March 26, 2026

The Honorable Abigail Spanberger
Governor of Virginia
1111 East Broad Street
Richmond, VA 23219

Re: Senate Bill 229 & House Bill 449 – Class Action Lawsuits in Virginia Courts

Dear Governor Spanberger:

On behalf of Virginia's business community, thank you for your service to the Commonwealth. The undersigned organizations are invested in ensuring the Commonwealth remains a top state for business and a leading state for economic growth and job creation. We know you share those goals, and in that spirit, we write to respectfully urge you to veto Senate Bill 229 and House Bill 449, which would allow class action lawsuits in Virginia courts. While the legislation is presented as a reform, these bills in their current form would fundamentally alter Virginia's civil justice system. As enrolled, the legislation would expose Virginia businesses, nonprofits, and other entities to expansive, unpredictable, and costly litigation risk. Should you determine a veto is not feasible, we respectfully urge you to recommend the following amendments in their totality.

Virginia has, appropriately, long refrained from authorizing class actions. This restraint has served the Commonwealth well by ensuring a fair, predictable, and stable legal climate that discourages speculative, costly litigation while still preserving meaningful avenues for individual claims. For decades, this balance has played a vital role in ensuring Virginia's reputation as a top state for business.

Senate Bill 229 and House Bill 449 are a sweeping departure from that longstanding policy. Unlike Rule 23 of the Federal Rules of Civil Procedure (FRCP), the legislation creates a novel and untested regime for class certification and lacks sufficient safeguards to screen weak or overly broad claims before certification. Virginia law should mirror federal procedures in this regard, as without these safeguards defendants will face significant legal exposure even when claims are legally or factually deficient. Meaningful early merits review, particularly through robust summary judgment, is essential before class actions can proceed at the federal level. We respectfully urge you to make all amendments necessary to conform the bills to FRCP Rule 23.

First, the bills amend § 59.1-204 of the Code of Virginia, within the Virginia Consumer Protection Act (VCPA), to allow plaintiffs to recover statutory damages on a "per violation" basis. This is a substantial departure not only from existing Virginia law, but also from similar provisions in most other states. Awarding statutory damages on a "per violation" basis, particularly without defining the term, would impose disproportionate and potentially catastrophic liability on Virginia businesses of all sizes and in all industries. We urge you to strike that language from the enrolled bill in lines 181 and 183 and ensure the third enactment clause is declarative of existing law.

We would also respectfully urge you to strike the second enactment clause of the bill, which would apply the provisions of the bill to retroactive actions. As noted above, permitting class action lawsuits in Virginia for the first time would already be a massive, substantive change to the law. As such, this change should only be applied prospectively. Applying the legislation retroactively to conduct occurring before the bill's effective date of January 1, 2027, would not only be arguably unconstitutional and, regardless, manifestly unfair to Virginia businesses, our court system, and other potential defendants who would be subject to new potential liabilities for past alleged conduct.

Proposed § 8.01-267.13(C) also deviates from established federal precedent relating to procedures used to calculate attorney fees in class actions. In federal class actions, attorney fees are typically calculated by use of the "lodestar method;" reasonable time spent by counsel multiplied by a reasonable hourly rate. In certain cases involving a finite amount of money in a common fund, fees may be calculated based on a reasonable percentage of the fund. Courts also use the other method as a cross-check to ensure the fee is reasonable under the particular facts of a case. The bills make no reference to the lodestar method, nor do they define the term "common fund." Instead, the legislation states, "the court may award attorney fees as a percentage of the common fund, if applicable" at lines 99–100 of the enrolled bill. We respectfully urge you to strike this language as it is vague, confusing, and almost certain to result in failure to use, or a misapplication of, the proper recognized criteria for determining reasonable attorney fees in class actions.

Next, we would respectfully urge you to consider amending the legislation to provide the provisions of § 8.01-420(A) are not applicable to class actions conducted pursuant to the proposed chapter. Already, Virginia is unique among the states in its broad prohibition on the use of depositions in motions for summary judgment. Failing to allow deposition-based summary judgment for class actions would catastrophically undermine Virginia's business legal climate and discourage economic growth and development. Class actions only work in federal courts, and in other states, because of the existence of robust, deposition-based, summary judgment. This mechanism allows defendants and courts alike to trim or eliminate substantively meritless cases that may procedurally qualify for a class action. Without meaningful summary judgment, courts will be required to determine a class before considering the merits of a claim. This is certain to result in a deluge of unnecessary trials, which would impose a substantial burden on Virginia's judicial system. We therefore respectfully urge you to further amend the legislation to provide that, for class actions brought pursuant to this chapter, summary judgment shall be available on the same terms as found in Rule 56 of the FRCP, including but not limited to the use of depositions, where there is no genuine dispute of fact. Anything less than this would create a class action regime structurally incapable of filtering meritless claims before trial, a safeguard which is fundamental to the integrity of the system the legislation seeks to create.

