IN THE SUPREME COURT OF VIRGINIA

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Record No. 25_____

_____

CHARLES STIMSON, et al.,
Petitioners/Defendants,

v.

L. LOUISE LUCAS, et al.,
Respondents/Plaintiffs

_____

PETITION FOR REVIEW PURSUANT TO CODE § 8.01-626

_____

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INTRODUCTION

The circuit court entered an unprecedented preliminary injunction on the erroneous premise that nine individual legislators (Plaintiffs) can speak for the General Assembly. The court enjoined the heads of three public university boards of visitors (Rectors) to bar recently appointed board members (Appointees) from participating in university governance. It held that a divided vote by one Senate committee not to report a resolution confirming the Appointees means that "the General Assembly" has "refused to confirm" them. Const. art. V, § 11. The injunction incorrectly allows Plaintiffs to shortcut constitutional procedures and aggrandize their roles at the expense of the full General Assembly. This Court should vacate it.

The circuit court's preliminary injunction suffers from multiple defects. First, the court lacked jurisdiction to enter it. Plaintiffs are suing the wrong defendants using the wrong cause of action. Virginia law provides an established means to try title to public office: a writ of *quo warranto* against the disputed officials. Plaintiffs instead sought an injunction against the Rectors, even though Plaintiffs admit that the Rectors did nothing wrong. Plaintiffs therefore lack standing because the Rectors did not cause the purported injury and cannot redress it. In addition, nine individual legislators cannot sue to assert a purported injury to the General Assembly. And for similar reasons, sovereign immunity bars the suit.

Second, Plaintiffs fail to establish the conditions for a preliminary injunction,

beginning with the threshold requirement that the purported harm is irreparable. To the contrary, any harm could be repaired by setting aside the Appointees' decisions.

Third, Plaintiffs fail to show that they will more likely than not succeed on the merits. Their theory that a vote by one committee of one chamber constitutes refusal by the General Assembly is wrong. As the circuit court acknowledged, the General Assembly could still decide to confirm the Appointees. The court concluded that a refusal need not be completed, but that is incorrect. The Refusal Clause's text, providing that the General Assembly "shall have refused" and that refusal creates a "vacancy" in the office, requires a completed and final refusal. As a matter of ordinary meaning, legislative practice, and common sense, the General Assembly cannot "have refused" to confirm an appointee who can still be confirmed. The circuit court's interpretation would also create immense uncertainty and practical difficulties for appointees and the agencies they serve. This Court should grant the petition for review under Code § 8.01-626 and vacate the preliminary injunction.

STATEMENT

The Governor appoints members of the boards of visitors of public universities, "subject to confirmation by the General Assembly." Code § 23.1-1300(A). Board members generally serve four-year terms and "continue to hold office until their successors have been appointed and qualified." *Id.* § 23.1-1300(A). Under the Constitution's Refusal Clause, no gubernatorial appointee "subject to confirmation

by the General Assembly . . . shall enter upon, or continue in, office after the General Assembly shall have refused to confirm his appointment, nor shall such person be eligible for reappointment during the recess of the General Assembly to fill the vacancy caused by such refusal to confirm." Const. art. V, § 11.[1]

In 2024, Governor Youngkin convened a special session of the General Assembly ("2024 Special Session"). R. 577 ¶¶ 1–2. The General Assembly resolved that the special session could consider appointments. R. 577 ¶ 3. In 2025, the General Assembly convened, and later adjourned *sine die*, its regular session. R. 578 ¶ 4. The General Assembly reconvened in regular session for one day in April, then adjourned that session *sine die*. R. 578 ¶ 7.

In February and April 2025, while the regular session was adjourned but the special session was purportedly ongoing, Governor Youngkin announced the Appointees to serve on the boards of visitors of three public universities. R. 578 ¶¶ 6, 8. Consistent with constitutional text and precedent, they began serving immediately. R. 8 ¶ 27; Const. art V, § 11. The Secretary of the Commonwealth transmitted the Appointees' names to the General Assembly in May 2025. R. 578 ¶ 9.

