

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF TAZEWell

ASSOCIATION OF AMERICAN PHYSICIANS)
AND SURGEONS; VIRGINIA MEDICAL)
FREEDOM ALLIANCE; and MEAGAN KADE,)

Plaintiffs,

v.

Case No. _____

VIRGINIA STATE BOARD OF ELECTIONS;)
VIRGINIA DEPARTMENT OF ELECTIONS;)
G. PAUL NARDO, in his official capacity as Clerk)
of the Virginia House of Delegates; CHARITY D.)
HURST, in her official capacity as Clerk of the)
Circuit Court for Tazewell, Virginia; and)
GENERAL REGISTRAR OF TAZEWell)
COUNTY, VIRGINIA,)

Defendants.

COMPLAINT

Association of American Physicians and Surgeons, Virginia Medical Freedom Alliance, and Meagan Kade (collectively, “Plaintiffs”), by and through the undersigned counsel, for their Complaint, allege as follows against the Virginia State Board of Elections; the Virginia Department of Elections; G. Paul Nardo, in his official capacity as Clerk of the Virginia House of Delegates; Charity D. Hurst, in her official capacity as Clerk of the Circuit Court for Tazewell, Virginia; and the General Registrar of Tazewell County, Virginia (collectively “Defendants”):

INTRODUCTION

1. This November, Virginia’s voters will be asked to approve or oppose a constitutional amendment (the “Proposed Amendment”) establishing a “fundamental right to reproductive freedom”—that is, a right to freely engage in sexual and other reproductive conduct with essentially no possibility of governmental restraint at all.

2. However, the approved ballot language that will pose the question to Virginia’s voters regarding whether to adopt the proposed amendment makes no reference to “fundamental right” or “reproductive freedom” at all, leaving Virginias blind to the unprecedentedly broad “freedom” they are being asked to constitutionalize.

3. Furthermore, the approved ballot language completely fails to inform the voters that the proposed amendment, due to its overwhelming breadth, would overturn many significant aspects of Virginia regulatory authority, including:

- a. Terminating Virginia’s statutory requirement for parental consent prior to a minor obtaining an abortion, and likewise removing notification requirements;
- b. Ending Virginia’s ability to limit the performance of sexual sterilization procedures on consenting minors, removing potential parental consent or notice requirements;
- c. Allowing any person—licensed or not—to perform abortions (currently, only licensed medical professionals can do so), by prohibiting the Commonwealth from penalizing any person who does;
- d. Ending or severely limiting Virginia’s ability to set safety standards for the performance of abortions;
- e. Ending Virginia’s criminal prohibition against adults engaging in consensual sex with minors of reproductive age (i.e., statutory rape laws);
- f. Terminating Virginia’s ability to restrict sexual conjugal visits for prisoners; and
- g. Ending or severely limiting Virginia’s ability to regulate the assisted reproductive technology industry, including the performance of in vitro fertilization, commercial surrogacy, human genetic engineering (e.g., the creation of “designer babies”), reproductive child cloning, etc.

4. The approved ballot language (the “Ballot Language,” as defined below in paragraph 56) profoundly misleads by omission and misrepresentation. As such, it cannot suffice to satisfy the requirement that the proposed amendment be appropriately “submit[ted]” to the people for a vote, as required by Virginia Constitution Article XII, § 1. Also, because of its

misleading character, it violates the unenumerated right of the people to have their elections conducted in a nondeceptive manner, as protected by Virginia Constitution Article I, § 17.

5. Additionally, while Virginia’s constitutional amendment process contains safeguards designed to give the voters a fulsome opportunity to become informed about proposed constitutional amendments, the process undertaken here violated those safeguards in a material way. Virginia Code § 30-13 requires the Clerk of the House of Delegates to present copies of the Proposed Amendment to the clerks of Virginia’s circuit courts specifically to enhance the awareness of the voters—that is, for the Proposed Amendment to be “posted at the front door of the courthouse” and “made available for public inspection.” This required step was to be completed at least 3 months prior to the November 2025 general election. Yet these important steps were not taken by the Clerk of the House of Delegates, the Clerk of Tazewell Circuit Court, or the clerks of at least some of the other Virginia circuit courts. Consequently, Virginia voters in the November 2025 election who should have been informed about the actual language of the Proposed Amendment through the mechanisms established by Va. Code § 30-13, again, were left uninformed.

