution. *See Scott v. James*, 114 Va. 297, 303, 76 S.E. 283, 285 (Va. 1912) (“[T]he amendments [are] to be published for three months previous to the time of such election, in order to notify the people of their pendency.” (emphasis added)); *McDougle v. Nardo*, 2026 WL1396581, *3 (Va. Cir. Ct. Jan. 27, 2026) (“The sole purpose for the posting the proposed amendment at the front door of the Courthouse and having a copy in the Clerk’s Office available for inspection is to provide the voters with notice and information PRIOR to the election of the House of Delegates members who would be elected to vote on the proposed Constitutional Amendment for the second vote as required under the Constitution.”).

II. The process followed for proposed constitutional amendment, House Joint Resolution 1.

House Joint Resolution 1, proposing an amendment to the Constitution of Virginia by adding in Article I, “a section numbered 11-A, relating to fundamental right to reproductive freedom,” was first proposed and approved by the General Assembly during the 2025 session. R. 11–12, ¶50; R. 36. After the close of the 2025 General Assembly, the Clerk of the House of Delegates was required, *inter alia*, to distribute the

Proposed Constitutional Amendment to the Clerks for each circuit court in the Commonwealth for posting and inspection. R. 12, ¶51. The Clerk of the House of Delegates did not distribute the Proposed Constitutional Amendment to the clerks of every circuit court in the Commonwealth and thus failed to meet the Clerk's constitutional and statutory obligations. R. 12, ¶52.

Bansley confirmed prior to the filing of her Verified Complaint below that the requirements for posting and inspection at every circuit court in the Commonwealth did not occur. R. 12, ¶51. Prior to the institution of her Verified Complaint below, Bansley's counsel communicated with the Circuit Court Clerks for the Circuit Courts of Bedford County, Campbell County, and the City of Lynchburg to inquire if the Proposed Constitutional Amendment was provided to them for posting and inspection. R. 12–14, ¶¶54, 57, 61. The Clerk of the Circuit Court of Bedford County had no recollection of receiving the Proposed Constitutional Amendment from the Clerk of the House of Delegates and confirmed that she had no knowledge that the Proposed Constitutional Amendment was posted on the courthouse door of the Circuit Court of Bedford County or that it was made available for inspection for at least

three months prior to the 2025 General Election of the members of the House of Delegates. R. 12–13, ¶¶54–55. The Clerk of the Circuit Court for the City of Lynchburg likewise confirmed that he had reviewed his files and had no evidence that the Proposed Constitutional Amendment was distributed to him for posting and inspection and confirmed that the Proposed Constitutional Amendment was not posted or made available for inspection. R. 13, ¶¶57–59. The same was true for the Clerk of the Circuit Court for Campbell County. R. 13–14, ¶¶61–63.

The facts surrounding the failure of the Clerk of the House of Delegates to distribute the Proposed Constitutional Amendment and the failure of the circuit court clerks to post and make available for inspection are not in dispute. *See* R. 712. *See also* R. 736.

Because the Clerk for the House of Delegates did not distribute the Proposed Constitutional Amendment to the Clerks for the Circuit Courts of Bedford County, Campbell County, and City of Lynchburg, and on information and belief, Bansley alleged that the Clerk of the House of Delegates had not distributed the amendment to any circuit court clerks. R. 14, ¶64. Because the Clerks for the Circuit Court of Bedford County, Campbell County, and City of Lynchburg had no record of receiving or

posting and making available for inspection at the courthouse the Proposed Constitutional Amendment, the Proposed Constitutional Amendment was not posted at least three (3) months prior to the next intervening election of members of the House of Delegates. R. 13–15, ¶¶55, 59, 65. These facts are not in dispute. *See* R. 712; R. 736.

After initial passage of the Proposed Constitutional Amendment in the 2025 General Assembly, the next intervening election of the House of Delegates concluded on November 4, 2025. R. 15, ¶71. Thus, at the latest, the Proposed Constitutional Amendment was required to be posted and made available for inspection on the courthouse door of every circuit court in the Commonwealth by August 4, 2025; and if one includes the early voting process, the posting and availability for inspection was required by June 19, 2025, to be timely posted and made available for inspection three months prior to the September 19, 2025, start for early voting. R. 15–16, ¶¶72, 75. That irreducible constitutional mandate was not met. R. 16, ¶¶73, 76.

Because the Proposed Constitutional Amendment was not made available for inspection at the circuit court for Bedford County, Campbell County, or the City of Lynchburg at least three months before the

November 2025 election, it necessarily was not made available for inspection at *every* circuit court throughout the Commonwealth and the constitutionally mandated notice requirements were not satisfied. R. 16, ¶77. Despite failing to distribute the Proposed Constitutional Amendment for posting and inspection at the circuit courthouses, the House of Delegates introduced House Joint Resolution 1, the Proposed Constitutional Amendment, for approval on January 14, 2026. R. 16–17, ¶78. The House of Delegates approved the Proposed Constitutional Amendment on that same day, January 14, 2026. R. 17, ¶79; R. 36. The Proposed Constitutional Amendment was then approved by the Senate on January 16, 2026. R. 17, ¶80; R. 36. Defendants have placed the Proposed Constitutional Amendment on the ballot for approval by the voters in the November 2026 election, R. 17, ¶81, for which voting is now underway.