In June 2025, Senator Aaron Rouse—Chairman of the Senate Privileges and Elections (P&E) Committee—introduced Senate Joint Resolution No. 6001 (SJR

[1] A board member appointed by the Governor "during the recess of the General Assembly" may serve until "thirty days after the commencement of the next session of the General Assembly." Const. art. V, § 7.

6001), proposing that the Senate and House of Delegates jointly confirm the Appointees. R. 192, 579. The Senate P&E Committee failed to report SJR 6001 by a vote of 8–4. R. 194. Senate Majority Leader Scott Surovell then wrote to the heads of the boards of visitors, asserting that "the General Assembly refused to confirm" the Appointees. R. 506–08. At Senator Rouse's direction, the Clerk of the Senate issued a letter stating that the Senate P&E Committee's "failure to report SJR 6001 [wa]s effective immediately." R. 503. The letter did not state that the General Assembly had refused to confirm the Appointees. *Id*. The Clerk of the Senate clarified that there were "still avenues of opportunity" for the General Assembly to confirm the Appointees, including "reconsideration" under Senate Rules 20(m) and 48(b), "discharge" of the P&E committee by the full Senate under Article IV, section 11, and origination of a confirming resolution in the House of Delegates. R. 514–15; see R. 511–12.

Plaintiffs then filed this lawsuit against the Rectors. They allege that "[t]he General Assembly [has] refused to confirm" the Appointees within the meaning of the Refusal Clause based on the Senate P&E Committee's vote. R. 2–3, 12 ¶¶ 4, 40. Plaintiffs moved for a preliminary injunction compelling the Rectors to bar the Appointees from participating in university governance. R. 198. In opposing the motion, the Rectors submitted declarations from the Chairman of the Senate Republican Caucus and the Ranking Member of the House P&E Committee, stating that they

"intend[] to pursue appropriate and available avenues to have the individuals named in [SJR] 6001 confirmed." R. 518–19 ¶ 9; see R. 521.

The circuit court granted a preliminary injunction. The court held that Plaintiffs have standing and that the Refusal Clause waives the Rectors' sovereign immunity. R. 847–57. The court further held that Plaintiffs would face irreparable harm without a preliminary injunction, because they were asserting a constitutional injury. R. 858–59. Then, as "a matter of first impression," the court construed the Refusal Clause to provide that "the General Assembly's refusal may be reconsidered" and that nothing in the Constitution's text "denotes permanence" in that refusal. R. 842, 862. The court held that the vote of "8 of 40 sitting Virginia Senators" was sufficient to "refuse the confirmation of a gubernatorial appointee" because the Senate had "delegated" authority to the P&E Committee. R. 861, 864. It accordingly ruled that Plaintiffs were likely to succeed on the merits. R. 860. The court also held that the balance of hardships and public interest favored preliminary relief. R. 863–64.

ASSIGNMENTS OF ERROR

1. The circuit court erred in exercising jurisdiction over Plaintiffs' claims when Plaintiffs lack standing and sovereign immunity bars Plaintiffs' claims. (Preserved at: R. 476–84, 709–15, 737–45, 748–55, 847–57, 871–72).

2. The circuit court erred in holding that Plaintiffs would more likely than not suffer irreparable harm without the preliminary injunction when it relied on inapposite foreign authorities and acknowledged that Plaintiffs' alleged injuries are reparable. (Preserved at: R. 490–91, 698–708, 858–59, 873).

3. The circuit court erred in holding that Plaintiffs' claim would more likely than not succeed on the merits when it concluded that a single committee of one chamber has power to refuse to confirm a gubernatorial appointee that Article V, section 11 of Virginia's Constitution reserves to "the General Assembly," avenues of opportunity for confirmation remain available, and its interpretation creates internal inconsistences within Article V, section 11. (Preserved at: R. 485–90, 696–98, 718–21, 726–37, 745–48, 859–63, 872–73).