6. The Court should declare and direct that the Ballot Language violates the Virginia Constitution, that the Proposed Amendment was not distributed and posted in a fashion compliant with Virginia’s constitutional amendment procedure, and that the Ballot Language and amendment question on the November 2026 ballot will be taken as being invalid and as having no effect.

PARTIES

7. Plaintiff Association of American Physicians and Surgeons (AAPS) is a nonprofit organization with numerous Virginia members, all eligible to vote in Virginia. It is dedicated to the highest ethical standards of the Oath of Hippocrates and to preserving the sanctity of the patient-physician relationship and the practice of private medicine.

8. Plaintiff Virginia Medical Freedom Alliance (VAMFA) is a nonprofit organization incorporated under the laws of Virginia with thousands of Virginia members who are medical professionals, health advocates, parents, and people from all walks of life. Its mission is to restore and protect the unalienable individual right to medical freedom within the Commonwealth of Virginia by ensuring informed consent, bodily sovereignty, and the sanctity of the doctor-patient relationship.

9. Plaintiff Meagan Kade is a resident and registered voter of Tazewell County, Virginia. She is a life-long resident of southwest Virginia and a member of the Bluefield Town Council located within Tazewell County.

10. Pursuant to Virginia Constitution Article XII, Section 1, the General Assembly of the Commonwealth of Virginia is required by law to submit proposed constitutional amendments to the voters for their approval and ratification. In doing this, the General Assembly adopts language for the voting ballot to set out a summary explanation of the proposed amendment for the voters' consideration.

11. Pursuant to Virginia Code § 30-19.9, this ballot language may contain up to 500 words and must be written in "plain English" as a "neutral explanation" of the proposed amendment.

12. Pursuant to Virginia Code § 30-19.9, the State Board of Elections is required to print and distribute to the general registrar of each county and city copies of the ballot language explanation for the proposed amendment.

13. Pursuant to Virginia Code § 24.2-103, Defendant Virginia Department of Elections is integrally involved in Virginia elections as it "supervise[s] and coordinate[s] the work of the county and city electoral boards and of the registrars to obtain uniformity in their practices and

proceedings and legality and purity in all elections.” Pursuant to Virginia Code § 24.2-105.1, it furnishes information online regarding proposed constitutional amendments.

14. Defendant G. Paul Nardo is the Clerk of the Virginia House of Delegates and, pursuant to Va. Code § 30-13, is responsible for (i) at least 3 months prior to the November 2025 general election, distributing copies of the Proposed Amendment to the clerks of Virginia’s circuit courts, and (ii) certifying to the General Assembly his accomplishing of this. He is sued in his official capacity.

15. Defendant Charity D. Hurst is the Clerk of the Circuit Court for Tazewell, Virginia and, pursuant to Va. Code § 30-13, is responsible for, 3 months prior to the November 2025 general election, posting a copy of the Proposed Amendment on the front door of the courthouse for the Tazewell Circuit Court. She is sued in her official capacity.

16. Pursuant to Virginia Code § 30-19.9, Defendant General Registrar of Tazewell County, Virginia is required to post the ballot language explanation at each voter registration site in sufficient number to provide a copy to any interested person and to provide for election officials to post at the polling places on the day of the election.

17. Venue is proper in this Court under Virginia Code §§ 8.01-261(15)(c) and 8.01-262(2).

FACTS

The Proposed Amendment’s Capacious Language

18. On January 16, 2026, the General Assembly passed House Joint Resolution 1, a proposed amendment to the Constitution of Virginia (“Proposed Amendment”). *See also* Complaint ¶ 59 (attaching the language of the Proposed Amendment as *Exhibit 1*).

19. If approved during Virginia’s November 2026 general election, the Proposed Amendment would establish a right of enormously capacious breadth that an ordinary, lay reader

would not readily comprehend. It would establish a fundamental right to human reproductive conduct for every “individual” that is nearly unlimited.

20. Paragraph 1 of the Proposed Amendment declares a “fundamental right” to “reproductive freedom.”

21. While leaving the meaning of “fundamental right” unexplained, the use of these words in Paragraph 1 describes a right that is of extraordinary significance and is essential to civil order, and therefore largely unlimited.

