
IN THE SUPREME COURT OF VIRGINIA

Record No. 260127

DON SCOTT, in his official capacity as Speaker of the House of
Delegates, *et al.*,

Appellants,

v.

RYAN T. McDOUGLE, Virginia State Senator and Legislative
Commissioner for the Virginia Redistricting Commission, *et al.*,

Appellees.

**BRIEF OF HONEST ELECTIONS PROJECT AS *AMICUS*
CURIAE IN SUPPORT OF APPELLEES**

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INTEREST OF *AMICUS CURIAE*¹

Honest Elections Project (“HEP”) is a nonpartisan organization devoted to supporting the right of every lawful voter to participate in free and honest elections. Through public engagement, advocacy, and public-interest litigation, HEP defends the fair, reasonable measures that legislatures put in place to protect the integrity of the voting process. HEP supports commonsense voting rules and opposes efforts to reshape elections for partisan gain. HEP has a significant interest in this case because it involves efforts to disregard procedural safeguards in the Virginia Constitution to reshape Virginia’s congressional maps for partisan gain.

STATEMENT OF FACTS

HEP generally adopts the statement of facts set forth in Appellees’ Brief. HEP provides the following statement of facts regarding the specific arguments made in this Brief.

¹ No counsel for any party authored this brief in whole or in part. No party or party’s counsel contributed money that was intended to fund preparing or submitting this brief. No person, other than *amicus curiae*, its members, or its counsel contributed money that was intended to fund preparing or submitting this brief.

On April 17, 2024, the General Assembly passed HJR 428 by a more than two-thirds vote and which called upon the Governor to convene a special session “for the purpose of considering Budget Bills.” HJR 428 (2024). HJR 428 passed 98 to 0 in the House and 40 to 0 in the Senate.² The Governor obliged, and the 2024 special session convened on May 13, 2024, to consider budget bills. HJR 6001 (2024). On January 7, 2025, a special election was held to fill vacancies in Senate Districts 10 and 32 and House District 26,³ replacing three members that comprised the two-thirds majority that called the 2024 special session.

On January 8, 2025, the General Assembly’s 2025 regular session began. Almost a year after the 2024 special session was originally convened, the General Assembly adopted HJR 6004, which extended the special session to again consider budget bills. HJR 6004 (2025). Six

² *2024 Session – HJ 428*, LEGACYLIS.VIRGINIA.GOV (Apr. 17, 2024), <https://legacylis.virginia.gov/cgi-bin/legp604.exe?241+vot+HV1845+HJ0428> (House); *2024 Session – HJ 428*, LEGACYLIS.VIRGINIA.GOV (Apr. 17, 2024), <https://legacylis.virginia.gov/cgi-bin/legp604.exe?241+vot+SV1327HJ0428+HJ0428> (Senate).

³ *2025 January 7 Special*, VA. DEP’T OF ELECTIONS (last updated Jan. 15, 2025), <https://enr.elections.virginia.gov/results/public/Virginia/elections/2025-January-7-Specials>.

months later, in October 2025, the General Assembly adopted HJR 6006, which again extended the special session and added the ability to consider any “joint resolution proposing an amendment to the Constitution of Virginia related to reapportionment or redistricting” HJR 6006 (2025). Unlike HJR 428, HJR 6006 passed with bare majorities in the House (50 to 42) and Senate (21 to 17).⁴ Then, on October 31, 2025, the General Assembly adopted the proposed redistricting amendment, HJR 6007. HJR 6007 (2025). This was, purportedly, the first passage of the proposed redistricting amendment under Article XII, Section 1’s amendment process.

When HJR 6006 and 6007 were adopted, early voting for a *new General Assembly* had already begun. Va. Att’y Gen. Op. 25-029 (Oct. 28, 2025). After the November 2025 general elections again changed the makeup of the General Assembly, the 2026 regular session began on January 14, 2026. The General Assembly passed the proposed redistricting amendment in the 2026 regular session on January 16,

⁴ *2024 Special Session I – HJ6006*, LIS.VIRGINIA.GOV (Oct. 27, 2025), <https://lis.virginia.gov/vote-details/HJ6006/20242/2429595>; *2024 Special Session I – HJ6006*, LIS.VIRGINIA.GOV (Oct. 29, 2025), <https://lis.virginia.gov/vote-details/HJ6006/20242/SV76>.

2026. HJR 4 (2026). The General Assembly did not adjourn the 2024 special session *sine die* until January 15, 2026—nearly two years after the vote to convene the special session and the second day of the 2026 regular session.