4. The circuit court erred in holding that the balance of hardships and the public interest support the preliminary injunction when it collapsed these factors into its assessment of likelihood of success on the merits. (Preserved at: R. 491, 705–09, 755, 863–64, 873).

STANDARD OF REVIEW

This Court reviews a decision to grant a preliminary injunction for abuse of discretion. *Commonwealth v. Sadler Bros. Oil Co*., 2023 WL 9693656, at *4 (Va. Oct. 13, 2023). At the same time, the Court reviews a circuit court's "interpretation of statutory or constitutional provisions" *de novo*. *Id.* The Court will vacate a preliminary injunction that rests on "erroneous legal conclusions," because "a court by definition abuses its discretion when it makes an error of law." *Id.* (citation omitted).

ARGUMENT

I. The circuit court lacked jurisdiction to issue the preliminary injunction

At the outset, the preliminary injunction should be vacated because the circuit court lacked jurisdiction to issue it. Plaintiffs' novel action is an improper procedural shortcut: the Rectors are the wrong defendants, and this injunction suit is the wrong type of action to challenge the Appointees' right to office. In addition, a handful of individual legislators also cannot bring suit over a purported injury to the General

Assembly as a whole. Plaintiffs therefore fail to meet the requirements of standing. And sovereign immunity independently bars their suit.

The General Assembly has established a specific mechanism for disputing a claim to public office: the writ of *quo warranto*, brought against the disputed appointee. See Code § 8.01-635 *et seq.*; *Parker v. Commonwealth*, 215 Va. 281, 281 (1974). This Court has long held that the writ of *quo warranto* is the appropriate way to resolve "the question of title to office," while an "injunction [i]s not the proper remedy." *Kilpatrick v. Smith*, 77 Va. 347, 359–60 (1883); see *Brown v. Baldwin*, 112 Va. 536, 538–39 (1911) (same); see also *Lockard v. Wiseman*, 80 S.E.2d 427, 436 (W. Va. 1954) (same). A writ of *quo warranto* must be brought against the disputed officeholder, Code § 8.01-636, in the circuit court with jurisdiction over that officeholder, Code § 8.01-637. Plaintiffs instead filed a single suit against all three Rectors in a circuit court where only one of them resides, seeking an injunction compelling them to act against the Appointees.

Plaintiffs lack standing for this suit, because their asserted injury is not "fairly traceable to [any] challenged action *of the defendant*" Rectors or redressable through a judicial order against them. *Morgan v. Board of Supervisors*, 302 Va. 46, 64 (2023) (citation omitted). Plaintiffs' complaint identifies no action by the Rectors that caused their purported injury. To the contrary, the complaint states that Plaintiffs "do not accuse [the Rectors] of any wrongdoing," R. 4 ¶ 9; they are simply suing the

Rectors as proxies to challenge all the Appointees' titles to office in one suit in Plaintiffs' preferred venue. This attempted procedural shortcut is improper.

The preliminary injunction also does not redress Plaintiffs' purported injury. The circuit court concluded that the Rectors could refuse to "recogniz[e]" the Appointees "as board members" under Robert's Rules of Order. R. 855–56, 857. But the Rectors simply preside over their respective boards; they do not control them. See, *e.g.*, Code §§ 23.1-1301, 23.1-1502(C), 23.1-2202(C), 23.1-2502(C)–(D). In particular, the Rectors have no authority to take the actions compelled by the preliminary injunction—such as barring the Appointees from attending meetings and voting—if a majority of the board votes otherwise. *Id.* § 23.1-1300(E). Plaintiffs' suit against the Rectors accordingly seeks the kind of "advisory opinion" this Court has held improper. *Morgan*, 302 Va. at 67 (citation omitted). By contrast, a *quo warranto* action against the Appointees could directly bar them from serving in the disputed office and would (if successful on the merits) redress the purported injury.