22. In ordinary usage, “fundamental right” means “[a] right derived from natural or fundamental law;” “[a] significant component of liberty, encroachments of which are rigorously tested . . . to ascertain the soundness of purported governmental justifications”; “[a] fundamental right triggers strict scrutiny.” Black’s Law Dictionary, 10th ed. at 789.

23. Tellingly, no portion of the Virginia or federal constitutions declares any right to be “fundamental” (except Virginia’s constitutional protection of property rights in Article I, § 11).

24. While establishing a fundamental right to “reproductive freedom,” the Proposed Amendment, includes no limiting definition to the meaning of “reproductive freedom” at all. It gives examples of what this proposed freedom includes, but critically, it does not limit itself to its examples.

25. It has long been true in Virginia that the word “includes” followed by examples is non-exhaustive. *See, e.g.* Va. Code § 1-218 (“‘Includes’ means includes, but not limited to.”).

26. By leaving its reference to “reproductive freedom” undefined, the Proposed Amendment establishes a broad right for all reproductive sexual activity, without nearly any limit.

27. In ordinary usage, the word “reproductive” refers to the human capability for reproduction, including the use of human reproductive organs or cells, or human reproductive processes or actions.

28. Oxford English Dictionary defines “reproductive” as “[o]f or relating to biological reproduction.”

29. In ordinary usage, “freedom” connotes the idea of the absence of restraint.

30. Oxford English Dictionary defines “freedom” as “[t]he state of being able to act without hinderance or restraint; liberty of action.”

31. Additionally, by directly including contraception as part of this reproductive freedom, the Proposed Amendment protects activity related to reproduction when the participants specifically intend to avoid reproduction.

32. If the words “reproductive freedom” in the context of the Proposed Amendment mean anything, they establish an essentially unlimited liberty for Virginians to engage in acts associated with human reproduction (whether with or without intent to actually reproduce)—something largely accomplished through sexual intercourse but also through a variety of alternative and artificial reproductive measures—and a right to remove one’s ability to reproduce.

33. Further detailing the absence of limit for this proposed freedom, Paragraph 2 of the Proposed Amendment declares that this fundamental right to reproductive freedom cannot be limited except if the restriction constitutes the least restrictive means for achieving a compelling state interest. Ordinarily, this exception is referred to as “strict scrutiny.”

34. Until now, strict scrutiny has never been imbedded in the Virginia or federal constitutions’ texts: Heretofore, when courts evaluated the application of a constitutional right to

a particular set of facts, they determined the degree of protection the particular constitutional right afforded in that discrete instance.

35. The Proposed Amendment, however, declares as a matter of constitutional law that such flexibility cannot exist for the contemplated “fundamental right to reproductive freedom.” Instead, it requires that this right always be afforded strict protection under nearly every instance.

36. Additionally, Paragraph 2 of the Proposed Amendment declares that this proposed fundamental right to reproductive freedom can only be limited if the restriction is the least restrictive means for achieving a compelling state interest, even if the restriction is “indirect.”

37. Heretofore, Courts have been more permissive regarding incidental or indirect restrictions on constitutional rights, compared to direct restrictions.

38. Constitutional free speech jurisprudence well illustrates this. Ordinarily, laws “that target speech based on its communicative content” must satisfy strict scrutiny. *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). However, content-neutral restrictions that incidentally restrict speech are subjected to a more permissive test, often called “intermediate scrutiny.” *Turner Broad. Sys. v. FCC*, 512 U.S. 622, 662 (1994) (citing *U.S. v. O’Brien*, 391 U.S. 367, 377 (1968)).

39. The Proposed Amendment, however, declares as a matter of constitutional law that such flexibility may not exist for the contemplated “fundamental right to reproductive freedom.” Instead, it requires that even indirect restrictions must be tested under a very strict review.

40. Further, Paragraph 6 of the Proposed Amendment considerably limits which compelling state interests can justify a restriction on this proposed fundamental right, stating that such a compelling interest only exists if it specifically is directed at furthering “the health of an individual seeking care.” Thus, the Proposed Amendment constitutionalizes a nearly impenetrable type of super-strict-scrutiny for everything that falls within the scope of “reproductive freedom.”

41. Then, Paragraph 6 of the Proposed Amendment sharply cuts nearly to zero this already reduced subset of compelling state interests, stating that the only compelling state interest that can justify a restriction on this proposed fundamental right are ones that do not “infringe on that individual’s autonomous decision making.”