STANDARD OF REVIEW

HEP adopts the standard of review set forth in Appellees’ Brief.

ARGUMENT

Article I, Section 2 of the Virginia Constitution states that “all power is vested in, and consequently derived from, the people.” Va. Const. art. I, § 2. “Section 2 reminds us that public officials are servants of the people, and not the other way around.” Stephen R. McCullough, *Virginia Constitutional Law* § 1.02[4] (2026) (Matthew Bender). Accordingly, while the “General Assembly’s legislative powers are ‘without limit,’” the people may constrain the General Assembly in the exercise of those powers through “express or necessarily implied prohibitions arising from the Constitution of Virginia” *Elizabeth River Crossings OpCo, LLC v. Meeks*, 286 Va. 286, 311 (2013) (quoting *Marshall v. N. Va. Transp. Auth.*, 275 Va. 419, 432 (2008)).

By passing the proposed redistricting amendment in a special session that the General Assembly held indefinitely open for nearly two years, the General Assembly violated at least two constraints the people placed on it in the Virginia Constitution: (1) Article IV, Section 6's limits on the frequency and duration of regular sessions; and (2) Article IV, Section 6's requirement that a special session may only be convened on the call of the Governor or the vote of a two-thirds majority of both houses. By violating the latter, the General Assembly also trenched upon the Governor's authority over convening special sessions in violation of Article III, Section 1's separation of powers guarantee. And interpreting "special session" to permit a special session to continue *ad infinitum* would lead to an absurd result under Article IV, Section 13's provisions regarding the effective date of laws passed in special session. Accordingly, the proposed redistricting amendment is void because it was first passed in an unlawful special session.

I. Indefinite Special Sessions Are Inconsistent with the Durational Limits on Legislative Sessions in Article IV, Section 6 of the Virginia Constitution

A. The History and Purpose of Virginia’s Durational Legislative Session Limits

Throughout its history, Virginia has carefully sought to ensure that the General Assembly—the oldest continuously operating legislative body in the Western Hemisphere—retains its character as a part-time “citizen legislature.” Virginians, ever skeptical of broad assertions of government power, have done so, in part, by imposing constitutional limits on the frequency and duration of the General Assembly’s legislative sessions. Indeed, Virginians considered these limitations so essential to the nature of their government that they enshrined them in Article IV, Section 6 of the Virginia Constitution:

The General Assembly shall meet once each year on the second Wednesday in January. Except as herein provided for reconvened sessions, no regular session of the General Assembly convened in an even-numbered year shall continue longer than sixty days; no regular session of the General Assembly convened in an odd-numbered year shall continue longer than thirty days; but with the concurrence of two-thirds of the members elected to each house, any regular session may be extended for a period not exceeding thirty days.

Va. Const. art. IV, § 6.

These limitations on the General Assembly are not new. Since 1851, the Virginia Constitution has limited the frequency and duration of legislative sessions. Va. Const. art. IV, § 8 (1851) (limiting the General Assembly to meeting “once in every two years” and for no “longer than ninety days”). While the 1776 Constitution permitted the General Assembly to meet “once, or oftener, every year,” by the mid-nineteenth century, “the confidence of the men of ’76 in legislatures had given way to a rising mistrust.” 1 A.E. Dick Howard, *Commentaries on the Constitution of Virginia* 494 (1974). Accordingly, the Constitutional Convention of 1850–51 sought “to start in earnest the practice of circumscribing the powers of the general assembly.” *Id.* (internal quotations and citation omitted). One way the framers of the 1851 Constitution sought to do so was through biennial legislative sessions limited to 90 days in duration, with an option to extend the session for another 30 days upon a three-fifths vote of the members elected to each house. Va. Const. art. IV, § 8 (1851).

The effort to circumscribe the General Assembly’s powers “reached its climax in the Convention of 1901.” Howard, *supra*, at 494. The 1902 Constitution retained biennial legislative sessions and *reduced* the

length of regular sessions from 90 to 60 days. Va. Const. art. IV, § 46 (1902). However, it retained the option to extend the session for another 30 days upon a three-fifths vote of the members elected to each house. *Id.*

By the time Virginians began considering additional revisions to the Constitution in 1969, there was “considerable interest” in changing the frequency and duration of legislative sessions, specifically in whether Virginia should adopt annual legislative sessions. Commission on Constitutional Revision, *The Constitution of Virginia*, H.D. Doc. No. 1, at 132 (1969). Indeed, “[t]he question of annual legislative sessions was one of the few subjects which Governor Godwin mentioned specifically in his message asking the Legislature to create the Commission on Constitutional Revision.” *Id.* Ultimately, however, the Commission on Constitutional Revision proposed largely maintaining the 1902 Constitution’s frequency and durational limits. The Commission proposed maintaining biennial legislative sessions and limiting regular sessions to 90 days with no opportunity to extend. *Id.* at 131.

