

In the

Supreme Court of the United States

DON SCOTT, IN HIS OFFICIAL CAPACITY AS
SPEAKER OF THE VIRGINIA HOUSE OF
DELEGATES, *et al.*,

Applicants,

v.

RYAN T. MCDUGLE, VIRGINIA STATE SENATOR
AND LEGISLATIVE COMMISSIONER FOR THE
VIRGINIA REDISTRICTING COMMISSION, *et al.*,

Respondents.

**BRIEF OF *AMICUS CURIAE* NATIONAL
ASSOCIATION FOR THE ADVANCEMENT OF
COLORED PEOPLE VIRGINIA STATE
CONFERENCE IN SUPPORT OF PETITIONERS'
EMERGENCY APPLICATION FOR STAY**

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TABLE OF CONTENTS

TABLE OF CONTENTS..... ii

TABLE OF AUTHORITIES..... iii

INTEREST OF AMICUS CURIAE..... 1

SUMMARY OF ARGUMENT..... 3

ARGUMENT 4

 A. The Virginia Supreme Court’s Interpretation of the Timing of an Election
 Requires a Novel Misapplication of State Law 4

 B. The Virginia Supreme Court’s Interpretation of “Election” Conflicts with
 Every Relevant Federal Election Statute..... 8

 C. The Virginia Supreme Court’s Unprecedented Invalidation of a Completed
 Statewide Election Violates the Due Process Clause..... 11

CONCLUSION 14

TABLE OF AUTHORITIES

Cases

<i>Bonas v. Town of N. Smithfield</i> , 265 F.3d 69 (1st Cir. 2001)	13
<i>Callais v. Louisiana</i> , No.25A1197, 608 U.S. ---, 2026 WL 1209010 (May 4, 2026)	4
<i>Coleman v. Pross</i> , 219 Va. 143 (1978).....	7, 12
<i>Duncan v. Poythress</i> , 657 F.2d 691 (5th Cir. Unit B 1981).....	11, 12, 13
<i>Foster v. Love</i> , 522 U.S. 67 (1997)	8
<i>Griffin v. Burns</i> , 570 F.2d 1065 (1st Cir. 1978)	12, 14
<i>Hendon v. N.C. State Bd. of Elections</i> , 710 F.2d 177 (4th Cir. 1983).....	12
<i>Hoblock v. Albany Cnty. Bd. of Elections</i> , 422 F.3d 77 (2d Cir. 2005)	14
<i>Michigan v. Long</i> , 463 U.S. 1032 (1983)	8
<i>Moore v. Pullem</i> , 150 Va. 174 (1928).....	6
<i>Purcell v. Gonzalez</i> , 549 U.S. 1 (2006)	4
<i>Republican Nat’l Comm. v. N.C. State Bd. Elections</i> , 120 F.4th 390 (4th Cir. 2024)	8

<i>Reynolds v. Sims</i> , 377 U.S. 533 (1964)	12
<i>Smith v. Cherry</i> , 489 F.2d 1098 (7th Cir. 1973)	13
<i>Staples v. Gilmer</i> , 183 Va. 613 (1945)	11
<i>United States v. Florida</i> , 870 F. Supp. 2d 1346 (N.D. Fla. 2012)	9
<i>United States v. Mosley</i> , 238 U.S. 383, 386 (1915)	12
<i>Wesberry v. Sanders</i> , 376 U.S. 1 (17 (1964)	12
Statutes	
52 U.S.C. § 10308(b)	10
52 U.S.C. § 10502(d)	10
52 U.S.C. § 20302	10
52 U.S.C. § 20507	8
52 U.S.C. § 20510	8
52 U.S.C. § 20701	9
52 U.S.C. § 21082	9
52 U.S.C. § 30101	9
2019 Va. Acts ch. 668	5, 6