42. Yet more, Paragraph 4 of the Proposed Amendment establishes that there may be no discrimination in the enforcement of the Proposed Amendment—providing no exception for important factual details such as age, parental consent, incarcerated status, or moral, ethical, or safety considerations.

43. In sum, the Proposed Amendment establishes a fundamental right to sexual and other reproductive conduct that generally cannot be restricted—even indirectly—except if the restriction is the least restrictive means for achieving a compelling state interest directed at furthering the health of an individual seeking care in a fashion that does not restrict an individual’s autonomous decision making.

44. The Proposed Amendment declares a fundamental right that is so iron-clad that nearly every governmental restriction of any activity relating to human reproduction in Virginia—no matter how concerning or nefarious the activity may be—is banned.

The Proposed Amendment’s Real-World Effect

45. The Proposed Amendment will have far-reaching consequences.

46. Currently, Virginia law establishes that a minor seeking to obtain an abortion generally must obtain parental consent first, a requirement that is of paramount importance when a pregnant girl is pressured to abort her child by an abusive boyfriend or other abusers. However, by establishing a fundamental right to reproductive freedom for “every individual” that can only be restricted—even if done so indirectly—through the most narrow means for achieving a compelling state interest directed at furthering the health of an individual seeking care without

restricting an individual's autonomous decision making, the Proposed Amendment invalidates Virginia's parental consent law.

47. By law, Virginia is empowered to restrict the performance of sexual sterilization procedures on minors. However, by establishing a fundamental right to reproductive freedom for every individual that can only be restricted—even if done so indirectly—through the most narrow means for achieving a compelling state interest directed at furthering the health of the individual seeking care while not restricting an individual's autonomous decision making, the Proposed Amendment invalidates Virginia's ability to limit a minor's decision to permanently remove his or her sexual reproductive functions.

48. Currently, Virginia government may and does limit the performance of abortions to certain licensed healthcare providers such as physicians. However, by expressly prohibiting the government from “penaliz[ing], prosecut[ing], or otherwise tak[ing] adverse action against any individual for aiding or assisting another individual in” obtaining an abortion, the Proposed Amendment prohibits or drastically restricts Virginia's ability to establish such licensure requirements for the performance of abortions.

49. Currently, Virginia government may establish safety standards to protect women's health regarding the performance of abortions. However, by establishing a fundamental right to reproductive freedom that can only be restricted—even if done so indirectly—through the most narrow means for achieving a compelling state interest directed at furthering the health of an individual seeking care in a fashion that *specifically does not restrict an individual's autonomous decision making*, the Proposed Amendment prohibits or drastically restricts Virginia's ability to establish such health and safety standards for the performance of abortions.

50. Currently, through criminal law, Virginia prohibits adults from engaging in consensual sex with minors (often referred to as statutory rape). However, by establishing a fundamental right to reproductive freedom for every “individual” that can only be restricted—even if done so indirectly—through the most narrow means for achieving a compelling state interest directed at furthering the health of the individual seeking care while not restricting an individual’s autonomous decision making, the Proposed Amendment invalidates Virginia’s statutory rape and related laws.

51. Ordinarily, Virginia prisons disallow sexual conjugal visits for inmates. However, the Proposed Amendment divests Virginia’s government of any power to regulate or restrict such sexual conjugal visits. A fundamental right to reproductive freedom establishes a right to sexual intercourse, yet under the Proposed Amendment, this right cannot be restricted—even indirectly—unless the restriction is justified by a compelling state interest directed at furthering the health of an individual seeking care while not infringing on that individual’s autonomous decision making. Because restraining sexual conjugal visits for Virginia prisoners could not be said to be done to further the health of an individual seeking care without restraining an individual’s autonomous decision-making, such a restriction would be prohibited by the Proposed Amendment. (It is a long-standing fact that prisoners retain fundamental rights, for example religious exercise, etc.).

52. Currently, Virginia government may establish health, safety, and ethical limits on the emerging assisted reproductive technology industry—carefully regulating the performance of in vitro fertilization, artificial insemination, commercial surrogacy, the genetic manipulation of human embryos, or even reproductive child cloning. However, by establishing a fundamental right to reproductive freedom that can only be restricted—even if done so indirectly—through the most narrow means for achieving a compelling state interest directed at furthering the health, only of

the individual seeking care, and therefore specifically not considering the unborn embryo/child, in a fashion that specifically does not restrict an individual's autonomous decision making, the Proposed Amendment prohibits or drastically restricts Virginia's ability to establish such health, safety, or ethical regulations for this emerging industry.