STANDARDS OF REVIEW AND ARGUMENT

The circuit court erred by finding that Bansley lacked standing to bring her challenge to Appellees’ admitted failures to comply with Va. Code §30–13. Bansley has standing under every test applicable to voting-context cases, declaratory judgment actions, and traditional standing

principles. The circuit court also erred in sustaining a demurrer on the basis that the General Assembly’s retroactive repeal of Section 30–13 was within its constitutional prerogative, despite the fact that such retroactive repeal impacted antecedent, substantive rights in effect at the time of the failures. Because the purported repeal of Section 30–13 impacted antecedent substantive rights and attempted to give new legal significance to conduct that had already occurred, it cannot constitutionally be made retroactive. The circuit court’s decision sustaining the demurrers must be reversed.

I. The circuit court erred by ignoring over 120 years of precedent to hold that Bansley lacked standing to bring her claims against the Proposed Constitutional Amendment (Assignment of Error 1).

A. This Court reviews the sustaining of a demurrer and questions of standing *de novo*.

The Court reviews a circuit court’s ruling sustaining a demurrer *de novo*. *E.g., Fisher v. Tails, Inc.*, 289 Va. 69, 73, 767 S.E.2d 710, 712 (Va. 2015). The same is true of questions pertaining to standing, which this Court has opined are “questions of law that we review *de novo*.” *Reston Hosp. Ctr., LLC v. Remley*, 59 Va. App. 96, 106, 717 S.E.2d 417, 422 (Va. Ct. App. 2011). In making that determination, the Court “do[es] not

accord the presumption of correctness to the judgment below[.]” *Philip Morris USA Inc. v. Chesapeake Bay Found., Inc.*, 273 Va. 564, 572, 643 S.E.2d 219, 223 (Va. 2007). A demurrer should be overruled when the pleading “alleged sufficient facts to constitute a foundation in law for the judgment sought.” *Hubbard v. Dresser, Inc.*, 271 Va. 117, 122, 624 S.E.2d 1, 4 (Va. 2006).

Moreover, questions of construction or the interpretation of the Constitution of Virginia are pure questions of law subject to *de novo* review. *Walker v. Commonwealth*, 302 Va. 304, 314, 887 S.E.2d 544, 549 (Va. 2023). The same is true of questions regarding statutory interpretation. *E.g.*, *City of Danville v. Garrett*, 249 Va. 36, 40, 803 S.E.2d 326, 328 (Va. 2017) (“This Court also reviews *de novo* the application of a statute to the undisputed, stipulated facts in a declaratory judgment action.” (citing *Bd. of Supervisors of James City v. Windmill Meadows, LLC*, 287 Va. 170, 174–75, 752 S.E.2d 837, 839–40 (Va. 2014))).

Bansley preserved her objection to the circuit court’s Final Order sustaining of Appellees’ demurrers on the basis of standing both orally at the July 14 hearing and in written objections to the circuit court’s Final Order. R. 616, R. 740.

B. Argument.

The circuit court sustained Appellees' demurrers on the basis that, *inter alia*, Bansley lacked standing to bring her challenges to the flawed constitutional process used in relation to the Proposed Constitutional Amendment. R. 614. The circuit court's decision was erroneous for several independent reasons. Bansley has standing under long-established and binding decisions from the Supreme Court of Virginia in voting context cases. Bansley also sufficiently alleged and demonstrated standing under Virginia's Declaratory Judgment Act to challenge the Proposed Constitutional Amendment. And Bansley's standing to bring a challenge to an allegedly flawed constitutional process for proposed amendments to the Constitution of Virginia is consistent with the universal and unequivocal precedent in Virginia dating back at least 120 years. The circuit court's Final Order sustaining of the demurrers should be reversed.

1. Bansley has standing under long-established voting context cases to bring her challenge to the Proposed Constitutional Amendment.

Where a government official's failure to abide by constitutional and statutory requirements imposes harm in the district where a plaintiff

resides, like Bansley in Bedford County, 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 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.”). 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. The same is true in this matter where the strict requirements of Article XII, Section 1 of the Constitution of Virginia were not followed.

Importantly, *Wilkins* is not limited to mere racial gerrymandering cases but has broad application to the voting context in general—such as Bansley’s claims here. *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)). Thus, standing in the voting context is far broader than the circuit court allowed in its Final Order, and Bansley’s well-pleaded Complaint plainly established the requisite requirements for her constitutional standing to bring her claims below.

In *Howell*, the question involved the compliance of certain Commonwealth officials with the requirements of voter registration and specific provisions of the Constitution of Virginia 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 a personalized injury.” Id. at 332, 788 S.E.2d at 713 (emphasis added). 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.*, 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., 788 S.E.2d at 715. The same is true here.

