



COMMONWEALTH of VIRGINIA

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January 17, 2026

The Honorable Marcus B. Simon
Thirteenth District
Virginia House of Delegates
201 North 9th Street
General Assembly Building
Richmond, Virginia 23219

Dear Delegate Simon:

I am responding to your request for an official advisory Opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You inquire when the proposed constitutional amendment to Article II, § 6 of the Constitution of Virginia first agreed to by the Senate and House of Delegates on October 31, 2025, should next be considered by the General Assembly.¹ Specifically, you ask when did or will the next general election of members of the House of Delegates take place after the proposed constitutional amendment was agreed to on October 31, 2025, in accordance with the requirement in Article XII, § 1 of the Constitution of Virginia that, after being agreed to by the General

¹ 2024 Va. Acts Spec. Sess. I ch. 5. House Joint Resolution 6007 was agreed to by a majority of the members of the Senate and a majority of the members of the House of Delegates on October 31, 2025 (<https://lis.virginia.gov/bill-details/20242/HJ6007>) (last visited January 2, 2026).

Assembly, a proposed constitutional amendment must be “referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates.”²

Response

It is my opinion that the plain language of the Constitution of Virginia definitively answers your question, and the next general election of members of the House of Delegates held after October 31, 2025, occurred on November 4, 2025.³ That means, for purposes of Article XII, § 1 of the Constitution of Virginia, the proposed amendment must be referred to the 2026 regular session of the General Assembly.

Applicable Law and Discussion

Article XII, § 1 of the Constitution of Virginia sets out the process for how constitutional amendments must be adopted by the General Assembly in order for such amendments to be submitted to the voters of the Commonwealth for approval.

Any amendment or amendments to this Constitution may be proposed in the Senate or House of Delegates, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, the name of each member and how he voted to be recorded, and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates. If at such regular session or any subsequent special session of that General Assembly the proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the voters qualified to vote in elections by the people, in such manner as it shall prescribe and not sooner than ninety days after final passage by the General Assembly. If a majority of those voting vote in favor of any amendment, it shall become part of

² Va. Const. art. XII, § 1. The General Assembly will commence its 2026 regular session on January 14, 2026. Va. Const. art. IV, § 6.

³ The time of the general election of members of the House of Delegates is set forth in Art. IV, § 3 of the Constitution of Virginia. *See infra* notes 6-8 and the accompanying text.

the Constitution on the date prescribed by the General Assembly in submitting the amendment to the voters.⁴

The requirements set out in Article XII, § 1 of the Constitution of Virginia are mandatory. Further, the Supreme Court of Virginia has held that “strict compliance with these mandatory provisions is required in order that all proposed constitutional amendments shall receive the deliberate consideration and careful scrutiny that they deserve.”⁵

The answer to whether the proposed constitutional amendment agreed to on October 31, 2025, must be referred to the 2026 regular session of the General Assembly turns on the phrase “next general election of members of the House of Delegates” as used in Article XII, § 1 of the Constitution of Virginia. That is, what is the date of the next general election held after the proposed amendment was agreed to on October 31, 2025.

We need look no further than the provisions of the Virginia Constitution to answer this question. Article IV, § 3 of the Constitution of Virginia definitively fixes the date of the general election of members of the House of Delegates.

*The House of Delegates shall consist of not more than one hundred and not less than ninety members, who shall be elected biennially by the voters of the several house districts on the Tuesday succeeding the first Monday in November.*⁶

Article IV, § 3 of the Constitution of Virginia unequivocally establishes that House members are elected every two years “on” the Tuesday succeeding the first Monday in November.” In the context of Article IV, § 3 of the Constitution of Virginia, “on” is preposition “used as a function word to indicate a time frame during which something takes place”.⁷ Thus, according to the Constitution of Virginia, the general election of members of the House of Delegates takes place on the Tuesday succeeding the first Monday in November, and at no other time.⁸

“When constitutional language is clear and unambiguous, a court must give the language its plain meaning and is not allowed to resort to legislative history or other extrinsic evidence.”⁹ It is difficult to conceive of a provision clearer and more unambiguous as the one setting the date of

⁴ Va. Const. art. XII, § 1. *See also* Va. Code Ann. § 30-19. In addition, although not implicated by your inquiry, the Constitution of Virginia may also be amended through a constitutional convention called for by the General Assembly. Va. Const. art. XII, § 2.