53. Additionally, with the rise of modern fast-developed innovations like artificial intelligence and numerous other innovations, the full implications of constitutionalizing a non-regulable "fundamental right to reproductive freedom" cannot yet even be discerned.

54. The invalidation of the aforementioned laws and regulatory authority presents matters of enormous significance to Virginia voters of abundantly diverse backgrounds and circumstances.

55. Despite all of this, the explanation that will be provided to voters considering whether to approve the Proposed Amendment does not disclose any of the enormous impacts outlined above or even the fact that the Proposed Amendment establishes a "fundamental right to reproductive freedom."

Approved Ballot Language

56. On February 2, 2026, the General Assembly passed House Bill 781 and Senate Bill 449, setting out the only language ("Ballot Language") that will be included on voters' November 3, 2026 ballots to explain the Proposed Amendment that the voters would contemplate approving.

57. House Bill 781 and Senate Bill 449 contain identical language.

58. On February 6, 2026, the Virginia Governor approved House Bill 781 and Senate Bill 449.

59. A true and accurate copy of the Proposed Amendment and Ballot Language as reflected by House Bill 781 is attached as *Exhibit 1*.

60. Set out with only 71 words, the approved Ballot Language states:

Question: Should the Constitution of Virginia be amended to (i) protect the freedom to make personal decisions about prenatal care, childbirth, postpartum care, birth control, abortion, miscarriage management, and fertility care; (ii) protect doctors, nurses, and patients from being punished for these decisions; and (iii) allow for restrictions on access to abortion during the third trimester of pregnancy except when the patient's health is at risk or the pregnancy cannot survive?

61. Misleadingly, the Ballot Language claims that the proposed amendment would “protect” the freedom to abort one’s child, falsely implying that such a freedom currently exists. However, in *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022), the U.S. Supreme Court undeniably confirmed that this freedom does not exist if a state does not provide for it. Thus, while the Ballot Language could forthrightly explain that the Proposed Amendment would “establish” or “declare” a freedom for abortion, it instead falsely pretends the right already exists and is only intended to be “protect[ed].” Undoubtedly, this presents a deceptive and biased word choice.

62. The Ballot Language fails to disclose that Virginia voters are being asked to approve a near-absolute “fundamental right to reproductive freedom.”

63. The Ballot Language fails to disclose that the right Virginia voters are being asked to approve is more iron-clad than any constitutional Bill of Rights provision ever enacted under the Virginia or federal constitutions.

64. The Ballot Language fails to disclose that the Proposed Amendment will end or severely limit Virginia’s (a) ability to require parental notice and consent for minors abortions, (b) its ability to limit the performance of sexual sterilization procedures on minors, (c) licensure requirements for the performance of abortions, (d) safety requirements for the performance of abortions, (e) ability to prohibit statutory rape, (f) ability to restrict sexual conjugal visits for

Virginia inmates, and (g) ability to regulate the emerging assisted reproductive technology industry.

65. The Ballot Language fails to disclose that the Proposed Amendment establishes a right that will prevent efforts to regulate reproductive technologies or experiments that have yet to emerge on the modern scene.

66. Additionally, the Ballot Language misleads, saying that the Proposed Amendment will “allow for restrictions” to third-trimester abortion, and thus implying that the status quo does not already allow such restrictions. It does.

67. Indeed, the Proposed Amendment broadens the circumstances for when an abortion may be performed in the third trimester of pregnancy.

68. Currently, Virginia Code § 18.2-74 prohibits third-trimester abortions except to avoid the mother’s death or substantial and irremediable impairment to her mental or physical health.

69. However, if approved, the Proposed Amendment would establish that third-trimester abortions must be allowed to protect the mother’s “life or physical or mental health,” not accounting for whether such mental health concerns would amount to a substantial and irremediable impairment.

70. Despite all of this, the Ballot Language manipulatively, dishonestly, and fraudulently implies to voters that, if approved, the Proposed Amendment would increase Virginia’s ability to regulate third trimmest abortions. As discussed above, this representation is entirely false.