Bansley is a resident affected by Appellees’ unlawful actions concerning the Proposed Constitutional Amendment and subject to the harms that it necessarily imposes on Bansley in Bedford County (and throughout the Commonwealth). As Bansley alleged, she is a resident, elected official, and registered voter in Bedford County. R. 4, ¶11. The

failure to follow the procedures outlined in Va. Code §30–13 and Article XII, Section 1 of the Constitution of Virginia were effectuated by Commonwealth officials and elected representatives in her own county. R. 4–5. As the Supreme Court of Virginia said in *Coleman v. Pross*, Article XII, Section 1 includes “mandatory provisions” that require “strict adherence” 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 Bansley for which the court of the Commonwealth can provide redress. *Id.* at 158, 246 S.E.2d at 622–23 (“[W]e 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. Bansley easily satisfied each component. She plainly alleged that this matter involves a right specifically arising in the voting context. R. 2–3, ¶¶1–10. Bansley alleged that she is a resident and registered voter of a district in which the injuries occurred and would be felt. R. 4, ¶11. And Bansley alleged that Appellees failed to follow the requirements of Virginia law. R. 3, ¶8; R. 4, ¶10; R. 11–17, ¶¶49–82 (alleging violations of the procedural requirements for amending the Virginia Constitution); R. 17–24, ¶¶84–115 (alleging that Appellees failed to follow the requirements of Va. Code §30–13); R. 24–31, ¶¶121–154 (alleging that failed to follow the strict requirements of Article XII, Section 1 of the Constitution of Virginia). Each of these allegations is sufficient to establish standing in a voting context case, such as this one.

Contrary to this binding precedent in the voting-context cases and in spite of the clear allegations of Bansley’s Complaint, the circuit court sustained Appellees’ demurrers by holding that Bansley lacked standing to bring her claims in the circuit court. R. 614; R. 740. “[T]he standing doctrine asks only whether the claimant truly has a personal stake in the outcome of the controversy.” *Morgan v. Bd. of Supervisors of Hanover Cnty.*, 302 Va. 46, 58, 883 S.E.2d 131, 137 (Va. 2023). Bansley’s interest

in her government's strict adherence to the Constitution of Virginia is plainly fundamental, and the vote in Bedford County is plainly impacted in a legally significant manner by Appellees' failure to abide by the requisite constitutional procedures that require strict adherence. As in other voting-context cases, there is little dispute that Bansley and Appellees are actual adversaries in the matter and that the issues are fully developed. *E.g.*, *Jones v. Va. Dep't of Elections*, 111 Va. Cir. 296, 2023 WL 12070210, *2 (Va. Cir. Ct. Richmond, Mar. 29, 2023); *Democratic Party of Va. v. Piper*, 102 Va. Cir. 478, 2018 WL 11299342, *4 (Va. Cir. Ct. Richmond, Sept. 6, 2018). The circuit court's Final Order ignored this binding and unequivocal precedent, is therefore erroneous and must be reversed.

2. Appellees' failure to follow the strict requirements of self-executing provisions of the Constitution of Virginia in the amendment process confer standing on Bansley to challenge the Proposed Constitutional Amendment.

Outside the voting-context cases, the circuit court's conclusion that Bansley lacks standing is erroneous for a separate and independent reason. Specifically, Article XII, Section 1 of the Constitution of Virginia is self-executing and thus confers on Bansley standing to challenge

Appellees' failures to follow it. *See, e.g., Gray v. Va. Sec'y of Transp.*, 276 Va. 93, 103–04, 662 S.E.2d 66, 72 (Va. 2008).

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.

Id., 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 necessarily indicates Bansley'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.

Va. 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 v. Rectors & Visitors of George Mason Univ.*, 281 Va. 127, 138, 704 S.E.2d 365, 371 (Va. 2011) (same). 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 Appellees contended below that Article XII, Section 1 is not self-executing because it may require enabling legislation to make it operative, the Commonwealth’s own actions and purported defenses demonstrated the error of that contention. Article XII, Section 1 states that submission to the voters may be in the manner that the General Assembly prescribes, but Appellees’ purported repeal (or attempt to constitutionally repeal) Va. Code §30–13 at least tacitly acknowledged

that no enabling legislation is necessary to make the amendment provision operative.

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 to be "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, Appellees failed to comply with it, and Bansley has standing to seek declaratory relief concerning that failure.

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). That such 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 (“[W]e 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. v. Summer Falls Run, LLC*, 303 Va. 253, 256, 903 S.E.2d 242, 245 (Va. 2024). “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. Bansley’s claims under the Declaratory Judgment Act are plainly justiciable, and she has standing to challenge the procedural deficiencies underlying the Proposed Constitutional Amendment.

The Declaratory Judgment Act, Va. 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 Bansley alleges an actual controversy arising from Appellees’ failure to follow the strict procedures in the constitutional amendment process. R. 17–31, ¶¶83–158. In essence, Bansley alleges Appellees’ failure 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 circuit court had 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). Specifically pertinent to Bansley’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, Bansley may obtain a remedy in declaratory relief. Indeed, though the Supreme Court of Virginia limited Bansley’s ability to obtain injunctive relief prior to the election concerning the Proposed Constitutional Amendment, it made clear that the power to review the process via declaratory judgment remains was not only available by mandatory. *Koski v. Republican Nat’l Comm.*, 926 S.E.2d 289, 292 (Va. 2026) (“[W]e must then exercise our constitutional duty to review lower court’s declaratory judgments[.]”). Bansley alleged an antagonistic assertion of a right afforded her under the Constitution of Virginia. That is the entire purpose of declaratory relief. Bansley has standing to bring her claims in this matter, and the circuit court’s Final Order must be reversed on that basis.

3. Bansley has standing under the Declaratory Judgment Act to bring her challenge to the Proposed Constitutional Amendment.