Turning back to the VCPA, another amendment to § 59.1-204 creates new subsection E on lines 199–201 of the enrolled bills. This language would eliminate the reasonable reliance requirement under the VCPA. The Supreme Court of Virginia (and courts in other states with similar statutes) has consistently held that for a valid claim a consumer plaintiff must have

reasonably relied upon the prohibited practice or representation. Reasonable reliance is the appropriate and easily understood element of causation in VCPA claims: if a plaintiff did not rely on the allegedly wrongful conduct, then that allegedly wrongful conduct did not cause the alleged injury. We contend that this language is an attempt to lower the standards for VCPA cases, and as it relates to class actions would be used by plaintiffs' attorneys to artificially inflate the value of claims. Removing the reasonable reliance requirement would upend long-established precedent and would tilt the balance of the legal system in this regard towards plaintiffs. Even without class actions, this change is manifestly unfair to Virginia businesses. With class actions, this change would subject businesses to potentially catastrophic liability. We respectfully urge you to remove §59.1-204(E).

Next, in proposed § 8.01-267.10(B)(3), the legislation deviates from FRCP Rule 23(b)(3) relating to the procedures for certifying a class. Although this section parallels several relevant factors used to determine whether common issues predominate over individual issues, the added language under romanette v ("the practical ability of individual class members to pursue their claims without certification") is novel and overly plaintiff friendly. We are gravely concerned this provision would be abused to suggest that any modestly valued case should become a class action. Moreover, adding this language will create confusion even for litigants with experience operating under the FRCP. We respectfully urge you to strike this language from the legislation and add "and" prior to romanette iv on line 35.

Finally, as you know, Virginia has added and enhanced numerous private rights of action in recent years which—even in the absence of class actions—has had a negative impact on the cost of doing business in our Commonwealth. With the addition of class actions, many of these provisions (particularly those without meaningful safe-harbors or rights to cure), could be devastating to Virginia businesses. As such, if this policy is to move forward, we would respectfully request that it be delayed both so that our courts and businesses can prepare and, moreover, so that the General Assembly might have time to review our existing remedies on a variety of statutes to ensure that they are appropriate in a legal system in which class actions are a possibility.

Each of the changes described above is essential to reducing unintended consequences, clarifying legislative intent, and helping preserve Virginia's balanced civil justice system. We respectfully urge you to veto these bills. Should you choose to sign the legislation, the legislation must include all of these amendments to preserve Virginia's balanced and fair civil justice system.

Even with these amendments, allowing class action lawsuits in Virginia courts is likely to create a substantial burden on Virginia's judges, clerks, and other judicial staff. We believe steps can be taken to alleviate this burden and would respectfully request you further amend Senate Bill 229 and House Bill 449 to add language consistent with Senate Bill 369, which passed the Senate by a vote of 36–3, and House Bill 604 from the 2026 session. Doing so would create a process by which the Chief Justice of the Supreme Court of Virginia may assign a judge with relevant experience and background to preside over certain business litigation actions. Establishing a business litigation docket, which more than 30 other states have done, serves two key goals. First, allowing a judge with relevant expertise to preside over designated cases

allows for a more efficient allocation of limited judicial resources, improving resolution timelines for all cases in the system. Second, a business court docket will create consistency in adjudication in the long-term, producing a coherent body of precedent on commercial law issues, minimizing contradictory rulings, and promoting legal certainty for businesses across the Commonwealth.

Thank you for your consideration of this letter and for your leadership in safeguarding Virginia's legal and business climate.

Respectfully submitted,

Virginia Chamber of Commerce
Virginia Retail Federation
Virginia Maritime Association
Virginia Hospital & Healthcare Association
Virginia Automobile Dealers Association
Virginia Food Industry Association
Virginia Assisted Living Association
Virginia Hispanic Chamber of Commerce
Virginia Trucking Association
Council of Independent Colleges in Virginia, Inc.
Associated Builders and Contractors – Virginia Chapter
National Federation of Independent Business (NFIB)
American Property Casualty Insurance Association
National Veteran Small Business Coalition
Blackstone Chamber of Commerce
Bristol TN/VA Chamber of Commerce
Central Fairfax Chamber of Commerce
ChamberRVA
Culpeper Chamber of Commerce
Fredericksburg Regional Chamber of Commerce
Greater Augusta Chamber of Commerce
Hampton Roads Chamber of Commerce
Hampton Roads Utility and Heavy Contractors Association
Loudoun Chamber of Commerce
Louisa Chamber of Commerce
Lynchburg Regional Business Alliance
Mount Vernon-Springfield Chamber of Commerce
New Kent Chamber of Commerce
Northern Virginia Chamber (NVC)
Roanoke Regional Chamber of Commerce
Shenandoah County Chamber of Commerce
Southern Virginia Chamber of Commerce
Top of Virginia Regional Chamber
Virginia Peninsula Chamber of Commerce
Charles G. Meyer, O'Hagan Meyer PLLC
A Touch of Grace Healthcare
Augusta Health
ECPI University
Hourigan
InterChange Group, Inc.
MI Technical Solutions
Perdue Farms
PRA Group
Standard Communities
Volkswagen Group of America