The main argument the Commission cited in support of longer and more frequent legislative sessions was the General Assembly’s increasing workload. *Id.* at 134. “That members of the General Assembly have too

many bills to consider in too short a time, and that they cannot give proposed legislation the mature consideration they would wish [was], in the judgment of the Commission, clear.” *Id.* at 135. However, the Commission determined that other constitutional revisions, such as expanding the powers of local governments and limiting special legislation, combined with additional efforts to improve legislative procedures, such as prefilings bills, would adequately address this concern. *Id.*

On the other hand, the Commission emphasized the dangers of saddling Virginians with a full-time legislature. The Commission expressed concern that more frequent legislative sessions “would tend to more frequent changes and hence to more instability in the law,” while less frequent sessions “would have a tendency to less frequent changes and therefore to more stability.” *Id.* at 137. The Commission also noted the “prevailing view in Virginia” that “serving as a legislator is not a ‘profession’; that is, it is assumed that a citizen who serves in the Assembly makes his living elsewhere” *Id.* The Commission was “reluctant to recommend a change which might cause many of the Commonwealth’s ablest citizens to draw back from running for the

Legislature because the frequency of sessions would cut too deeply into their . . . livelihoods.” *Id.*; see also Howard, *supra*, at 496 (noting the “traditional American aversion to professional legislators”).

Ultimately, however, the General Assembly chose to depart from the Commission’s proposal, opting instead for *annual* legislative sessions in the revised Constitution submitted to Virginians in 1971. Nevertheless, the General Assembly still imposed strict durational limits on annual sessions. So, while today’s Constitution permits the General Assembly to meet “once each year,” regular sessions are limited to 60 days in even-numbered years and 30 days in odd-numbered years, with the option to extend regular sessions for 30 days upon a two-thirds vote of the members elected to each house. Va. Const. art. IV, § 6.

Throughout this history, Virginia’s Constitution has given the Governor the power to convene special sessions of the legislature in certain circumstances. *E.g.*, Va. Const. art. V, § 5 (1851); Va. Const. art. V, § 73 (1902). And Virginia’s various constitutions have not placed specific durational limitations on such special sessions.

Nevertheless, Virginia’s long history of placing frequency and durational limits on the General Assembly’s regular sessions

demonstrates that the provisions authorizing special sessions have never been understood to authorize broad sessions of indefinite duration that continue in perpetuity until adjourned *sine die*. If that were true, the frequency and durational limits on regular sessions would be a dead letter. Once a governor convened a special session, the General Assembly—as it did here—could just keep the special session open indefinitely, returning to meet at will no matter the time of year, year after year. But it is clear that the framers of Virginia’s various constitutions, by providing the authority to convene special sessions, did not originally understand those provisions as providing an end-run around the frequency and durational limits on legislative sessions imposed since 1851.

This is true even though the Constitution does not expressly limit the duration of special sessions. While “implied constitutional limitations on the legislative power of the General Assembly are particularly disfavored,” *FFW Enters. v. Fairfax Cnty.*, 280 Va. 583, 593 (2010), limitations on the duration of legislative sessions are not limits on the General Assembly’s *substantive powers* but *procedural* limits on the way in which it exercises its powers. And even if durational limits on special

sessions did limit the General Assembly’s substantive powers, it has long been accepted that the General Assembly may be restrained by implication if the restraint is “so necessary and so plainly manifest as to require the implication in order to enforce the restraints expressly imposed.” *Breckenbridge v. Cnty. Sch. Bd.*, 146 Va. 1, 6 (1926). Interpreting “special session” to preclude indefinite special sessions is necessary to enforce the express restraints on the duration of regular sessions. Without implied limits on the duration of special sessions, the Virginia Constitution’s express limits on the duration of regular sessions would be rendered meaningless.