Even if Bansley was required to plead particularized injury in a voting-context case, which she was not, she would still have standing to bring her claims under the Declaratory Judgment Act on the basis of the injuries alleged in her Complaint. In general, to establish standing to seek a declaratory judgment, Bansley 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 will be fully and faithfully developed.” *Cupp v. Bd. of Supervisors of Fairfax Cnty.*, 227 Va. 580, 589, 318 S.E.2d 407, 411 (Va. 1984). Bansley easily satisfied this threshold.

Morgan v. Board of Supervisors of Hanover County 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.*, 302 Va. at 66, 883 S.E.2d at 142 (quoting *Summers v. Earth Island Inst.*, 555 U.S. 488, 496 (2009)), but Bansley may plead standing where a procedural right is accorded to protect her concrete interests. *Id.*

Appellant did just that. As demonstrated *supra*, Article XII, Section 1 of the Virginia Constitution and Virginia Code §30-13 impose procedural requirements that require “strict adherence,” *Coleman*, 219 Va. at 152, 246 S.E.2d at 619, and 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*, 2026 WL 1396581, at *3. Bansley’s allegations suffice to demonstrate that she has a vested interest and right in compliance with those procedures that make her interest concrete. Bansley alleged that

she is a resident and registered voter of a district in which the injuries occurred and would be felt. R. 4, ¶11. And Bansley alleged that Appellees failed to follow the requirements of Virginia law. R. 3, ¶8; R. 4, ¶10; R. 11–17, ¶¶49–82; R. 17–24, ¶¶84–115; R. 24–31, ¶¶121–154.

And, to the extent necessary, Bansley specifically alleged concrete and particularized injury resulting from the constitutionally deficient procedures. R. 3, ¶8; R. 17, ¶82; R. 21, ¶106; R. 23–24, ¶¶116–119; R. 29, ¶¶145–146; R. 31, ¶155. “[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. Hosp.*, 237 Va. 87, 98, 376 S.E.2d 525, 530 (Va. 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.” *Id.* 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. As the foundation upon which all other rights are preserved, the right to vote is certainly a substantive and vested right. The alleged violation of Virginia Code §30–13, as a mandatory procedure impacting that fundamental right to vote, necessarily alleges a requisite infringement warranting standing.

4. The precedent is universal and unequivocal that a voter and citizen has standing to challenge flaws in the constitutional amendment process.

From *Scott v. James*, 114 Va. 297, 76 S.E. 283 (1912), to recently in *Koski v. Republican National Committee*, 926 S.E.2d 289 (Va. 2026), and even more recently in *Scott v. McDougle*, 930 S.E.2d 332 (Va. 2026), binding precedent demands but one conclusion: Bansley has standing to bring her claims in this matter.

In *Scott*, 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.” 114 Va. 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. Despite having an unequivocal duty to address a lack of standing *sua sponte*, *Appalachian Voices v. State Corp. Comm’n*, 277 Va. 509, 515, 675 S.E.2d 458, 460 (Va. 2009); *Martin v. Ziherl*, 269 Va. 35, 40, 607 S.E.2d 367, 369 (Va. 2005), the Supreme Court of Virginia found sufficient standing for the individual citizen and taxpayer to challenge procedurally deficient constitutional amendment proposals. Though Bansley has alleged more concrete and particularized injury than *Scott* did, even her allegations that she is a citizen and registered voter would suffice to provide her sufficient standing to challenge the Proposed Constitutional Amendment.

II. The circuit court erred by sustaining the demurrer on the basis that the provisions of Va. Code §30–13 were directory rather than mandatory. (Assignment of Error 2.)

A. The standard of review for sustaining the demurrer on the basis of statutory interpretation is review *de novo*.

As demonstrated *supra* Section I.A, the Court reviews a circuit court’s ruling sustaining a demurrer *de novo*. *Fisher v. Tails, Inc.*, 289 Va. 69, 73, 767 S.E.2d 710, 712 (Va. 2015). And questions of

constitutional construction or the interpretation of the Constitution of Virginia and of Virginia statutory law are pure questions of law subject to *de novo* review. *Walker v. Commonwealth*, 302 Va. 304, 314, 887 S.E.2d 544, 549 (Va. 2023); *City of Danville v. Garrett*, 249 Va. 36, 40, 803 S.E.2d 326, 328 (Va. 2017).

Bansley preserved her objection to the circuit court’s sustaining of a demurrer on the basis that Va. Code §30–13 was merely directory and not mandatory such that violation of its provisions would not invalidate the amendment both orally at the July 14 hearing and in written objections to the circuit court’s Final Order. R. 615, R. 740.

B. Argument

- 1. The circuit court erred by relying on a nonprecedential dissent to sustain a demurrer on the basis that Appellees’ failure to follow Va. Code §30–13 has no constitutional dimension.**

The circuit court found Va. Code §30–13 could be retroactively repealed without constitutional concern and that it was merely directory rather than mandatory, in any event, so violation of the statute would not invalidate the amendment. R. 614. And the circuit court based that conclusion on the analysis of the *dissenting* opinion in *Scott v. McDougle*,

930 S.E.2d 332, 357 (Va. 2026) (Powell, C.J., dissenting). *See* R. 739. This was reversible error for several independent reasons.