Va. Code § 24.2-701.1	5, 7
Va. Code § 24.2-510	7, 8
Va. Code § 24.2-536	7
Va. Code § 24.2-709.1	6
Va. Code § 24.2-947.6	7
Va. Code § 24.2-948.2	6, 7
 Constitutional Provisions	
Va. Const. art. I, § 2.....	11
Va. Const. art. II, § 1	5, 8, 13
Va. Const. art. II, § 2	5, 8
Va. Const. art. II, § 9	5
Va. Const. art. IV, § 2	5, 6
Va. Const. art. IV, § 3	5, 6
Va. Const. art. IV, § 4	5, 8
Va. Const. art. VII, § 4.....	5, 6
Va. Const. art. VII, § 5.....	5, 6
Va. Const. art. XII, § 1.....	4, 7
Va. Const. art. XII, § 2.....	7

Other Authorities

- Gregory Schneider, *A GOP-aligned group is using Klan imagery to target Black voters*, WASH. POST (Apr. 9, 2026), <https://www.washingtonpost.com/politics/2026/04/09/virginia-redistricting-obama-civil-rights/> 2
- James Alcorn, *Recent Developments in Absentee Voting*, 12 Rich. J.L. & Pub. Int. 283, 284 (2008), <http://scholarship.richmond.edu/pilr/vol12/iss4/4>..... 6
- Markus Schmidt, *Civil rights imagery in anti-redistricting mailers draws outrage in Virginia*, VIRGINIA MERCURY (March 9, 2026), <https://virginiamercury.com/2026/03/09/civil-rights-imagery-in-anti-redistricting-mailers-draws-outrage-in-virginia/> 2
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- Press Release, NAACP VIRGINIA STATE CONFERENCE, NAACP Virginia State Conference Confronts Jim Crow Disinformation in Redistricting Referendum Affecting Black Voters (Apr. 1, 2026), <https://naacpva.org/naacp-virginia-state-conference-confronts-jim-crow-disinformation-in-redistricting-referendum-affecting-black-voters/> 2
- Report of the Commission on Constitutional Revision, House Doc. No. 1 (1969), <https://rga.lis.virginia.gov/Published/1969/HD1/PDF> 6
- Virginia Department of Elections, 2026 April 21 Special Election Unofficial Results, <https://enr.elections.virginia.gov/results/public/virginia/elections/2026-April-21-Special> (last visited May 13, 2026)..... 3

INTEREST OF AMICUS CURIAE¹

The National Association for the Advancement of Colored People (“NAACP”) was founded in 1909 by pioneers of racial justice in the United States. The NAACP is the oldest and largest civil rights organization in the United States. Its mission is to achieve equality, political rights, and social inclusion by advancing policies and practices that expand human and civil rights, eliminate discrimination, and accelerate the well-being, education, and economic security of Black people and all persons of color. The NAACP works to mobilize voters through robust non-partisan civic engagement and election-related programming.

Established in 1935, and in keeping with the NAACP’s mission, the NAACP Virginia State Conference (“NAACP Virginia”) has a long history of fighting for and protecting the voting rights and other fundamental rights of its members and constituents—including by engaging in voter registration, outreach, education, and activism.

Recent mid-decade redistricting efforts in states around the country have imperiled a number of congressional districts nationwide in which Black voters previously had an equal opportunity to elect their candidates of choice, which is of particular concern to NAACP and NAACP Virginia. Accordingly, NAACP Virginia publicly supported Virginia’s redistricting amendment and engaged in voter

¹ Pursuant to Supreme Court Rule 37.6, counsel for *amicus curiae* affirm that no counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae* or its counsel made a monetary contribution to its preparation or submission.

education and get-out-the-vote efforts for the April 21, 2026 special referendum election on Virginia’s proposed redistricting amendment.

