

Dear Senator Surovell,

I have appealed to VMI's legal counsel, Pat O'Leary, who advises us to follow the advice of the Attorney General on this matter (attached). I do not believe it's fair to put universities and their boards in the middle of this, and I hope that you and the Governor can cool this down.

We are losing good, qualified board members, not radical partisans, and VMI is the loser here. Look at our record. Our BOV is not radical, and I honestly can't understand why we were singled out last January and then again now, losing five good members. Our Board made a performance-based decision not to extend the contract of our Superintendent, and our detractors have tried to make this political and/or racist. Our record doesn't reflect either. We have not touched our Inclusive Excellence office, unlike most State schools, and are still researching the law to make sure we stay in compliance. We have not pursued any agenda other than raising the standards of performance across all elements of VMI, and again, I ask for evidence of any other agenda or improper activity on our part.

I would like to think that, come January and elections are over, everyone can put politics aside and judge each appointee on their own merit. I don't see the harm in waiting until then. For VMI, our BOV will vote on a new Superintendent hopefully in the next few months and focus on some important budget issues. The three BOV members in question will be very helpful in this process. If we can't have them, and the governor has to give us seven new members in July instead of four, then that's not helpful for the Commonwealth or VMI.

Sincerely,

Thomas E. Gottwald
President
VMI Board of Visitors



COMMONWEALTH of VIRGINIA

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June 11, 2025

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Charles Stimson, Rector
George Mason University

Robert D. Hardie, Rector
University of Virginia

Edward Baine, Rector
Virginia Polytechnic and State
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Dear Rectors of Virginia's Institutions of Higher Education:

The Office of the Attorney General is aware of a June 9, 2025, letter addressed to you from Senator Scott A. Surovell regarding appointments made by Governor Glenn Youngkin to certain of your institutions' boards of visitors.¹ In it, Senator Surovell incorrectly claims that "the General Assembly has refused to confirm" these appointees. This false statement appears designed to mislead you into thinking that the General Assembly as a whole has taken action when in fact it has not. Citing no authority for his claim, the Senator goes on to offer you guidance that is legal in nature.

The Attorney General, not Senator Surovell or any component of the General Assembly, is the chief executive officer of the Commonwealth's Department of Law and counsel to Virginia's public institutions of higher education. Code §§ 2.2-500; 2.2-507. It is true that gubernatorial appointees to your institutions'

¹ This Office is also aware of a June 11, 2025 letter from the Clerk of the Senate, sent at the direction of the Chair of the Senate Committee on Privileges and Election, appearing to imply that the Committee's action is the final word on this matter. Notwithstanding the Committee's action, for the reasons stated in this letter, the appointees mentioned remain members of the boards of visitors to which they were appointed.

boards of visitors are subject to confirmation by the General Assembly.² Code § 23.1-1300. Each remains in his or her respective office until either (1) confirmation of the appointment is “refused by the General Assembly” should the legislature be in session, Va. Const. art. V, § 11, or (2) until “thirty days after commencement of the next session” if the appointment is made when the legislature is in recess. Code § 2.2-2830. As neither of these circumstances exists with respect to the appointees referenced in the letter, it is this Office’s conclusion that each of those eight appointees remain members of the respective board of visitors. Indeed, absent these circumstances, “[m]embers appointed by the Governor to the governing board of a public institution of higher education shall continue to hold office until their successors have been appointed and qualified.” Code § 23.1-1300.

To conclude that a confirmation has been refused, a finding must be made that it has been “refused by the General Assembly.” The plain language of Article V, § 11 thus requires more than action by a single committee of one house of the General Assembly. Article IV, § 1 makes clear that “[t]he legislative power of the Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and House of Delegates.” The authority to refuse a confirmation thus rests with the General Assembly as a whole, not a Senate committee. As this Office has noted, the “concept of bicameralism is firmly entrenched in our history.”³ And where, as here, a constitutional provision expressly calls for bicameral action, the plain language of the Constitution must be given effect. *See Thomson v. Robb*, 229 Va. 233, 241 (1985).

The recommendation of a Senate committee cannot be elevated to an act of the General Assembly.⁴ Therefore, at this stage, it is premature to conclude, as a matter of law, that the General Assembly has refused the pending confirmations. Accordingly, I advise you that the eight appointees referenced in Senator Surovell’s June 9, 2025, letter remain members of the boards of visitors of the institutions to which they were appointed. Each of these appointees continues to be fully vested with the rights and responsibilities conferred upon a member of a board of visitors.

Although Senator Surovell makes other questionable assertions in his letter, I address herein only the issue of continued board membership given the exigency of the matter. As your counsel, the Attorney General’s Office will continue to monitor this and related issues as they develop and advise you accordingly.

United in service to our Commonwealth, I remain

Very truly yours,



Jason S. Miyares
Attorney General

² Appointees to the board of visitors of Virginia Polytechnic Institute and State University need only be confirmed by the Senate. *See* Code §§ 23.1-1300; 23.1-2601. No such appointees were addressed by Senator Surovell.

³ 1984-85 Op. Va. Att’y Gen 289, 291 (citing generally I A.E. Dick Howard, *Commentaries on the Constitution of Virginia* 465 *et seq* (1974)).

⁴ Moreover, I understand that, here, there are additional foundational questions as to whether the matter was properly before the committee.