First, the *majority* opinion in *Scott* tacitly, if not explicitly, rejected that proposition. As the *Scott* majority concluded, “Code §30-13 . . . *was in effect in October 2025.*” *Scott*, 930 S.E.2d at 348 n.31 (emphasis added). If the *majority* had concluded that Va. Code §30–13 was effectively and constitutionally repealed retroactively, it necessarily could not have been “in effect in October 2025.” *Id.* “The repealing statute obliterates the statute repealed as completely as if it had not been passed, and it must be considered as a law that never existed.” *White’s Adm’x v. Freeman*, 79 Va. 597, 601 (Va. 1884). Moreover, the majority rejected the dissent’s proposition that there would be no invalidation of the proposed amendment if the procedure violated Va. Code §30—13, and it specifically reserved the question of “the potential remedy for a failure of state and local officials to comply with former Code §30–13.” *Scott*, 930 S.E.2d at 348 n.31. That statement alone shows that the majority did not address and therefore rejected the proposition that the repeal necessarily was operative and that no remedy would result from a violation of a statutory provision in effect at the time of the violation.

Second, even if the foregoing proposition were incorrect, which it is not, dissenting opinions are neither precedential, nor binding. *See Walker v. Commonwealth*, 74 Va. App. 475, 504 n.14, 870 S.E.2d 328, 342 n.14 (Va. Ct. App. 2022) (“Indeed, we note that, on multiple occasions, the dissent relies upon *dissenting* opinions from non-Virginia courts. These citations are not only not the law in Virginia, but also are not the law in the jurisdictions in which they were rendered.”). “[A] dissent is generally not the best source of legal advice on how to comply with the majority opinion.” *Lisann v. Lisann*, 304 Va. 242, 262 n.16, 915 S.E.2d 59, 70 n.16 (Va. 2025) (quoting *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 230 (2023)). Indeed, “Cassandra-like predictions in dissent are not a sure guide to the breadth of the majority’s ruling.” *United States v. Travers*, 514 F.2d 1171, 1174 (2d Cir. 1974). The circuit court’s reliance on the dissent in *Scott* was error.

2. In the context of proposed constitutional amendments, the provisions of Va. Code §30–13 are mandatory, not directory, and the Commonwealth’s failure to follow it requires a finding that the Proposed Constitutional Amendment is null and void.

“Properly understood, a ‘shall’ command in a statute always means ‘shall,’ not ‘may.’” *Rickman v. Commonwealth*, 294 Va. 531, 537, 808

S.E.2d 395, 398 (Va. 2017). “[T]he use of the word ‘shall’ in a statute requiring action by a public official is directory and not mandatory unless the statute manifests a contrary intent.” *Butler v. Commonwealth*, 264 Va. 614, 619, 570 S.E.2d 813, 816 (Va. 2002) (quoting *Jamborski v. Baskins*, 247 Va. 506, 511, 442 S.E.2d 636, 638 (Va. 1994)). Where, as here, “precise compliance” with the statute is “deemed essential to the validity of the proceedings,” the statute is mandatory. *Nelms v. Vaughan*, 84 Va. 696, 699, 5 S.E. 704, 706 (Va. 1888). Whether precise compliance is essential to the validity of the proceedings “depends upon the General Assembly’s intended meaning of [shall], which is discerned from ‘the nature, context, and purpose’ of the relevant statute.” *Bland-Henderson v. Commonwealth*, 303 Va. 211, 220–21, 902 S.E.2d 51, 56 (Va. 2024) (quoting *Huffman v. Kite*, 198 Va. 196, 202, 93 S.E.2d 328, 332 (Va. 1956)).

In the context of proposed constitutional amendments, where the Supreme Court of Virginia has held that strict compliance is the touchstone and irreducible constitutional minimum, Va. Code §30–13 must be deemed mandatory. Additionally, comparisons between related statutes in which the General Assembly has specifically noted that a

failure to comply does not impact the constitutional validity of a proposed amendment demonstrates that Section 30–13 carries with it constitutional dimension. And, regardless of the Court’s view on these considerations, violation of even a directory statute requires a judicial remedy—not ignoring that the Commonwealth neglected its mandatory duties in submitting proposed constitutional amendments to the voters.

- a. **Binding precedent demonstrates that the nature, context, and purpose of Va. Code §30–13 renders the procedures by which the General Assembly prescribed the proposal of constitutional amendments mandatory.**

The Supreme Court of Virginia has long held that the procedures to pass a constitutional amendment must be meticulously followed or the amendment will fail. *See, e.g., Staples v. Gilmer*, 183 Va. 613, 623, 33 S.E.2d 49, 53 (Va. 1945) (stating the procedures to amend the Constitution “must be followed if a valid revision or amendment is to result”); *Coleman*, 219 Va. at 153, 246 S.E.2d at 619 (“[F]or more than one hundred years, constitutional amendment by the non-convention method has necessitated compliance with the requirements of a deliberatively lengthy, precise, and balanced procedure.”); *id.*, at 154, 246 S.E.2d at 620 (finding that “strict compliance with these mandatory

provisions is required in order that all proposed constitutional amendments shall receive the deliberate consideration and careful scrutiny that they deserve”); *Scott*, 930 S.E.2d at 348 (emphasizing the importance of “strict compliance with these mandatory provisions”) (quoting *Coleman*, 219 Va. at 154, 246 S.E.2d at 620).