⁵ *Coleman v. Pross*, 219 Va. 143, 154 (1978).

⁶ Va. Const. art. IV, § 3 (emphasis added).

⁷ Merriam-Webster.com Dictionary, <http://www.merriam-webster.com/dictionary/on> (last visited January 2, 2026).

⁸ See 1981-82 Op. Va. Att'y Gen. 85, 86 (emphasis in original) (construing Article XII, § 1 and Article IV, § 3 of the Constitution of Virginia together and noting that a general election for purposes of Article XII, § 1 “is one held automatically on Tuesday after the first Monday in November”). *See also* I A. Howard, *Commentaries on the Constitution of Virginia* 472-73 (1974) (emphasis added) (“Section 3 provides for (1) the number of delegates (not more than one hundred nor fewer than ninety), (2) their term (two years), (3) their constituents (voters of their respective districts), and (4) the date of their election (the Tuesday succeeding the first Monday in November).”).

⁹ *Scott v. Commonwealth*, 247 Va. 379, 384 (1994). *See also* *Town of Madison v. Ford*, 255 Va. 429, 432 (1998) (“if a constitutional provision is plain and unambiguous, we do not construe it, but apply it as written.”).

the election of members of the House of Delegates contained in Article IV, § 3 of the Constitution of Virginia.¹⁰

Therefore, in accordance with the plain language of the Constitution of Virginia, the next general election of members of the House of Delegates occurring after the proposed constitutional amendment was agreed to on October 31, 2025, was held on November 4, 2025.¹¹ Under the terms of Article XII, § 1, the proposed amendment must now be referred to the “first regular session” held after such election, i.e, the 2026 regular session of the General Assembly.

It would violate the basic canons of constitutional construction to interpret the “general election of members of the House of Delegates” language used in Article XII, § 1 without giving due consideration to all the related provisions in the Constitution of Virginia. “The constitution must be viewed and construed as a whole, and every section, phrase and word given effect and harmonized if possible.”¹² Hence, the term “general election of members of the House of Delegates” used in Article XII, § 1 cannot be read in a vacuum to manufacture ambiguity where none exists. Instead, it necessarily must be read in conjunction with provisions in Article IV, § 3 that definitively fix the date of the House election.¹³

¹⁰ Indeed, until recently, this Office has opined in regard to proposed constitutional amendments that the general election of members of the House of Delegates takes place on the Tuesday succeeding the first Monday in November. *See, e.g.*, 1993 Op. Va. Att'y Gen. 33, 44 note 5 (emphasis added) (“Article XII, § 1 requires that proposed amendments to the Constitution agreed to by the General Assembly at one session must again be referred to the General Assembly ‘at its first regular session held after the next general election of members of the House of Delegates.’ *A general election of members of the House of Delegates occurred in November 1993.*.”); 1981-82 Op. Va. Att'y Gen. 84, 85 (“The ‘next general election’ of the members of the House of Delegates following the 1981 regular session was November 1981. Accordingly, I am of the opinion that an amendment to the Constitution agreed upon by the 1981 session of the General Assembly may be referred to the 1982 session of the General Assembly for consideration.”). *See also* 1981-82 Op. Va. Att'y Gen. 85 *supra* note 8.

¹¹ See Va. Code Ann. § 24.2-215. The Constitution of Virginia is silent as to the year in which a House of Delegates election occurs. However, the Constitution of 1971 preserved the term of office of all incumbents who were in office when the Constitution became effective, which means such elections continue to take place in odd-numbered years in the same manner as before. Va. Const. sched. §2. *See also* I Howard at 475.

¹² *Dean v. Paolicelli*, 194 Va. 219, 226 (1952). *See also* *Swift & Co. v. Newport News*, 105 Va. 108, 114 (1906) (“Constitutional provisions, *in pari materia*, like statutes are to be construed together, and effect is to be given to the policy established by the Constitution.”).

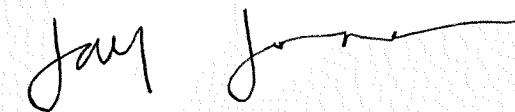
¹³ Virginia’s absentee voting laws do not, and, moreover, cannot, alter the absolute fact that the date of the general election of members of the House of Delegates is fixed in Article IV, § 3 of the Constitution of Virginia. Statutes cannot alter, redefine, or supersede a constitutional provision. *See, e.g.*, *Black v. Trower*, 79 Va. 123, 125 (1884) (“For if a right conferred by the constitution were not beyond the reach of legislative interference, the constitutional guarantees would be a dead letter, and the legislature instead of being controlled by, would be superior to the constitution, and unrestrained in the exercise of its power.”).