Plaintiffs also lack standing because their purported injury is not cognizable. By their own account, Plaintiffs seek "to enforce the constitutional prerogatives of the Virginia General Assembly." R. 2 ¶ 1. But Plaintiffs are not the General Assembly, and Virginia courts have never held that individual *legislators* may assert the interests of the *legislature* as a whole. Federal courts have held to the contrary, con-

cluding that an asserted "institutional injury" to a legislature is not sufficiently "personal" to support standing for individual legislators. *Raines v. Byrd*, 521 U.S. 811, 821 (1997); see *McClary v. Jenkins*, 299 Va. 216, 222 (2020) (standing requires "a personal stake in the outcome of the controversy") (citation omitted); *Marshall v. Warner*, 64 Va. Cir. 389, 391 (Richmond City 2004) (relying on *Raines*). That is because the "legislative power . . . is not personal to the legislator but belongs to the people." *Nevada Comm'n on Ethics v. Carrigan*, 564 U.S. 117, 126 (2011). Therefore, "individual members" may not "assert interests belonging to the legislature as a whole." *Virginia House of Delegates v. Bethune-Hill*, 587 U.S. 658 (2019).

The circuit court held that Plaintiffs had a personal injury because their votes were "nullified," citing the fractured federal decision in *Coleman v. Miller*, 307 U.S. 433 (1939). R. 852–53. But the legislators in *Coleman* did not seek to vindicate the interests of the legislature as a whole; they sought only to have their votes to defeat a federal constitutional amendment "counted" and given effect. *Bethune-Hill*, 587 U.S. at 669 (describing *Coleman*). Here, Plaintiffs' votes *were* counted and given effect: Plaintiffs voted not to report SJR 6001, and SJR 6001 was not reported. R. 194. Plaintiffs' asserted injury is to the "authority" of "the *Virginia General Assembly* . . . to confirm or refuse confirmation of gubernatorial appointments." R. 12 ¶ 40(a) (emphasis added). That is an invocation of harm to the *legislature*, not an injury personal to Plaintiffs. Thus, *Coleman* does not support Plaintiffs' position.

Once again, the established writ of *quo warranto* provides the solution. Rather than raising the complex question of legislator standing, the *quo warranto* statutes define exactly who may petition. Code § 8.01-637.

For similar reasons, the Rectors' sovereign immunity also bars this suit. See, *e.g.*, *Rector & Visitors of the Univ. of Va. v. Carter*, 267 Va. 242, 246 (2004). In yet another novel threshold constitutional determination, the circuit court held that the Refusal Clause is self-executing. R. 847–49. That holding of first impression is incorrect because that provision has none of the hallmarks of self-execution: it "contains no declaration of self-execution, it is not in the Bill of Rights, it is not declaratory of common law," and it "lays down no rules" for bringing claims. *Robb v. Shockoe Slip Found.*, 228 Va. 678, 682 (1985). The circuit court held it to be "prohibitory," R. 848, but the provision does not "specifically prohibit particular conduct" by the *Rectors*, and that does not suffice to make the provision self-executing, *Robb*, 228 Va. at 681; *cf. Roberston v. City of Staunton*, 104 Va. 73, 77 (1905) (provision self-executing because it prohibited conduct by municipal defendant directly). And the codification of *quo warranto* to adjudicate precisely the question in this case further demonstrates that the General Assembly intended that statutory remedy, not a constitutional provision silent about self-execution, as the appropriate mechanism to try the Appointees' titles to their offices. The preliminary injunction should therefore be vacated because the circuit court lacked jurisdiction to issue it.