“The Constitution is the fundamental law of Virginia. It is the charter by which our people have consented to be governed,” *Coleman*, 219 Va. at 152, 246 S.E.2d at 618, and “one of the two amendatory processes specified in the Virginia Constitution must be followed if a valid amendment is to be effectuated.” *Id.*, 246 S.E.2d at 619. *See also Staples*, 183 Va. at 623, 33 S.E.2d at 53. (“They must be followed if a valid revision or amendment is to result.”). For over 225 years, the Virginia Constitution “has necessitated compliance with the requirements of a deliberatively lengthy, precise, and balanced procedure.” *Coleman*, 219 Va. at 153, 246 S.E.2d at 619.

Precision is the touchstone of the constitutional amendment process with each step building on the prior to properly effectuate the deliberative process. Each step must be followed to the letter, or else the amendment process is incurably flawed. Whether that process finds itself

in Article XII, Section 1 of the Virginia Constitution, in the Virginia Code, or in both (as is the case here), all steps that are in effect at the time of each vote must be meticulously followed. Virginia Code §30-13 “was in effect in October 2025[.]” *Scott*, 930 S.E.2d at 348 n.31. Therefore, under Supreme Court precedent, Virginia Code §30-13 must have been strictly complied with to properly pass the Proposed Constitutional Amendment. The context of Va. Code §30–13 as being the manner in which the General Assembly shall prescribe the submission of proposed amendments to the voters under Article XII, Section 1 of the Constitution of Virginia, the nature of Va. Code §30–13’s imperative role in a process mandating “strict compliance,” *Coleman*, 219 Va. at 154, 246 S.E.2d at 620, and the purpose of Va. Code §30–13 to provide voters with the information necessary to make the determination concerning the proposed amendment, *McDougle v. Nardo*, 2026 WL 1396581, *3 (Va. Cir. Ct. Jan. 27, 2026), all demonstrate that compliance with Va. Code §30–13 was “essential to the validity of the proceedings,” *Butler*, 264 Va. at 619, 570 S.E.2d at 816. Thus, Va. Code §30–13 is mandatory, not directory, and a failure to comply with its commands renders the Proposed Constitutional Amendment null and void.

b. The plain text of Va. Code §30–13 demonstrates that it was a mandatory statute because it is essential to the validity of the constitutional amendment process.

“Virginia law holds that the plain language of a statute determines whether it is mandatory . . . or directory[.]” *Marrison v. Dep’t of Family Servs.*, 59 Va. App. 61, 69, 717 S.E.2d 146, 150 (Va. Ct. App. 2011). The text of Va. Code §30–13 and its comparison to other related statutes in the process of a constitutional amendment likewise demonstrate that it is mandatory, not directory.

Consider, for example, Va. Code §30-19.9, titled “Distribution of information on proposed constitutional amendments to voters.” At the conclusion of that statute, the General Assembly specifically included a limitation on remedies: “Any failure to comply with the provisions of this section shall not affect the validity of the constitutional amendment.” Va. Code §30-19.9. Section 30–13 contains no such limitation. That distinction is critical. Indeed, “we continue to presume that the legislature chose, with care, the specific words of the statute and that the act of choosing words carefully some words *necessarily implies others are omitted with equal care.*” *Wal-Mart Stores East, LP v. State Corp. Comm.*, 299 Va. 57, 70, 844 S.E.2d 676, 683 (Va. 2020) (quoting *Rickman*, 294 Va.

at 540 n.3, 808 S.E.2d at 399 n.3) (emphasis added). Notably absent, then, and presumptively intentional, is any note that a failure to abide by Va. Code §30–13 is constitutionally irrelevant.

When a statute contains a given provision with reference to one subject, the omission of such provision from a similar statute dealing with a related subject is significant to show the existence of a different legislative intent. A comparison to other, similar statutes demonstrates that the General Assembly clearly knew how to create such authority when it so desired.

See Blevins v. Commonwealth, 63 Va. App. 628, 639, 762 S.E.2d 396, 401 (Va. Ct. App. 2014) (cleaned up). The omission by the General Assembly of any limitation on the validity of a proposed amendment that does not comply with Section 30–13 was intentional under binding law and renders the distinction critical. The omission plainly “manifests a contrary intent,” *Butler*, 264 Va. at 619, 570 S.E.2d at 816, under binding Virginia precedent.

c. Even if Va. Code §30–13 was directory, which it is not, violation of its provisions still requires adjudication of a proper remedy.

Even if the circuit court was correct, which it was not, that Va. Code §30–13 was merely directory and that failure to follow its commands would not impact the Proposed Constitutional Amendment, the Supreme

Court has been clear that “a ‘shall’ command in a statute always means ‘shall,’ not ‘may.’ *No litigant or court should willfully disregard such a legislative command.*” *Rickman*, 294 Va. at 537, 808 S.E.2d at 398 (emphasis added). Failure to follow a shall command—even in a directory statute—is still a violation of the law for which “the Courts are *bound to devise the proper remedy*[.]” *Coleman v. McMurdo*, 26 Va. (5 Rand.) 51, 82 (Va. 1827) (opinion of Green, J.); (emphasis added); *Rickman*, 294 Va. at 537, 808 S.E.2d at 398 (“[I]t empowers the court to exercise discretion in fashioning a tailored remedy, if one is called for at all.”).