71. Creating a blanket freedom for any number of sordid deeds, the Proposed Amendment removes legal liability for anyone who assists in any such deed, establishing that:

“The Commonwealth shall not penalize, prosecute, or otherwise take adverse action against any individual for aiding or assisting another individual in exercising such other individual’s right to reproductive freedom with such other individual’s voluntary consent.” Misleadingly, however, the Ballot Language omits this fact, instead communicating that the Proposed Amendment simply will “protect doctors, nurses, and patients from being punished.”

Plaintiffs’ Interest in this Matter

72. Plaintiffs AAPS and VAMFA have numerous members who are Virginia voters who intend to vote in the election to be held on November 3, 2026.

73. Some of AAPS’s members are Virginia healthcare providers whose medical practices will be affected if the Proposed Amendment is adopted.

74. For AAPS’s members who perform emergency medicine or obstetrical care, they anticipate that they will have an increase in abnormal patient presentations arising from poorly performed abortions resulting from the work of unlicensed or unprofessional service providers.

75. Many of AAPS and VAMFA’s Virginia members intend to vote against the Proposed Amendment and will have the effect of their vote reduced by numerous other Virginians who will be deceived by the Ballot Language regarding the Proposed Amendment.

76. Many of AAPS and VAMFA’s Virginia members are not believed to fully appreciate the scope of the Proposed Amendment and are considering voting for it.

77. AAPS and VAMFA’s members who are considering voting for the Proposed Amendment will likely further be deceived by the misleading Ballot Language.

78. AAPS and VAMFA’s members are entitled to participate in an election free of deception on the face of the ballot because such deception can mislead them and other members of the public on something so foundational as their constitutional rights.

79. Ms. Kade is entitled to participate in an election free of deception on the face of the ballot because such deception can mislead members in Tazewell County and across Virginia, derailing the constitutional amendment process for which she is a part.

80. AAPS and VAMFA's members and Ms. Kade will suffer irreparable harm if the Proposed Amendment is posed to the voters using the Ballot Language because it will irreparably dilute the effect of their votes and skew how other Virginia voters view the question of whether the Proposed Amendment should be adopted.

81. AAPS and VAMFA's members and Ms. Kade will suffer irreparable harm from the failure of Defendants to follow the process prescribed in Virginia Code § 30-13 requiring that further steps be taken to inform the public regarding the actual language of the Proposed Amendment prior to the November 2025 Virginia House of Delegates election.

COUNT I
Virginia Constitution: Amendment Submission Clause
(VA. CONST. art. XII § 1)

82. Plaintiffs incorporate by reference all foregoing allegations.

83. Article XII § 1 of the Virginia Constitution (Submission Clause) requires that, after the General Assembly has approved a proposed Amendment twice (with an intervening House of Delegates election), it becomes the “duty of the General Assembly to submit such proposed amendment” to “the voters qualified to vote in elections by the people.”

84. The word “submit” means “to present (something) to a person for criticism, consideration, approval, action, etc.” Oxford English Dictionary, submit, sense II.7.a.

85. The word “such” means something “previously described or specified,” “the ([] thing) before mentioned.” *Id.*, such, sense I.5.

86. Article XII requires the General Assembly to present the voters with the same amendment that was approved by the General Assembly so that the people can consider that amendment and decide whether to approve it.

87. This means that “the Legislature cannot propose one question and submit to the voters another.” A.E. Dick Howard, 2 Commentaries on the Constitution of Virginia 1174 n.13 (quoting 1949–50 Ops. Va. Att’y Gen 66). “[A]nd the question presented should not be such as would mislead the voters.” *Id.*

88. “A palpably deceptive or misleading ballot” therefore “invite[s] challenge.” *Id.*

89. The approved Ballot Language selected to be presented to voters deciding whether to approve the Proposed Amendment fails to satisfy the requirements of the Submission Clause.

90. The Ballot Language is flagrantly misleading.

91. The Ballot Language does not accurately describe the Proposed Amendment.

COUNT II
Virginia Constitution: Unenumerated Powers Clause
(VA. CONST. art. I § 17)

92. Plaintiffs incorporate by reference all foregoing allegations.

93. Article I § 17 of the Virginia Constitution declares: “The rights enumerated in this Bill of Rights shall not be construed to limit other rights of the people not therein expressed” (Unenumerated Rights Clause).