II. Plaintiffs fail to meet the threshold requirement of irreparable harm

This Court should also vacate the preliminary injunction because Plaintiffs fail to satisfy Rule 3:26(c)'s "[t]hreshold [r]equirement" that "the movant will more likely than not suffer irreparable harm without the preliminary injunction." The circuit court based its finding of irreparable harm solely on the purported "nullification of Plaintiffs' Committee votes." R. 859. As explained above, that is not a cognizable harm. See pp. 9–10, *supra*. But in addition, the asserted harm is not "irreparable," and thus cannot support a preliminary injunction. Rule 3:26(c).

Relying largely on federal precedents, the circuit court concluded that Plaintiffs have shown irreparable harm merely because they assert a constitutional injury. R. 858–59. But federal precedents do not track Rule 3:26(c), and this Court has never adopted the federal preliminary-injunction standard. See generally Advisory Comm. on Rules of Ct., Call for Comment: Proposed Rule Specifying Standard for a Preliminary Injunction (Apr. 25, 2023), https://tinyurl.com/4h6rsnmm. In any event, neither federal nor Virginia courts have held that all asserted constitutional injuries are *per se* irreparable. Indeed, multiple cases have held to the contrary. See, *e.g.*, *Leachco, Inc. v. Consumer Prod. Safety Comm'n*, 103 F.4th 755 (10th Cir. 2024) ("Allowing *any* deprivation of *any* constitutional right to serve as per se irreparable harm is a far-too-powerful tool in most cases." (citation omitted)); *Glidedowan, LLC v. N.Y. State Dep't of Health*, 768 F. Supp. 3d 503, 516 (W.D.N.Y. 2025) ("[A] mere

assertion of a constitutional injury is insufficient to automatically trigger a finding of irreparable harm." (citation omitted)). The circuit court's interpretation would gut Rule 3:26(c)'s threshold requirement in all constitutional suits.

The circuit court pointed to *Elrod v. Burns*, 427 U.S. 347, 373 (1976), which held that "[t]he loss of First Amendment freedoms" is "irreparable." R. 858. But nothing in *Elrod* suggested that *any* constitutional injury is necessarily irreparable. Rather, *Elrod* noted that the "timeliness of political speech is particularly important" in finding the injury there irreparable. *Id.* at 374 n.29 (plurality opinion).[2] And cases involving fundamental individual rights are a far cry from the sort of legislative-authority injury Plaintiffs allege. The circuit court expressly acknowledged that the alleged injury can be repaired by setting aside affected decisions of the boards of visitors "while they were not properly constituted." R. 864. Such ready reparability demonstrates that Plaintiffs failed to clear Rule 3:26(c)'s threshold for entitlement to drastic preliminary injunctive relief.

III. Plaintiffs are unlikely to succeed on their constitutional claim

Plaintiffs have also failed to demonstrate that their claim "will more likely

[2] The circuit court's reliance on *Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 22 F.3d 546 (4th Cir. 1994) is even further misplaced. There, the irreparable harm arose from "the possibility of permanent loss of customers to a competitor or the loss of goodwill." *Id.* at 552.

than not succeed on the merits." Rule 3:26(d)(i). Plaintiffs seek to shortcut the constitutionally prescribed procedure for considering appointees, improperly aggrandizing one vote of one committee in one chamber into a refusal by "the General Assembly." Their argument has no basis in constitutional text, legislative practice, or judicial precedent, and it would create serious practical problems.

The Refusal Clause provides that a gubernatorial appointee shall not "enter upon, or continue in, office after the General Assembly shall have refused to confirm his appointment." Const. art. V, § 11. "[N]or shall such person be eligible for reappointment during the recess of the General Assembly to fill the vacancy caused by such refusal to confirm." *Id.* Majority votes by both chambers of the General Assembly meeting with a quorum not to confirm appointees constitute a refusal. See R. 861–62. So does adjournment *sine die* by the General Assembly without adopting a resolution before it to confirm them. See 1981–82 Op. Va. Att'y Gen. 183, 1982 Va. AG LEXIS 186, at *1–2 (Feb. 8, 1982). But a vote of one committee of one chamber of the General Assembly not to report a confirmation resolution, while the General Assembly maintains that the legislative session is still open, is not a refusal because confirmation remains possible through multiple avenues.