B. A Special Session Ends When a New Regular Session Begins

Article IV, Section 6’s text refers to a “special session” of the General Assembly. A special legislative session is exactly that: special. “Special” means “distinguished by some unusual quality” or “designed for a particular purpose or occasion.” *Special, Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/special> (last visited April 10, 2026). *Black’s Law Dictionary* similarly defines “special” as “designed for a particular purpose . . . unusual; extraordinary.” *Special, Black’s Law Dictionary* (12th ed. 2024). *Black’s* more specifically defines a “special

session” as “[a] legislative session, usu. called by the executive, that meets *outside its regular term* to consider a specific issue or reduce backlog.—Also termed extra session; extraordinary session.” *Id.* (defining “Special Session”) (emphasis added). This Court has repeatedly held that “[i]t is a general rule that the words of a Constitution are to be understood in the sense in which they are popularly employed, unless the context or the very nature of the subject indicates otherwise.” *Edwards v. Vesilind*, 292 Va. 510, 522 (2016) (citation omitted).

Given this plain meaning, it is clear that a special session is not a regular session; it occurs *outside* a regular session. Construing the phrase “special session” to authorize a session that can linger *ad infinitum*, overhanging regular sessions and continuing even beyond supervening regular sessions, would be absurd.

The phrase “special session” implies inherent temporal limits, as confirmed by the practice of the United States House of Representatives and several state supreme court decisions. In the U.S. House, for example, *Hinds’*, *Deschler’s*, and *Cannon’s* precedents all confirm that a special session automatically ends when the next regular session begins. See 5 HINDS’ PRECEDENTS § 6690 (“[A] special session, whether convened

by law or proclamation, ends with the constitutional day for annual meeting.”); 8 CANNON’S PRECEDENTS § 3375 (“A special session continuing until the constitutional day for annual meeting ends automatically on that date.”); 1 DESCHLER’S PRECEDENTS ch. 1, § 3 (under the 20th Amendment, when “Congress adjourns *sine die* and the President convenes an extraordinary session, an entirely new session is begun, *and is terminated by the arrival of the constitutional day.*” (emphasis added)). Thus, any special session of the U.S. House automatically ends—even in the absence of a formal *sine die* adjournment thereof—when the *next regular session* is constitutionally required to begin. *D.R. Horton, Inc. v NLRB*, 737 F.3d 344, 352 (5th Cir. 2013) (“Because there was no *sine die* adjournment on an earlier date, one Senate session ended . . . immediately before the next session began at noon.”); *accord Dodge of Naperville, Inc. v. NLRB*, 796 F.3d 31, 41 (D.C. Cir. 2015).

The Rules of the Virginia House and Senate also indicate that special sessions must end when a new regular legislative session begins. For example, Senate Rule 56 states that in the “construction of the Rules, reference shall be had to the following sources in the following order: (a) Jefferson’s Manual of Parliamentary Practice[;] (b) Mason’s Manual of

Legislative Procedure[; and] (c) Standing Rules for Conducting Business in the Senate of the United States.” Manual of the Senate, Gen. Assembly of Va., Rule 56 (2024–2025). Similarly, Rule 80 of the Virginia House of Delegates states that “[t]he rules of parliamentary practice comprised in Jefferson’s Manual will govern the House in all cases to which they are applicable and in which they are not inconsistent with the Rules of the House” HR 10, Rule 80 (2024).

Jefferson’s Manual, which is expressly deemed authoritative by both the Virginia House and Senate Rules, references the U.S. Constitution’s declaration that “Congress shall assemble at least once every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.” U.S. Const. art. I, § 4.⁵ Jefferson concluded that this constitutionally-specified date “must begin a new session” because even if the legislature did not adjourn until the very same day, that “act of adjournment is merged in the higher authority of the [date specified by] the Constitution, and the meeting [of the

⁵ This language was modified by section two of the Twentieth Amendment, which states that “Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.” U.S. Const. amend. XX, § 2.

legislature] will be under that [constitutional provision], and not under their adjournment.” JEFFERSON’S MANUAL OF PARLIAMENTARY PRAC. § 591. In this way, Jefferson observed, the constitutional specification of the date of a new legislative session provides a “fixed landmark[] for determining sessions.” *Id.* When that date occurs, a “dissolution” of the legislative session occurs, and a “dissolution certainly closes one session, and the meeting of the new Congress begins another.” *Id.*

Mason’s Manual is even clearer: “An extraordinary session of the legislature is terminated on the date provided for the convening of the regular session.” MASON’S MANUAL OF LEGIS. PROC. § 781(8) (2010 ed.); *see also id.* at § 781 (“the legislative session ceases to exist on the moment of sine die adjournment *or periodic dissolution*” (emphasis added)).