Leading up to the April 21 election, some NAACP Virginia members and constituents received mailers featuring Klansmen in white hoods warning against voting for the redistricting amendment, which the mailers falsely compared to Jim Crow.² Mailers also invoked imagery from the civil rights movement, stating that “our ancestors fought to represent us” and urging voters to vote no to prevent “Richmond politicians” from “tak[ing] our districts away.”³ In truth, there was no such threat. Other advertisements used out-of-context statements and old video footage to falsely suggest that former President Barack Obama opposed the amendment.⁴ NAACP Virginia was forced to undertake significant voter education and outreach efforts to combat and correct these mailers and other efforts at disinformation.⁵

Many NAACP Virginia members overcame these obstacles and voted in the April 21, 2026 special referendum election; most of whom supported the redistricting measure.⁶ NAACP Virginia and its members are gravely concerned that their votes,

² Gregory Schneider, *A GOP-aligned group is using Klan imagery to target Black voters*, The Washington Post (Apr. 9, 2026), <https://www.washingtonpost.com/politics/2026/04/09/virginia-redistricting-obama-civil-rights>.

³ *Id.*; Markus Schmidt, *Civil rights imagery in anti-redistricting mailers draws outrage in Virginia*, Virginia Mercury (March 9, 2026), <https://virginiamercury.com/2026/03/09/civil-rights-imagery-in-anti-redistricting-mailers-draws-outrage-in-virginia/>.

⁴ Schneider, *supra* Note 2.

⁵ *See, e.g.*, Press Release, NAACP Virginia State Conference Confronts Jim Crow Disinformation in Redistricting Referendum Affecting Black Voters (Apr. 1, 2026), <https://naacpva.org/naacp-virginia-state-conference-confronts-jim-crow-disinformation-in-redistricting-referendum-affecting-black-voters/>.

⁶ Political scientist and elections expert Dr. Michael McDonald conducted an analysis of the April 21, 2026 election results and estimated that 84.6% of Black voters supported the amendment. Dr.

and the will of a majority of the more than 3.1 million Virginians who voted in the April 21 election, have been thrown out by the Virginia Supreme Court based on an outlier interpretation of “election” that is in conflict with many state and federal laws.

SUMMARY OF ARGUMENT

On May 8, 2026, the Virginia Supreme Court issued an unprecedented decision rendering the Commonwealth’s April 21, 2026 special referendum election null and void. The majority’s ruling broadens the definition of “election” to include the entire early voting period and ignoring a score of federal and state statutes that compel a contrary conclusion. The Virginia Supreme Court’s expansive definition of “election” not only does violence to Virginia law, but also conflicts with all relevant federal election statutes and risks creating unintended harms with respect to their future implementation. The Virginia Supreme Court’s misinterpretation of “election” also fails to consider Virginia’s long history of absentee voting and upends Virginia’s constitutional hierarchy.

The Virginia Supreme Court’s novel interpretation of what constitutes an election imperils the constitutional rights of the more than 3.1 million Virginians who voted in the April 21 election.⁷ Unlike many other states, which enacted mid-decade

McDonald’s analysis also estimated that 77.6% of Hispanic voters, 88.4% of Asian voters, 79.2% of voters from other racial minorities voted in favor of the redistricting amendment. According to Dr. McDonald’s analysis, without this support from Black voters and other voters of color, the redistricting amendment would have failed. Michael McDonald, *How Did Virginia’s African-American Communities Vote in the 2026 Virginia Redistricting Referendum?*, U.S. Elections Project (Apr. 23, 2026), <https://michaelmcdonald.substack.com/p/how-did-virginias-african-american?r=chfet>

⁷ Virginia Department of Elections, 2026 April 21 Special Election Unofficial Results, <https://enr.elections.virginia.gov/results/public/virginia/elections/2026-April-21-Special> (last visited Apr. 28, 2026).

redistricting plans without seeking the approval of its residents, Virginia held a statewide special election, which was the subject of a high-profile (and very expensive) campaign garnering substantial state and nationwide attention. Casting aside millions of ballots based on a novel, erroneous interpretation of state and federal law constitutes a violation of substantive due process on a massive scale. Allowing the Virginia Supreme Court’s decision to stand under these circumstances would undermine the “[c]onfidence in the integrity of our electoral processes . . . essential to the functioning of our participatory democracy,” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006), and subvert the fundamental democratic principle that voting is a meaningful and legally effective exercise of constitutional power. Under these circumstances, and with critical absentee voting deadlines for Virginia’s primary election rapidly approaching, “the need for prompt action by this Court is clear.” *Callais v. Louisiana*, No.25A1197, 608 U.S. ---, 2026 WL 1209010, *1 (May 4, 2026) (granting the application to issue judgment forthwith) (Alito, J., concurring).