Furthermore, absentee voting in Virginia is not new. Some form of absentee voting has been allowed in Virginia for over 150 years. The first absentee voting laws were enacted in 1863, 1863 Va. Acts ch. 36, and Virginia’s current absentee voting laws can be traced back to 1916. 1916 Va. Acts ch. 369. Notably, the 1916 law permitted a voter to apply to vote absentee 60 days prior to the date of an election, which obviously exceeded the current 45-day absentee voting period. *See* Va. Code Ann. §§ 24.2-612, 24.2-701.1, 24.2-707, and 24.2-707.1. The current 45-day absentee voting period has been in place since 1984. 1984 Va. Acts ch. 480. The General Assembly has the constitutional authority to determine how absentee voting is conducted in the Commonwealth, Va. Const. Art. II, § 3, but this authority does not extend to altering the date of the election. *See* *Moore v. Pullem*, 150 Va. 174, 196 (1928) (upholding

Conclusion

Accordingly, it is my opinion that, in accordance with requirement in Article XII, § 1 of the Constitution of Virginia that a proposed constitutional amendment must be referred to the “first regular session held after the next general election of members of the House of Delegates, the proposed constitutional amendment agreed to by the General Assembly on October 31, 2025, must be referred to the 2026 regular session of the General Assembly since next general election of members of the House of Delegates occurring after October 31, 2025, took place on November 4, 2024, i.e., the Tuesday after the first Monday in November 2025 as provided for in Article IV, § 3 of the Constitution of Virginia.¹⁴

Sincerely,



Jay Jones
Attorney General

Virginia’s absentee voting laws and noting that there is no requirement in the Constitution of Virginia “that the voter must be personally present to tender his ballot on the day of election[.]”).

¹⁴ In addition to the requirement that there be a general election of members of the House of Delegates before a proposed constitutional amendment can be considered for final adoption by the General Assembly, Article XII, § 3 of the Constitution of Virginia also imposes a 90-day waiting period between the final approval of a proposed amendment by the General Assembly and the submission of the amendment to the voters. This 90-day waiting period was included in the Constitution of Virginia of 1971 in lieu of the three-month publication requirement contained in § 196 of the Constitution of Virginia of 1902. Del. D. French Slaughter, Jr., *Proceedings and Debates of the House of Delegates Pertaining to Amendment of the Constitution* 496 (1969). Cf. Commission on Constitutional Revision, *Report of the Commission on Constitutional Revision* 75, 324-325, 450 (1969). Although excised from the Constitution of Virginia, the vestiges of this previous three-month publication requirement can still be seen in § 30-13 of the Code of Virginia, the predecessor of which was first enacted in 1927 when the Constitution of 1902 was still in effect. 1927 Va. Acts ch. 109. As it did when enacted in 1927, § 30-13 of the Code of Virginia provides that the Clerk of the House of Delegates must publish and distribute copies of any proposed constitutional amendment to the clerks of the respective circuit courts. Va. Code Ann. § 30-13. In turn, the clerks of the circuit courts are directed to post one copy of the proposed amendment at the doors of their courthouses at least three months prior to the next general election of members of the House of Delegates. Va. Code Ann. § 30-13. However, the affirmative removal of the three-month publication requirement from the Constitution of Virginia of 1971 in favor of the 90-day waiting period necessarily means that any failure to comply with the publication provisions of § 30-13 cannot serve as a basis for challenging the legitimacy of a constitutional amendment. See II Howard at 1175 (“Section 1 does not require publication of amendments, only a delay of ninety days. Section 196 of the 1902 Constitution required that after an Assembly’s first approval of a proposed amendment, the amendment must be ‘published’ for three months before the next election of delegates. When at the 1969 session the Assembly dropped the publication requirement and instead inserted into section 1 the ninety-day delay, it avoided what otherwise could have been a troublesome problem of what the law means by ‘publication.’ Since section 1 does not require publication, an amendment cannot be challenged on the ground that publication was insufficient.”).