Several state supreme court decisions likewise confirm that special sessions are not unlimited free-for-alls that allow the state legislature to bypass constitutional time limits on legislative sessions. For example, in *Opinion of the Justices*, 152 So. 2d 427 (Ala. 1963), the Alabama Supreme Court considered the meaning of a state constitutional provision granting the governor the power to convene special sessions. *Id.* at 428. The court held, “The clear import of [that section] is that it provides the machinery

for convening the legislature because of extraordinary or emergency situations calling for legislative action *in the interim between the regular meetings of the legislature.*” *Id.* (emphasis added). Accordingly, “[i]f the legislature is in regular session, . . . the *special session should be considered as concluded upon the convening of [that] regular session.*” *Id.* at 428–29. (emphasis added).

The same is true here. When Governor Youngkin convened a special session in early 2024, that special session automatically “should have been considered as concluded upon the convening of the [next] regular session.” *Id.*; see also *D.R. Horton*, 737 F.3d at 352; *Dodge of Naperville, Inc.*, 796 F.3d at 41. The next regular session convened, and the 2024 special session thus ended, on January 8, 2025.

The Colorado Supreme Court recently reached a similar conclusion in *In re Interrogatory on House Joint Resolution 20-1006*, 500 P.3d 1053 (Colo. 2020). There, the court considered whether the state constitutional command that “[r]egular sessions of the general assembly shall not exceed one hundred twenty calendar days” required the invalidation of a legislative Joint Rule that allowed the 120 days to be counted non-consecutively when the Governor has declared a state of emergency

caused by a “public health emergency infecting or exposing a great number of people” *Id.* at 1060–61. The court concluded that the 120-day constitutional limit was ambiguous and that the legislature’s Joint Rule was “consistent with the terms and underlying purposes of the constitutional provision[].” *Id.* at 1066 (citing *In re Interrogatories Relating to the Great Outdoors Colo. Tr. Fund*, 913 P.2d 533, 539 (Colo. 1996)). The court reasoned that the 120-day limit on general sessions of the legislature was designed to assure that Colorado had a “part-time citizen legislature,” not a permanent, professional one. *Id.* The Joint Rule deviated from the legislature’s default rule—that the 120-day time period runs consecutively—only in “the rarest of circumstances” of a declared public health emergency (e.g., COVID-19)—and “[p]recisely because it presents the rare exception, Joint Rule 44(g) is unlikely to deter ordinary citizens from seeking legislative office.” *Id.*

The Colorado Supreme Court also considered whether the Joint Rule was improper because the legislature could simply have convened a special session, for which the state constitution imposed no durational limits. *Id.* at 1068–69. The court held that a special session serves a “narrow function” that “does not comport with the broader, more general

purpose of the legislature’s regular session.” *Id.* at 1068. And although the “constitution imposes no limit on the duration of a special session,” the General Assembly could not “substitute the remainder of its regular session with a *potentially unlimited special session*” because doing so would undermine “the electorate’s intent in adopting the 120-day limit” provided for in the state constitution. *Id.* at 1069 (emphasis added). It reasoned that “allowing a special session essentially to replace a regular session gives rise to separation of powers concerns” because the Governor determines the subject matter for such special sessions, so a special session’s consideration of “everyday, albeit potentially critical, legislation” would “risk[] running afoul of the constitutional provisions authorizing special sessions” which are limited in subject matter and can only be convened by a written request of two-thirds of both houses. *Id.* at 1068–69.

The same is true here. Like Colorado, Virginia’s Constitution imposes a time limit on general sessions of the state legislature to ensure that Virginia has a “part-time citizen legislature,” not a permanent, professional one, and it imposes no express durational limits on special sessions. *See id.* at 1066. Accordingly, as with the Colorado legislature,

the Virginia General Assembly cannot create, by a simple-majority joint resolution, a “potentially unlimited special session” that would eviscerate “the [Virginia] electorate’s intent in adopting” the time limits provided for regular sessions in Article IV, Section 6 of the Virginia Constitution. *See id.* at 1069.

While another state supreme court reached the opposite decision, it was swiftly rejected by the people through a constitutional amendment. In *State ex rel. Distilled Spirits Inst. v. Kinnear*, the Washington Supreme Court refused to impose temporal limitations to special sessions when no such limits were expressly stated in the state constitution. 492 P.2d 1012 (Wash. 1972). In doing so, the court relied heavily on several political science treatises lamenting that express or implied durational limitations on legislative sessions—whether regular or special—“serve no beneficial purpose” in the modern era when the business of state legislatures has expanded rapidly. *Id.* at 1017–19. While acknowledging that it was “true that these authorities are not judicial writers,” the court nonetheless concluded that their policy argument should prevail, as “there was no sound reason of public policy for reading into a constitution a limitation upon the length of sessions which is not clearly expressed

there, since such limitations hamper rather than aid the proper functioning of the legislative body” *Id.* at 1019–21. Importantly, the court was not presented with, and did not consider, any of the arguments in favor of inherent limitations on special sessions raised here.