ARGUMENT

A. The Virginia Supreme Court’s Interpretation of the Timing of an Election Requires a Novel Misapplication of State Law.

The Virginia Supreme Court’s opinion held that the General Assembly failed to comply with the Virginia Constitution’s requirement that a proposed amendment, after passing the General Assembly once, be “referred to the General Assembly at its first regular session held *after the next general election* of members of the House of Delegates.” Va. Const. art. XII, § 1 (emphasis added). Its conclusion was based on the theory that the “general election of members of the House of Delegates,” a date set by

the Virginia Constitution, *see id.* art. IV, § 3, began on the first day of in-person early voting. This form of voting did not exist in Virginia until 2019. 2019 Va. Acts Ch. 668, *codified at* Va. Code § 24.2-701.1(A).⁹ The court reasoned that the General Assembly’s passage of the proposed amendment on October 31, 2025 was ineffective because early voting had already begun for the election held on November 4, 2025. The court’s reasoning is inconsistent with the text of the Virginia’s Constitution and is belied by the relevant history and Virginia’s settled practice.

Virginia law sets elections for a date certain. The framers of the 1971 Constitution intended the intervening election requirement in Article XII, § 1 to be calculated with reference to Election Day. That intent is apparent in the text of the Constitution itself: where the framers scheduled elections, they did so for a specific date: “Tuesday after the first Monday in November,” to elect senators, delegates, county and city officers, and county governing bodies, and “the second Tuesday in June” to elect the governing bodies of cities and towns. Va. Const. art. IV, §§ 2, 3; *id.* art. VII, §§ 4, 5. As a result, the Constitution contains several provisions setting out timing-based qualifications and procedures for Virginia elections with reference to “the election” or “an election” that would occur on Election Day.⁸

⁸ Taking them in turn: voters in “elections by the people” must be eighteen years of age, and any person qualified to vote “at the next general election” may register in advance and vote in the intervening primary. Va. Const. art. II, § 1. Voter registration records may not be closed “more than thirty days before the election.” *Id.* art. II, § 2. A person may be elected to the Senate or House of Delegates if she is twenty-one years of age “at the time of the election.” *Id.* art. IV, § 4. And no voter may be compelled to “attend any court as suitor, juror, or witness,” “during the time of holding any election at which he is entitled to vote.” *Id.* art. II, § 9.

This textual understanding is consistent with the long history of absentee voting in Virginia. At the time of the 1971 Constitution’s ratification, Virginia did not have no-excuse absentee voting.⁹ Virginia had, however, long provided for absentee voting by voters unable to vote in their polling place on Election Day, with early versions of absentee voting dating back to the Civil War.¹⁰ *See Moore v. Pullem*, 150 Va. 174, 179-80 (1928). The framers were thus familiar with a system in which qualified voters were permitted to vote in advance of Election Day.¹¹ *See id.* at 182 (describing an earlier form of Virginia’s absentee ballot process). Understanding that voters would begin voting before the date of the election, the framers nevertheless defined elections as events that occurred on a particular day: Election Day. *See Va. Const. art. IV, §§ 2, 3; id. art. VII, §§ 4, 5.*

Consistent with the Virginia Constitution, Virginia statutes also recognize Election Day—excluding the early voting period—as the specific operative date of the election. *See Appl. for Stay* at 20; *see also* Va. Code § 24.2-709.1(C) (requiring registrars to notify voters of the need to correct errors on absentee ballots “received by the Friday immediately preceding the day of the election); *id.* § 24.2-948.2 (allowing the filing of certain reports “complete through the election day” by candidates “elected to fill a vacancy at a special election held on a general election

⁹ Virginia first provided for no-excuse absentee voting in 2019. *See* 2019 Va. Acts Ch. 668.