By definition, the "General Assembly . . . consist[s] of a Senate and House of Delegates." Const. art. IV, § 1. Accordingly, an action by "the General Assembly requires separate approval of each body." 1984–85 Op. Va. Att'y Gen. 289, 1985

Va. AG LEXIS 101, at *8 (Feb. 1, 1985); see 1 A.E. Dick Howard, *Commentaries on the Constitution of Virginia* 465 (1974). *A fortiori*, a legislative committee—a subset of one chamber—cannot act for the General Assembly. See Const. art. IV, § 8 (requiring a quorum "to do business").

The ordinary meaning of "refused" as used in the Constitution underscores that the Clause is not triggered by a committee vote alone. A "refusal" is "the denial or rejection of something offered or demanded," so refusal by the General Assembly requires denial or rejection by that body. *Refusal*, Black's Law Dictionary (12th ed. 2024). And the phrase "shall have refused" is in the future perfect verb tense, which "expresses *completion of an action* by a specified time that is yet to come." Webster's Third New International Dictionary 926 (Philip B. Gove et al. eds., 2002) (emphasis added); see also Bryan A. Garner, Modern English Usage (5th ed. 2022) 1082 ("[T]he future perfect tense . . . represents an action that *will be completed* at some definite time in the future.") (emphasis added). Further, the Refusal Clause provides that an appointee may "continue in office" until "*after* the General Assembly shall have refused to confirm his appointment." Const. art. V, § 11 (emphasis added). And it specifies that a "vacancy [is] caused by [the General Assembly's] refusal to confirm." *Id*. The plain language of the Constitution therefore requires the refusal to be final and completed, without the potential for future confirmation.

The circuit court recognized that the General Assembly has not *completed* any refusal to confirm the Appointees. R. 862.[3] Indeed, Plaintiffs concede that multiple avenues of confirmation are available. R. 210–11; see R. 514–15. Such avenues are not hypothetical. During the 2025 regular session, the House P&E Committee struck David Botkins' name before reporting an appointment resolution, but the House restored his name on the floor, and the entire General Assembly adopted the amended resolution. R. 523–24. The appointment of Patricia West followed a similar course, with the full Senate overruling the Senate P&E Committee's striking of her name. R. 527. Here, members of both the Senate and House of Delegates have expressly stated that they "intend[] to pursue appropriate and available avenues to have the [Appointees] confirmed." R. 518–19 ¶ 9; R. 521. That prospect of confirmation underscores the absence of a completed refusal.

The circuit court nonetheless held that the General Assembly has refused to confirm the Appointees because the Senate referred the confirmation resolution to the P&E Committee, and the P&E Committee voted not to report the resolution.

[3] The circuit court held that a completed refusal is not necessary under the definition of "refuse" used in *Craig v. Dye*, 259 Va. 533 (2000). R. 859–60. But *Craig* did not address whether a refusal must be final, instead distinguishing a "refusal" from a "failure" in holding that a refusal must be a "volitional" "denial or rejection." *Id*. at 539. The circuit court also did not consider the difference between the term "refuse" in "a personal liability umbrella insurance" contract in *Craig*, 259 Va. at 533, and the future perfect phrase "shall have refused" in the Constitution.