Moreover, following the court’s opinion, in 1979 the Washington legislature proposed, and the voters approved, an amendment rejecting the court’s conclusion and imposing a limit on the duration of special sessions. Wash. Const. art. II, § 12(2) (“Special legislative sessions may be convened for a period of not more than thirty consecutive days”). The State’s official “Voter’s Pamphlet” revealed this amendment’s commonsense purpose:

SJR 110 will force the legislature to prepare the state budget and enact necessary laws within a fixed period of time each year. . . . Unless SJR 110 is approved, our legislature will be run by full-time professional politicians It is in our best interest to vote for a citizens’ legislature and against a legislature run by full-time politicians.”⁶

⁶ State of Wash., Sec’y of State, 1979 Voter’s Pamphlet, Sen. J. Res. 110, Proposed Const. Amend., at p. 12, https://www2.sos.wa.gov/_assets/elections/voters'%20pamphlet%201979.pdf.

Those commonsense interests are present here, and they are bolstered by the arguments raised in this brief based on the Constitution, legislative rules, and precedents of Virginia.

Construing Article IV, Section 6 of the Virginia Constitution in light of these federal and state precedents ensures that special sessions of the Virginia General Assembly are kept within rational and commonly understood limits.

II. Indefinite Special Sessions Violate Article IV, Section 6 and the Separation of Powers by Trenching Upon the Governor’s Authority to Convene a Special Session

Indefinite special sessions also circumvent Article IV, Section 6’s plain language assigning to the Governor the sole responsibility for convening special sessions: “The Governor may convene a special session of the General Assembly when, in his opinion, the interest of the Commonwealth may require and shall convene a special session upon the application of two-thirds of the members elected to each house.” Va. Const. art. IV, § 6. Thus, whether the Governor determines the Commonwealth’s interest requires a special session or when two-thirds of the Legislature ask him to convene one, the power (and duty) of convening a special session lies exclusively with the Governor. The

Virginia Constitution has always provided variations of these two means of calling a special session. Howard, *supra*, at 499.

Permitting the General Assembly to hold open a special session indefinitely would eviscerate the Governor's exclusive constitutional role in convening special sessions. For example, if the Governor convened a special session based on certain public interests he identified, an indefinite special session would give the General Assembly an enormous power to continue legislating long after the interests identified by the Governor for convening the special session have passed.

Likewise, giving the General Assembly power to hold a special session *ad infinitum* would gut Article IV, Section 6's express limitation on legislative power, which gives the Legislature authority over the convening of a special session only when two-thirds of both houses make such application to the Governor. If one General Assembly, by two-thirds vote, can require the Governor to convene a special session and that session can stay open indefinitely, the General Assembly will be transformed into a perpetual, professional legislature by simply modifying or extending a special session every year by passage of a joint resolution by simple majorities. Indeed, such an indefinite special session

could continue to meet even after intervening elections, so that the Legislature meeting in special session is *not the same Legislature* that, by two-thirds vote, exercised legislative authority to call a special session.

That is exactly what happened here. On April 17, 2024, the General Assembly passed HJR 428 by a two-thirds vote calling upon the Governor to convene a special session “for the purpose of considering Budget Bills.” HJR 428 (2024). The Governor obliged, and the 2024 special session convened on May 13, 2024, to consider budget bills. HJR 6001 (2024). A year and a half later—after an intervening special election changed the makeup of the General Assembly, the 2025 regular session convened, and early voting had already begun for the 2025 general election—the General Assembly adopted HJR 6006, again extending the special session and adding an entirely new subject matter authorizing the special session to consider any “joint resolution proposing an amendment to the Constitution of Virginia related to reapportionment or redistricting.” The General Assembly then passed HJR 6007, the proposed redistricting amendment.

But notice what this indefinite special session did: By purporting to “extend” the 2024 special session twice in 2025 (via HJR 6004 and HJR

6006)—well *after* the 2024 regular session had ended and the 2025 regular session had convened—the General Assembly unconstitutionally aggrandized its power. This came at the expense of the Governor’s constitutional power, by circumventing Article IV, Section 6’s command that a two-thirds vote—by the 2025 General Assembly—was necessary for it to invoke a special session. The extension of the 2024 special session thus usurped the Governor’s constitutional authority to convene special sessions and eviscerated the requirement that the General Assembly may only require the Governor to convene a special session with a two-thirds vote.