¹⁰ *See also* James Alcorn, *Recent Developments in Absentee Voting*, 12 Rich. J.L. & Pub. Int. 283, 284 (2008), <http://scholarship.richmond.edu/pilr/vol12/iss4/4>.

¹¹ *See* Report of the Commission on Constitutional Revision, House Doc. No. 1, at 115 (1969), <https://rga.lis.virginia.gov/Published/1969/HD1/PDF>; Alcorn, 12 Rich. J.L. & Pub. Int. at 284.

day”); *id.* § 24.2-536 (providing for candidate nominations when a vacancy in office occurs “less than 75 but more than 45 days before the regular date for the holding of a primary”). Virginia statutes also frequently refer elections by the month in which they are constitutionally required to be held. *See id.* § 24.2-948.2 (specifying the procedures for filing certain postelection reports “in the case of a November election”); *id.* § 24.2-510 (setting certain party nomination deadlines for “a November general election”); *id.* § 24.2-947.6 (requiring candidates for offices “filled at a November general election” to file campaign finance reports). These provisions are in irreconcilable tension with a definition of “election” that includes an early voting period that can run through September and October.

The Virginia Supreme Court’s misinterpretation of “election” upends Virginia’s constitutional hierarchy insofar as constitutional deadlines now depend on the legislature’s policy decisions regarding early voting. In Virginia, early voting procedures are set by statute. *See Va. Code* § 24.2-701.1. But “[t]he Constitution is the fundamental law of Virginia.” *Coleman v. Pross*, 219 Va. 143, 152 (1978). It cannot be amended except through the processes provided by Article XII itself, which sets out the “strict” requirements that must be fulfilled to amend the Constitution. *Id.*; Va. Const. art. XII, §§ 1, 2. Now, however, the General Assembly will have the power to alter constitutional election deadlines by statute. This risks creating a moving target that could affect not only the process for amending the Constitution under Article XII, but constitutionally defined voter and candidate qualifications, Va. Const.

art. II, § 1; *id.* art. IV, § 4, the voter registration deadline, *id.* art. II, § 2, and the time during which voters are exempt from judicial and civil process, *id.* § 9.

B. The Virginia Supreme Court’s Interpretation of “Election” Conflicts with Every Relevant Federal Election Statute.

The Virginia Supreme Court’s interpretation is inconsistent with federal law. Because the Virginia Supreme Court’s reasoning relies on and was “interwoven with federal law,” *Michigan v. Long*, 463 U.S. 1032, 1040 (1983), this Court has an interest in overturning the Virginia Supreme Court’s decision.

Under federal law, elections occur on a particular date. The statute providing for election of senators and congressional representatives fixes a specific day “as the day for the election.” 2 U.S.C. § 7; *see also id.* § 1; 3 U.S.C. § 1. These statutes “mandate[] holding all elections for Congress and the Presidency on a single day throughout the Union.” *Foster v. Love*, 522 U.S. 67, 69-70 (1997).

Several major statutes governing the conduct of federal elections also include specific deadlines or references to timeframes that refer to “the date” of an election. The National Voter Registration Act of 1993 (“NVRA”) calculates its many election-related deadlines with reference to “the date of the election” or “the date of a primary or general election.” *See, e.g.*, 52 U.S.C. §§ 20507(a)(1), (c)(2)(A); 20510(b)(2), (3). Courts interpreting the NVRA’s requirement that states complete systematic programs to remove the names of ineligible voters from the voter rolls “not later than 90 days prior to the date of a primary or general election for Federal office,” *id.* § 20507(c)(2)(A), have uniformly calculated this ninety-day “quiet period” with reference to Election Day. *See, e.g., Republican Nat’l Comm. v. N.C. State Bd. of*

Elections, 120 F.4th 390, 401 (4th Cir. 2024) (“Plaintiffs filed their Complaint 74 days before the November federal election—well within the NVRA’s proscribed 90-day quiet period.”); *United States v. Florida*, 870 F. Supp. 2d 1346, 1349 (N.D. Fla. 2012) (“The quiet period began on May 16, 2012, which was 90 days before the scheduled August 14, 2012 primary.”). Calculating the NVRA’s 90-day quiet period or its 30-day registration requirement based on the first day of the early voting period would lead to patently absurd results, freezing voter registration lists for far longer than Congress intended.

