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HOUSE RESOLUTION NO. 566

Offered September 16, 2014

Authorizing the Speaker of the House of Delegates to employ legal counsel to represent the House of Delegates (i) to halt any attempt by the Governor to expand the Medicaid program without the explicit approval of the General Assembly and (ii) in litigation involving a challenge of the constitutionality of Article I, Section 15-A of the Constitution of Virginia.

Patrons—Cole, Marshall, R.G., Adams, Bell, Richard P., Fowler, Landes, LaRock, Lingamfelter, Orrrock and Wright

Referred to Committee on Rules

WHEREAS, the Constitution of Virginia is the fundamental law of the Commonwealth; and

WHEREAS, since the inception of Virginia as a colony in 1607, marriage has always been the union of one man and one woman; and

WHEREAS, though it did not change the definition of marriage in Virginia, the House of Delegates twice voted to approve an amendment to the Constitution of Virginia to add Section 15-A to Article I, which is popularly known as the Marriage Amendment; and

WHEREAS, the people of Virginia voted in 2006 to ratify the Marriage Amendment and place the Commonwealth's enduring definition of marriage into the Constitution of Virginia; and

WHEREAS, Virginia's marriage laws have been challenged in federal court as violating the United States Constitution; and

WHEREAS, the Office of the Attorney General of Virginia initially filed a vigorous defense of the constitutionality of Virginia's marriage laws; and

WHEREAS, upon assuming office as Attorney General of Virginia in January 2014, Mark Herring announced that his office would no longer defend Virginia's marriage laws, declined to employ special counsel to defend those laws in his place in accordance with Virginia law, and improperly filed a position statement on behalf of the Commonwealth arguing that Virginia's marriage laws violated the United States Constitution; and

WHEREAS, under the Constitution of Virginia, an Attorney General possesses no inherent powers, but only those granted by laws enacted by the General Assembly; and

WHEREAS, the General Assembly has not granted the Attorney General the power to continue representing the Commonwealth, its agencies, or its officers after deciding not to defend a provision of the Constitution of Virginia or legislation enacted by the General Assembly, nor has the Attorney General been granted the power to assert in litigation that a provision of the Constitution of Virginia or the laws of Virginia violate the Constitution or laws of the United States in the absence of a final and definitive ruling to that effect by the United States Supreme Court; and

WHEREAS, after announcing that he would not defend the Commonwealth's centuries-old marriage laws and the Marriage Amendment and when he continued to purport to represent the Commonwealth, Attorney General Herring acted without authority and in violation of the Constitution of Virginia and the laws of the Commonwealth when he failed to employ special counsel to defend those laws and submitted a position statement in the federal litigation challenging Virginia's marriage laws, in which he asserted that those laws violate the United States Constitution; and

WHEREAS, the Governor of Virginia has refused to exercise the authority granted to him by § 2.2-510 of the Code of Virginia to employ special counsel to defend the constitutionality of Virginia's marriage laws; and

WHEREAS, the judgment of the federal district court in the challenge to Virginia's marriage laws, which declared that those laws violate the United States Constitution, has been appealed to the United States Court of Appeals for the Fourth Circuit; and

WHEREAS, the decision of the United States Court of Appeals for the Fourth Circuit involving the challenge to Virginia's marriage laws is likely to be presented to the United States Supreme Court for review regardless of the outcome of the appeal; and

WHEREAS, the Governor has announced his determination to expand Virginia's Medicaid program even without legislative authorization to do so; and

WHEREAS, the House of Delegates and the Commonwealth of Virginia have a strong and independent interest in defending the constitutionality of Virginia's marriage laws as well as preserving the separation of powers required by the Constitution of Virginia; now, therefore, be it

RESOLVED by the House of Delegates, That the Speaker of the House hereby be authorized and instructed to employ legal counsel to represent the House of Delegates in state courts, removing

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58 Attorney General Mark Herring from his improper role in challenging Virginia's marriage laws, and to
59 take all steps for the House of Delegates to present the position of the Commonwealth in pending
60 litigation involving the challenge to the constitutionality of Virginia's marriage laws; and, be it

61 RESOLVED FURTHER, That the Speaker of the House hereby be authorized and instructed to
62 employ legal counsel to represent the House of Delegates in addressing any unconstitutional or illegal
63 attempt by the Governor to expand Medicaid without the authorization of the General Assembly, which
64 authorization has been explicitly withheld from the Governor; and, be it

65 RESOLVED FURTHER, That the Clerk of the House of Delegates transmit a copy of this resolution
66 to William J. Howell, the Speaker of the House.