As the circuit court noted, Va. Code §30–13 was not followed. R. 736. Under *Staples*, *Coleman*, *Scott v. McDougale*, *Scott v. James*, and the litany of other Supreme Court of Virginia precedent, that failure is fatal to the Proposed Constitutional Amendment. The procedures to amend the Constitution “must be followed if a valid revision or amendment is to result.” *Staples*, 183 Va. at 623, 33 S.E.2d at 53. Thus, because it was mandatory to follow the procedures, the Court must fashion the remedy for any failure to comply. And *Scott v. McDougale* compels the only remedy available: the Proposed Constitutional Amendment is “null and void.” 930 S.E.2d at 348. Indeed, “the Commonwealth submitted a proposed

constitutional amendment to Virginia voters in an unprecedented manner that violated” Va. Code §30–13, 930 S.E.2d at 348, and “[t]his violation irreparably undermines the integrity of resulting” vote. *Id.* The circuit court’s order sustaining a demurrer on the contrary basis was in error and must be reversed.

III. The circuit court erred by finding that the General Assembly could retroactively repeal Va. Code §30–13 without constitutional infirmity. (Assignment of Error 3)

A. This Court reviews the circuit court’s sustaining of a demurrer on the basis of constitutional questions concerning retroactivity *de novo*.

Whether a rule can be constitutionally applied retroactively is a pure question of law. *Oprisko v. Director of the Dep’t of Corrections*, 293 Va. 87, 93, 795 S.E.2d 739, 742 (Va. 2017). “A circuit court’s interpretation of a statute and its retroactive effect, or lack thereof, presents a question of law which this Court reviews *de novo*.” *Montgomery v. Commonwealth*, 75 Va. App. 182, 189, 875 S.E.2d 101, 104–05 (Va. Ct. App. 2022); *Taylor v. Commonwealth*, 44 Va. App. 179, 184, 604 S.E.2d 103, 105 (Va. Ct. App. 2004) (same).

Bansley preserved her objection to the circuit court’s sustaining of a demurrer on the basis that Va. Code §30–13 could be constitutionally

made retroactive both orally at the July 14 hearing and in written objections to the circuit court’s Final Order. R. 615–616, R. 740.

B. Argument

- 1. The General Assembly is not permitted to retroactively interfere with antecedent substantive rights existent at the time of the alleged violation of Va. Code §30–13.**

“It 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.³ But even explicit retroactive language in a statute is cabined by constitutional limitations on making a law retroactive. The circuit court sustained Appellees’ demurrer on the basis that the General Assembly cured its failures to comply with Va. Code §30–13 by repealing it retroactively and that doing so was in “its constitutional prerogative.” R. 614. The circuit court’s holding is in error.

³ See *supra* note 1.

The General Assembly’s attempt to retroactively cure the failure to comply with then-existent demands of proposing a constitutional amendment runs headlong into binding limitations 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). The reason is simple: retroactive application of a substantive right violates due process. *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)). Indeed, binding precedent “*clearly states* that the retroactive application of a statute impairing a ‘substantive’ right violates due process and is therefore unconstitutional.” *Potomac Hosp. Corp. v. Dillon*, 229 Va. 355, 360, 329 S.E.2d 41, 45 (Va. 1985)

(citing *Shiflet*, 228 Va. at 121, 319 S.E.2d at 754) (emphasis added). *See also Cohen v. Fairfax Hosp. Ass’n*, 12 Va. App. 702, 705, 407 S.E.2d 329, 331 (Va. Ct. App. 1991) (same).

The circuit court’s conclusion that the General Assembly’s attempted retroactive repeal of Va. Code §30–13 was constitutionally permissible is manifestly erroneous in its own language. The circuit court held that “the General Assembly acted within its constitutional prerogative when it retroactively repealed Section 30–13 in 2026 . . . *eliminating the statutory basis for Plaintiff’s claims.*” R. 614 (emphasis added). But, on its own rationale, retroactive repeal of Section 30–13 necessarily impacted substantive rights by—in the circuit court’s own understanding—(purportedly) eliminating an entire cause of action for Bansley that preexisted the purported repeal. That is no mere procedural modification, but an alteration of antecedent substantive rights.

Under the circuit court’s Final Order, Bansley plainly had a right to bring a suit seeking declaratory judgment on the basis that Appellees failed to abide by Va. Code §30–13 because the purported repeal necessarily could not have eliminated something that did not exist. Thus, even under its own rationale, the General Assembly’s attempt to

retroactively repeal Section 30–13 after its errors and omissions deprived Bansley of an antecedent right to seek relief.

2. **Va. Code §30–13 affected substantive rights because it created duties, obligations, and responsibilities on the government—and therefore rights on citizens—regarding the proper method of proposing a constitutional amendment.**

“Substantive rights, which are not necessarily synonymous with vested rights, are included within that part of the law dealing with creation of duties, rights, and obligations, as opposed to procedural or remedial law, which prescribes methods of obtaining redress or enforcement of rights.” *Shiflet*, 228 Va. at 120, 319 S.E.2d at 754 (citing Substantive Law, *Black’s Law Dictionary* 1281 (5th ed. 1979)). Indeed, “remedial laws do not create rights but merely operate in furtherance of already existing rights.” *Bd. of Supervisors of Fairfax Cnty. v. FCS Bldg. Ass’n*, 254 Va. 464, 467, 492 S.E.2d 634, 636 (Va. 1997).