The Virginia Supreme Court’s definition of “election” cannot be squared with numerous other federal statutes that refer to elections as occurring on a specific date. The Help America Vote Act of 2002 defines “voting information” to include “information regarding the date of the election.” 52 U.S.C. § 21082(b)(2)(B). Another statute requires officers of election to preserve records of federal elections “for a period of twenty-two months from the date of any general, special, or primary election.” *Id.* § 20701. And another defines “Federal election activity” to include “voter registration activity during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election.” *Id.* § 30101(20)(A)(i).

Other statutes include timeframes and deadlines with reference to “an election” or “such election” in contexts that clearly contemplate that the election occurs on a date certain. The Voting Rights Act requires states to provide for the registration of duly qualified residents who apply “not later than thirty days

immediately prior to any presidential election” and to allow absentee voting in presidential elections by qualified voters who apply “not later than seven days immediately prior to such election.” *Id.* § 10502(d). It also imposes criminal sanctions for destroying or altering the marking of a paper ballot “within a year following an election” in which a federal observer has been assigned. *Id.* § 10308(b).

Extending the Virginia Supreme Court’s definition of “election” to its logical conclusion could lead to absurd results, like having different deadlines in the fifty states depending on when their early voting period starts. Consider the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), which requires states to accept and process valid voter registration and absentee ballot applications from military and overseas voters if they are received “not less than 30 days before the election.” *Id.* § 20302(a)(2). The statute further requires states to transmit validly requested absentee ballots to such voters “not later than 45 days before the election” where “the request is received at least 45 days before an election for Federal office.” *Id.* § 20302(a)(8)(A). UOCAVA also requires states to submit a report on the absentee ballots transmitted and received under the statute “[n]ot later than 90 days after the date of each regularly scheduled general election for Federal office.” *Id.* § 20302(c).

Each of these deadlines, whether occurring before or after an “election,” necessarily contemplate that the election occurs on a date certain. Construing “election” to include the entire period of voting creates an impermissible conflict with the many federal deadlines and requirements that depend on this fundamental principle. This is not an area of the law that easily permits a double standard,

particularly given that state and federal elections are often held concurrently on the same date.

C. The Virginia Supreme Court's Unprecedented Invalidation of a Completed Statewide Election Violates the Due Process Clause.

In ruling that the Virginia General Assembly failed to comply with the Virginia Constitution's procedural requirements for amending the Constitution, the Virginia Supreme Court invalidated an already-completed, statewide election. In that election, Virginia voters were not merely choosing between candidates for office—they were acting in their sovereign capacity to approve an amendment to the Virginia Constitution. *Amicus* NAACP Virginia is not aware of, and the Virginia Supreme Court did not identify, any precedent for nullifying a completed, statewide election to approve a constitutional amendment. The result of the Virginia Supreme Court's decision is the total and complete disenfranchisement of the millions of Virginians who participated in the special election—a due process violation of massive scale that demands this Court's intervention. *Duncan v. Poythress*, 657 F.2d 691, 702 (5th Cir. Unit B 1981) (despite broad authority enjoyed by states over scope and conduct of elections, federal courts have not hesitated to act when state actions have jeopardized integrity of electoral process).

The Virginia Constitution is built on the foundational premise that “all power is vested in, and consequently derived from, the people.” Va. Const. art. I, § 2. It is thus “[t]he people [who] are possessed with ultimate sovereignty and are the source of all State authority.” *Staples v. Gilmer*, 183 Va. 613, 623 (1945). And the Virginia Constitution “is the charter by which our people have consented to be governed.”