94. This right applies to each Plaintiff, including to AAPS and VAMFA through their Virginia members.

95. Since time immemorial, it has been inherent in the concepts of democracy and ordered liberty that elections—especially to establish fundamental, constitutional rights—cannot be conducted in a fashion that is deceptive toward the voting public.

96. The approved Ballot Language selected to be presented to voters deciding whether to approve the Proposed Amendment fails to satisfy this requirement.

COUNT III

Virginia Constitution: Amendment Submission Clause (VA. CONST. art. XII § 1 and Va. Code § 30-13)

97. Plaintiffs incorporate by reference all foregoing allegations.

98. Article XII, § 1 of the Virginia Constitution describes the normal process for ratifying an amendment to the Commonwealth's Constitution.

99. As it requires, a proposed amendment must first pass the General Assembly on two separate instances, with an intervening election for the House of Delegates occurring between those two General Assembly approvals.

100. The intervening election requirement provides opportunities for Virginia voters to become informed about the proposed amendment and to determine whether to reelect the members of the House of Delegates before the General Assembly evaluates whether to vote for the proposed amendment a second required time.

101. Article XII, § 1 of the Virginia Constitution directs that the amendment process must follow the path directed by law. Virginia Code § 30-13 provides some of the specific requirements needed for a constitutional amendment to go forward.

102. Pursuant to Virginia Code § 30-13, “[t]he 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.”

103. Pursuant to Virginia Code § 30-13, “[e]very 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.”

104. Pursuant to Virginia Code § 30-13, “[t]he 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.”

105. The steps required pursuant to Virginia Code § 30-13 exist to increase the opportunities for Virginia voters to become informed regarding the precise language of the proposed amendment.

106. However, prior to the Virginia general election held on November 4, 2025, the Clerk of the House of Delegates did not have published the Proposed Amendment to the Constitution for distribution from his office to the clerk of the Circuit Court of Tazewell County, Virginia two copies of the proposed amendments.

107. Prior to the Virginia general election held on November 4, 2025, the Clerk of the Circuit Court of Tazewell County did not post at the front door of the courthouse the Proposed Amendment.

108. Prior to the Virginia general election held on November 4, 2025, the Clerk of the Circuit Court of Tazewell County did not report to the General Assembly at its next regular session the action taken by him under Virginia Code § 30-13, including the costs incurred in the printing and distribution of the amendments.

109. These deficiencies violated Article XII, § 1 of the Virginia Constitution and Virginia Code § 30-13.

110. These deficiencies deprived Virginia voters of the precise opportunities contemplated by Virginia Code § 30-13 for them to become informed about the Proposed Amendment's actual language prior to the November 2025 general election.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request that the Court grant the following relief:

- A. Declare that the Ballot Language (adopted in House Bill 781 and Senate Bill 449) violates Virginia Constitution Article XII, § 1 and Article I, § 17 by misleading the voters of Virginia as to the actual meaning of the Proposed Amendment and how it will affect them.
- B. Declare that the Proposed Amendment has been brought forth in a fashion that violated Virginia Constitution Article XII, § 1 and Virginia Code § 30-13 and therefore that the approaching November 2026 popular election regarding the Proposed Amendment will be of no effect.
- C. If the Proposed Amendment receives the popular vote required for its adoption following an election using the Ballot Language or with the Va. Code § 30-13 defects unremedied, (i) declare that the Proposed Amendment is nonetheless invalid, of no effect, and cannot be certified due to its violation of Virginia Constitution Article XII § 1 and Article I, § 17, and (ii) issue a permanent injunction prohibiting Defendants from certifying or taking any step to effectuate that result.
- D. Award reimbursement of their costs and attorneys' fees pursuant to Va. Code 8.01-190, Va. Const, art. XII § and Art. I, § 17.
- E. Award such other relief as the Court may deem proper.

**ASSOCIATION OF AMERICAN PHYSICIANS
AND SURGEONS, VIRGINIA MEDICAL
FREEDOM ALLIANCE, AND MEAGAN KADE**

By Counsel:

/s/ Joshua A. Hetzler

Joshua A. Hetzler, Esq. (VSB No. 89247)

Michael B. Sylvester, Esq. (VSB No. 95023)

FOUNDING FREEDOMS LAW CENTER

707 E. Franklin Street

Richmond, VA 23219

Telephone: (804) 971-5509

josh@foundingfreedomslaw.org

michael@foundingfreedomslaw.org

Counsel for Plaintiffs