Appellees conceded below that Va. Code §30–13 was not a remedial statute, R. 202, 270–271, which necessarily requires that it was substantive. *It was*. Va. Code §30–13 created duties, obligations, and responsibilities on the government, and therefore rights on Bansley, regarding the proper method of proposing a constitutional amendment.

Again, *Coleman* made clear that Article XII, Section 1 includes “mandatory provisions” that require “strict adherence” in order for a proposed constitutional amendment to pass muster. 219 Va. at 152, 246 S.E.2d at 619. Because substantive rights are 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 Appellees a duty and an obligation to follow a specific process to propose a constitutional amendment. Virginia Code §30-13 did not “merely operate in furtherance of already existing rights.” *Bd. of Supervisors of Fairfax Cnty.*, 254 Va. at 467, 492 S.E.2d at 636. It created duties, obligations, and responsibilities binding upon the Clerk of the House of Delegates and the Clerks of the Circuit Courts and rights in Bansley to expect that any proposed alteration to the fundamental charter of the Commonwealth’s ordered liberties be followed with precision.

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 Respondents’ 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.*, 233 Va. 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) (emphasis added). Because the General Assembly’s purported repeal of Section 30–13 “materially change[d] the substantive rights of a party,” *Shiflet*, 228 Va. at 120, 319 S.E.2d at 754, its actions were not “within [the General Assembly’s] constitutional prerogative” as the circuit court held. R. 614. Rather, they were a direct violation of the constitutional prohibition on retroactively negating antecedent substantive rights. The circuit court’s contrary conclusion was in error and should be reversed.

3. By attempting to retroactively cure its admitted failures to follow Va. Code §30–13, the General Assembly attempted to add new legal consequences to legal violations.

“The inquiry into whether a statute operates retroactively demands a commonsense, functional judgment about ‘whether the new provision attaches new legal consequences to events completed before its enactment.’” *Appalachian Power Co. v. State Corp. Comm’n*, 301 Va. 257,

295, 876 S.E.2d 349, 367 (Va. 2022) (quoting *Martin v. Hadix*, 527 U.S. 343, 357–58 (1999)). There is no dispute that Appellees failed to follow the requirements of Va. Code §30–13 and thus necessarily failed to comply with the manner in which the General Assembly had prescribed the proper proposal of constitutional amendments under Article XII, Section 1 of the Constitution of Virginia. R. 736.

Perhaps sensing that its host of procedurally deficient proposals to amend the Constitution of Virginia would be met with appropriate challenges to those failures, the General Assembly decided after its errors to attempt retroactive cure of its failures. Appellees’ suggestion below was essentially “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 renders the procedures relating to the Proposed Constitutional Amendment 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 retroactively 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). The circuit court dismissed Bansley’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 retroactively make it as though it never happened. Contrary to the circuit court’s finding, retroactive legislation is not permitted to be deployed as some constitutional ServPro, making it “like it never even happened.”⁴ That is not how retroactivity operates in any constitutional sense.

The principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal human appeal. It was recognized by the Greeks, by the Romans, by English common law, and by the Code Napoleon. It has long been a solid foundation of American law. Chancellor Kent said that “it cannot be admitted that a statute shall, by any fiction or relation, have any effect before it was actually passed.” Justice Story said that “retrospective laws are ... generally unjust; and ... neither accord with sound legislation nor with the fundamental principles of the social compact.” The United States Constitution itself so far reflects these sentiments that it proscribes all retroactive application of punitive law, and

⁴ *Servpro Indus. Inc. v. Zerorez of Phoenix LLC*, 339 F. Supp. 3d 898, 901 (D. Ariz. 2018).

prohibits (or requires compensation for) all retroactive laws that destroy vested rights.

Kaiser Aluminum & Chem. Corp. v. Bonjorno, 494 U.S. 827, 855–56 (1990) (Scalia, J., concurring) (emphasis added) (citations omitted). For centuries, retroactive legislation has been disfavored because it unsettles expectations of relied upon law. Blatant failures to follow clear black letter law cannot—and should not—be so easily cleaned up and swept under a rug. The General Assembly attempt to retroactively cure its failures to follow Va. Code §30-13 and Article XII, Section I were not within “its constitutional prerogative.” R. 614. Rather, they violated the Constitution of Virginia. The circuit court must be reversed.

CONCLUSION

Because Bansley adequately pleaded sufficient standing under the voting-context cases, the Declaratory Judgment Act, and traditional standing principles, the circuit court erred in sustaining a demurrer dismissing her complaint for lack of standing. Moreover, the circuit court erred in finding that Appellees’ admitted failure to follow Va. Code §30–13 did not matter because it would not have invalidated the Proposed Constitutional Amendment. And, in any event, the circuit court’s order

was contrary to binding Supreme Court of Virginia precedent. The circuit court should be reversed.

Respectfully submitted,

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RULE 5A:20 CERTIFICATION

Pursuant to Rule 5A:20(h), I, Daniel J. Schmid, counsel of record for Appellant, Charla Bansley, hereby certify as follows:

(1) The foregoing brief was served via electronic mail on all counsel of record at the following addresses:

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(2) Appellant desires oral argument in this appeal and specifically requests that the Court grant such argument.

(3) The foregoing Opening Brief of Appellant complies with the requirements of Rule 5A:19(a) and contains 12,076 words, exclusive of the cover, tables, signature blocks, and certificates.

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