Coleman, 219 Va. at 152. This structural commitment is not merely rhetorical. It reflects a constitutional design in which the electorate’s participation is an essential part of legitimate governance. That is especially true of elections called to amend the Constitution, “the fundamental law of Virginia” that “sets forth the basic rights and principles sought to be maintained and preserved in a free society.” *Id.*

“No right is more precious in a free country than that of having a voice in the election Other rights, even the most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). “[T]he Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections.” *Reynolds v. Sims*, 377 U.S. 533, 554 (1964). The right to vote includes “the right to have one’s vote counted.” *United States v. Mosley*, 238 U.S. 383, 386 (1915).

While the power to regulate the conduct of elections is committed to the states, federal court intervention is appropriate where necessary to vindicate voters’ constitutional rights. State action that causes an election to “reach[] the point of patent and fundamental unfairness” violates substantive due process. *Griffin v. Burns*, 570 F.2d 1065, 1077 (1st Cir. 1978); *see also Hendon v. N.C. State Bd. of Elections*, 710 F.2d 177, 182 (4th Cir. 1983) (“It is settled that if the election process reaches the point of patent and fundamental unfairness, the due process clause may be violated.” (internal quotation marks omitted)); *Duncan*, 657 F.2d at 702. While there is no bright-line rule for determining what state actions create sufficient constitutional harms under the due process clause to require intervention by federal

courts, “one thing is clear: total and complete disenfranchisement of the electorate as a whole is patently and fundamentally unfair (and, hence, amenable to rectification in a federal court).” *Bonas v. Town of N. Smithfield*, 265 F.3d 69, 75 (1st Cir. 2001); *see also Duncan*, 657 F.2d at 703-04 (finding a due process violation where “the entire state electorate has been deprived of the right to participate in an election”); *Smith v. Cherry*, 489 F.2d 1098, 1022 (7th Cir. 1973), *cert. denied*, 417 U.S. 910 (1974).

The nullification of the April 21, 2026 special election by judicial fiat meets this high bar. The Virginia Supreme Court had never before interpreted a state law concerning the timing of an election to encompass the early vote period. Presumably relying on the text of the Constitution and the Virginia statutes defining elections as occurring on a date certain, the Virginia Department of Elections’ longstanding practice ties election deadlines to Election Day.¹²

Departing from longstanding Virginia practice and wielding a novel interpretation of when an election occurs at odds with both federal and state law, the Virginia Supreme Court totally and completely disenfranchised the Virginia electorate. In so doing, it violated the due process rights of 3.1 million Virginians. *See Bonas*, 265 F.3d at 75 (holding that refusal to hold an election in violation of state law disenfranchised the electorate as a whole, in violation of due process); *Duncan*,

¹² For example, pursuant to Va. Code § 24.2-416, the voter registration deadline for the April 21, 2026 special election was April 14, 2026, seven days before the date of the election—not seven days before the start of early voting. *See* Virginia Department of Elections, Upcoming Elections, <https://www.elections.virginia.gov/casting-a-ballot/candidate-list/upcoming-elections.html> (last visited Apr. 28, 2026). *See also, e.g.*, GREB Handbook, Virginia Department of Elections, at 119 (August 2025) (stating that an eligible voter must be eighteen years of age or older by the date of the next general election, citing Va. Const. art. II, § 1).

657 F.2d at 703-04 (same). Courts have found due process violations when far fewer voters were disenfranchised by post-election state action. *See Griffin*, 570 F.2d at 1068, 1067-68, 1078-79 (finding that Rhode Island Supreme Court's decision invalidating certain ballots cast in primary election, affecting 123 voters, violated due process); *Hoblock v. Albany Cnty. Bd. of Elections*, 422 F.3d 77, 91-92, 98 (2d Cir. 2005) (finding a likely due process violation where election officials refused to count absentee ballots mistakenly sent to 27 voters).

Still worse, the Virginia Supreme Court took this action in an election in which the electorate acted in its sovereign capacity to approve an amendment to the charter under which the people of Virginia have consented to be governed. Invalidating the votes of the 3.1 million Virginians who voted in the April 21, 2026, special election constitutes a deprivation of constitutional due process that requires this Court's immediate intervention.

CONCLUSION

For the foregoing reasons, this Court should grant the application.

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