This Court’s decision in *Wolfe v. McCaull*, 76 Va. 876 (1882), confirms this conclusion. There, the General Assembly passed a bill to incorporate a railroad company. Following the bill’s passage, motions to reconsider were made but rejected in both houses. *Id.* at 877. Accordingly, the bill was presented to the Governor, but the following day, the Senate passed a joint resolution requesting that he return the bill without signing it, and the House then passed the joint resolution the next day. *Id.* at 877–78. The Governor then returned the bill to the General Assembly as instructed. *Id.* at 878.

The railroad sought a writ of mandamus seeking to compel the clerk to publish the bill as a law. *Id.* at 879. This Court considered whether “the legislature by joint resolution, ha[d] the power to recall the bill from the governor after it had been passed by both houses and sent to the governor.” *Id.* at 888. To answer this question, this Court concluded that it must determine, “*When does the power of control over a bill passed by both houses cease and determine?*” *Id.* The Court held, “*There must be a time, in all parliamentary proceedings, when the controlling power of the legislative body must come to an end.*” *Id.* at 889. (emphasis added).

The General Assembly argued that “passage of the joint resolution requesting return of the bill” repealed existing House and Senate rules specifying that a motion to reconsider could only be made once, within two days following the initial vote. *Id.* at 889–90. This Court rejected the General Assembly’s argument, reasoning that “to declare that by a joint resolution the general assembly might retain its power over a bill” that had been passed (and a motion to consider rejected) would mean that “*there could be no finality to legislative proceedings.*” *Id.* at 890 (emphasis added). Allowing the General Assembly to resort to the expedient of a joint resolution would be a “construction in favor of the powers of the

legislature [that] would trench upon the power and prerogative of the governor” that could not be countenanced under the Virginia Constitution. *Id.* If a joint resolution of the General Assembly could “recall[] from [the Governor’s] hands” a bill that had been passed, it “would tend to produce a constant conflict between [the legislature] and the executive” and the “independence of the executive” would be damaged by taking away his power to *choose* whether to veto the bill, return it with objections, or allow it to become law without his formal approval. *Id.* at 891; *see also id.* at 886 (discussing the Governor’s constitutional choices).

All of the concerns expressed by this Court in *Wolfe* are also present here. A special session—like a regular session—cannot continue *ad infinitum*. All legislative sessions, as this Court recognized in *Wolfe*, “*must come to an end.*” *Id.* at 889. (emphasis added). Otherwise, a special legislative session could last 10, 100, or 1000 years (or more). That is, of course, absurd. Thankfully, the Virginia Constitution tells us exactly when a special session ends: When the new regular session convenes “on the second Wednesday in January” each year. Va. Const. art. IV, § 6.

Under the plain language of the Virginia Constitution, therefore, the special session convened by Governor Youngkin in early 2024

automatically ended when the General Assembly convened on January 8, 2025. Thus, the joint resolutions purporting to “extend” the original special session by simple majority votes—i.e., HJR 6004 and 6006 (which were passed on April 2, 2025, and October 31, 2025, respectively)—were void as a matter of state constitutional law.

Moreover, as *Wolfe* instructs, these two 2025 joint resolutions (purporting to extend the 2024 special session) are independently unconstitutional because they violated the Virginia Constitution’s separation of powers. Va. Const. art. III, § 1 (“The legislative, executive, and judicial departments shall be separate and distinct, so that none exercise the powers properly belonging to the others . . .”). Specifically, the joint resolutions bypassed the two-thirds supermajority support required by Article IV, Section 6 for the General Assembly to force the Governor to convene a special session.

As in *Wolfe*, the Virginia legislature here argues that its 2025 “passage of the joint resolution[s],” 76 Va. at 890, effectively substituted the original 2024 special session joint resolution (i.e., HJR 428)—agreed to by the requisite two-thirds supermajority—and replaced it by simple majority votes purporting to “extend” the special session. But as this

Court held in *Wolfe*, “to declare that by [simple majoritarian] joint resolution[s],” passed in 2025, that the “general assembly might retain its power” over a special session passed by a *two-thirds supermajority* in 2024 would mean that “*there could be no finality to legislative proceedings.*” *Id.* at 890 (emphasis added). If the General Assembly may resort to the expedience of a majoritarian joint resolution to continue a special session *ad infinitum*, it would, as in *Wolfe*, be a “construction in favor of the powers of the legislature [that] would trench upon the power and prerogative of the governor” that cannot be countenanced under the Virginia Constitution. *Id.*; *see also* Va. Const. art. III, § 1.