R. 859–63. That analysis, however, ignores the Constitution's requirement of a completed refusal and the reality that the General Assembly can still confirm the Appointees through multiple mechanisms. For instance, the full Senate could, as part of a legislative deal, bypass the P&E Committee by discharging the committee under Article IV, section 11 and consider the resolution "as if reported."[4] See R. 210. Or a majority of the P&E Committee could favorably report a confirmation resolution originating in the House of Delegates in return for support from other legislators for Committee members' higher priorities. Such compromises are common hallmarks of lawmaking and can happen at any time before adjournment *sine die* of the legislative session. See, *e.g.*, *Trump v. Mazars*, 591 U.S. 848, 859 (2020); *Elizabeth River Crossings OpCo, LLC v. Meeks*, 286 Va. 286, 310 (2013) (legislative decisions involve "many competing economic, societal, and policy considerations" (citation omitted)). Thus, until the General Assembly adjourns, the committee vote means only that the General Assembly has not yet confirmed the Appointees. "It ain't over till it's over," *Bullard v. Blue Hills Bank*, 575 U.S. 496, 503 (2015), when the gavel adjourning the session falls.[5]

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[4] The Senate could vote to discharge the P&E Committee without Plaintiffs altering their position on the resolution. Const. art. IV, § 11; see R. 861 (circuit court observing that 16 Senators can constitute the requisite majority).

[5] The circuit court discussed several ways in which a minority of the General Assembly—but a majority of a quorum—can take legislative action. R. 861. Those examples provide no support for Plaintiffs' argument that eight legislators can act on behalf of the General Assembly although they are *not* a majority of a quorum.

Moreover, the circuit court's interpretation is untenable because it would make the Refusal Clause "internally inconsistent." *Cook v. Commonwealth*, 268 Va. 111, 116 (2004). The court held that the Refusal Clause does not "denote[] permanence," and "the fact that the General Assembly's refusal may be reconsidered does not mean that the refusal was not a refusal." R. 862. That reading would mean appointees *could* "continue in[] office after the General Assembly shall have refused to confirm" their appointment, if the General Assembly reconsidered. Const. art. V, § 11. But the Refusal Clause itself states the exact opposite. *Id.*

Further, the Refusal Clause provides that a "vacancy" for the Governor "to fill" is "caused by [the General Assembly's] refusal to confirm." *Id*. But under the circuit court's interpretation, the initial appointee would remain pending before the General Assembly for its consideration *after* the General Assembly's "refusal." R. 862. There would thus be no "vacancy" for the Governor to fill, despite the "refusal." Const. art. V, § 11. These internal inconsistencies all disappear when the Refusal Clause is interpreted according to its plain text, to require that the refusal must be complete and final. The circuit court's interpretation should therefore be rejected.

The circuit court's construction also presents immense practical difficulties. Under the court's reading, a gubernatorial appointee would have to leave his office following a single committee vote, but would then enter a state of limbo under which he might later resume that same office if the committee changed its vote, or the full

chamber overrode it. R. 862. A single appointee thus might have to leave and resume office multiple times while the General Assembly considered his confirmation, causing serious disruption to the work of the Commonwealth's agencies. And during the interim period after a committee's non-final "refusal," the Governor would be put to the choice of withdrawing the appointee, despite the General Assembly's ongoing consideration, or leaving the office to sit empty until the General Assembly either took further action or adjourned. This interpretation turns the Refusal Clause on its head: the Clause provides that an appointee can begin service immediately upon appointment and serve until "*after* the General Assembly shall have refused to confirm his appointment." Const. art. V, § 11 (emphasis added). Instead, under the circuit court's interpretation, following a single committee vote, the appointee *cannot* serve until the General Assembly votes to confirm. This "curious, narrow or strained construction" should be rejected in favor of "the plain, obvious and rational meaning" of the clause. *Commonwealth v. Delaune*, 302 Va. 644, 655 (2023).