Under such a construction, the “independence of the executive,” *Wolfe*, 76 Va. at 891, would be damaged by taking away the Governor’s power to convene a special session, either “when in his opinion the interest of the Commonwealth may require” it, or when he receives an “application of two-thirds of the members elected to each house.” Va. Const. art. IV, § 6. As the Colorado Supreme Court has recognized, “allowing a special session essentially to replace a regular session gives rise to separation of powers concerns” by undermining the Governor’s authority to call a special session for limited subjects and the state

Constitution's command that such limited subject-matter special sessions can be called by the Governor only upon written request of two-thirds of both houses. *In re Interrogatory*, 500 P.3d at 1068–69. Any construction of the authority of the General Assembly that would bypass these constitutional provisions protecting the separation of powers cannot be tolerated. Thus, allowing *ad infinitum* special sessions violates the legislative supermajority requirement of Article IV, Section 6 and the strict separation of powers principles in Article III, Section 1.

III. Indefinite Special Sessions Would Create Absurd Results Under Article IV, Section 13's Provisions Regarding the Effective Date of Laws Enacted at a Special Session

The maxim that “a statute should never be construed in way that leads to absurd results” is well established. *See Covell v. Vienna*, 280 Va. 151, 158–59 (2010); *Commonwealth v. Doe*, 278 Va. 223, 230 (2009). The same canon of construction applies with equal force to constitutional provisions since, as our most supreme law, any absurdity would have devastating and wide-ranging consequences. *See, e.g., Gray v. Mitchell*, 285 S.W.3d 222, 229 (Ark. 2008) (“Just as we will not interpret statutory provisions so as to reach an absurd result, neither will we interpret a constitutional provision in such a manner.” (quoting *State v. Oldner*, 206

S.W.3d 818, 824 (Ark. 2005)); *State v. Wilson*, 618 N.W.2d 513, 519 (S.D. 2000) (“[W]e will not construe a constitutional provision to arrive a[n] . . . absurd result”); *Neilson v. Cal. City*, 133 Cal App. 4th 1296, 1305–06 (Cal. Ct. App. 2005) (constitutional provisions should be construed “to avoid absurd results and to give effect to the intent of the voters”).

Here, Article IV, Section 13 of the Virginia Constitution defines the effective date of laws. It states that “all laws enacted at a *special session* . . . shall take effect on the first day of the fourth month following the month of *adjournment of the special session*” unless an emergency is “expressed in the body of the bill” and an “earlier date” is specified “by a vote of four-fifths of the members voting in each house” or “unless a subsequent date is specified in the body of the bill or by general law.” Va. Const. art. IV, § 13 (emphasis added). As the italicized portions show, this provision provides a default effective date for “all laws enacted at a special session.” *Id.* That default date is the “first day of the fourth month following the month of adjournment of the special session.” *Id.*

The absurdities wrought by an *ad infinitum* special session are readily apparent. Consider, for example, a special session that is

convened in the year 2000. During that year, 20 laws are enacted, some of which are minor, others major. If the General Assembly “extends” that special session for ten years and refuses to adjourn *sine die* until 2010, Article IV, Section 13 commands that all 20 of the laws enacted during the special session in 2000 “shall take effect” on the “first day of the fourth month” following the 2010 adjournment.

Although the General Assembly could specify “in the body of the bill or by general law” another effective date, *id.*, the effective date would be in 2010 for laws enacted in 2000 absent such affirmative actions by the legislature. Such a result would be absurd. It is far more reasonable to construe Article IV, Section 13’s reference to the “adjournment of the special session” to mean either upon a *sine die* adjournment of the special session or the automatic adjournment of the special session upon the start of the next regular session.

CONCLUSION

For the foregoing reasons, the Honest Elections Project respectfully requests that this Court clarify that special legislative sessions under Article IV, Section 6 automatically end upon the convening of the next regular legislative session; hold that the proposed redistricting

amendment is void because it was first passed in an unlawful special session; and affirm the decision of the circuit court.

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Respectfully submitted,

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**Pro Hac Vice Application Forthcoming*

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CERTIFICATE OF COMPLIANCE

I hereby certify that, pursuant to Rule 5:26, the foregoing brief complies with the length and word count limitations of Rule 5:26(b) because the brief contains 6,425 words.

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CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Rule 5:1B(c), a true and correct copy of the foregoing was emailed to counsel for all parties on this 13th day of April, 2026.

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