Also, under the circuit court's reading, it is unclear why the adverse committee vote would even be necessary to trigger the Refusal Clause. In the court's view, "[t]he failure to secure an affirmative majority vote in either chamber . . . constitute[s] a refusal of the General Assembly to confirm the subject appointee." R. 860. But that would mean the General Assembly has "refused" every appointee up until the time it confirms, gutting the Governor's authority to fill vacancies temporarily

pending confirmation. Const. art. V, § 11; see *id*. § 7; Code § 2.2-2830(A) (providing that "a vacancy . . . in any state office . . . shall be filled by the Governor," and "the appointee shall temporarily hold such office" pending confirmation by the General Assembly). The circuit court appeared to require "some manifestation of an unwillingness to comply with the request" to confirm appointees. R. 863. But it is entirely unclear what would count as a "manifestation," potentially casting doubt on the legitimacy of a host of actions by pending appointees. Again, these problems disappear under the plain text of the Clause, which imposes a bright-line rule that the General Assembly's refusal must be completed and final.

Ultimately, Plaintiffs seek an improper shortcut around the constitutionally prescribed mechanisms for the General Assembly to refuse to confirm the Appointees. As Plaintiffs assert that the General Assembly remains in session, it could hold floor votes on the Appointees. Or it could adjourn the special session *sine die*. Yet Plaintiffs have pursued neither course, instead choosing to bring this unprecedented lawsuit. Plaintiffs cannot have it both ways. A vote of eight legislators in one chamber is not a refusal "by the General Assembly" while the session remains open. Const. art. V, § 11. The Court should vacate the preliminary injunction.

IV. The balance of hardships and public interest weigh against the preliminary injunction

Finally, this Court should vacate the preliminary injunction because the bal-

ance of hardships and public interest weigh against it. Rule 3:26(d)(ii)–(iii). A central purpose of a preliminary injunction is "to preserve the status quo between the parties while litigation is ongoing." *May v. R.A. Yancey Lumber Corp.*, 297 Va. 1, 18 (2019). But the circuit court's preliminary injunction disrupts the status quo, compelling the Rectors to take the unprecedented step of barring participation by board members who have been serving for months—a step they do not have the legal power to take. See pp. 7–8, *supra*. Preliminary relief also thrusts the judiciary into the still-evolving legislative process, which could otherwise produce an undisputed confirmation or refusal of the Appointees without the need for courts to intervene. See, *e.g.*, R. 514–15, 517 (describing legislators' intent to pursue confirmation).

The circuit court did not seriously grapple with those considerations, instead collapsing its analysis of the balance-of-hardships and public-interest factors into its view of the merits. R. 863–64. But these equitable factors can support denial of the "extraordinary remedy" of a preliminary injunction apart from the merits. *Levisa Coal Co. v. Consolidation Coal Co.*, 276 Va. 44, 60 (2008); *cf. Winter v. NRDC*, 555 U.S. 7, 26–33 (2008). Here, the strong public interest in the orderly governance of public universities and the hardships that would result from disrupting the status quo weigh decisively against a preliminary injunction.

CONCLUSION

This Court should grant the petition and vacate the preliminary injunction.

Respectfully submitted,

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August 11, 2025

CERTIFICATE

Pursuant to Rule 5:17A(c), I certify that:

1. The petitioners are Charles Stimson, Rector of the Board of Visitors of George Mason University; James P. Inman, President of the Board of Visitors of the Virginia Military Institute; and Rachel Sheridan, Rector of the Board of Visitors of the University of Virginia.

2. Counsel for the petitioners are:

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3. The respondents are L. Louise Lucas, Aaron R. Rouse, Russet W. Perry, R. Creigh Deeds, Adam P. Ebbin, Schuyler T. VanValkenburg, Jennifer D. Carroll Foy, Saddam Azlan Salim, and Kannan Srinivasan.

4. Counsel for the respondents are:

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5. On August 11, 2025, this petition was filed via VACES, and copies were delivered to counsel for the respondents via email at the addresses listed above.

6. This petition complies with Rule 5:17A(c)(i) because it does not exceed 20 pages.

7. The copy of the record being filed with this petition is an accurate copy of the record of the circuit court and contains everything necessary for a review of the petition.

/s/ *Erika L. Maley*
ERIKA L. MALEY (#97533)
Solicitor General