The Majority Opinion: Justices /u/jjeaglehawk, /u/TowerTwo

SUPREME COURT OF THE COMMONWEALTH OF CHESAPEAKE

/u/Oath2Order v. Eastern State (*In re: A.037, the Third Constitution of the Commonwealth of Chesapeake*)

No. 17-02

Certiorari granted: 11/19/2017
Decision issued: 12/15/2017

Justice /u/TowerTwo and Chief Justice /u/JJEagleHawk announced the judgment of the Court and delivered an opinion. Justice /u/ModeratePontifex respectfully dissents.

Before the Court is a challenge by /u/Oath2Order ("Petitioner") of Eastern Commonwealth EC-A.037, an action to implement the Third Constitution of the Commonwealth of Chesapeake by the Eastern Commonwealth General Assembly. Petitioner argues that this action was procedurally and improperly enacted as an Amendment under Article II, rather than as a replacement of the Second Constitution of Chesapeake under Article XVII. Petitioner asks that the Third Constitution be held invalid, along with all actions and elections taken since its enactment. As set forth below, this Court agrees that the Third Constitution was improperly passed and that the Commonwealth must immediately revert to governing under the provisions set forth in the Second Constitution, as properly amended. However, this Court declines to invalidate any action taken under the Third Constitution or remove any official elected thereunder.

I. FACTUAL BACKGROUND AND PROCEDURAL POSTURE

According to the General Assembly Master Spreadsheet,[1] EC-A.037 was received by the State Clerk /u/ZeroOverZero101 and submitted for consideration by the Seventh Assembly on October 17, 2017 as "The Third Constitution of the Commonwealth of Chesapeake." It was listed on the Spreadsheet as an "Amendment" and accordingly numbered in sequence. The Spreadsheet Docket lists /u/ZeroOverZero101 as the sponsor of the action, as does the Bill Discussion for EC-A.037;[2] however, /u/ZeroOverZero101 was not a voting member of the Chesapeake General Assembly, Governor, or Lieutenant Governor at the time it was submitted.[3]

In the Bill Discussion thread for EC-A.037, State Clerk /u/ZeroOverZero twice referred to the action as an "Amendment" and listed himself as the sponsor of same. However, in a top-level comment explained its purpose differently: "[*O]ur constitution has had some issues*

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[1] **7th Assembly Docket Sheet** available here: https://docs.google.com/spreadsheets/d/1JeC1zroKXPWoe6pH0bXlQvfNn1I7aPSryxHDEkOmhKE/edit#gid=502784214
[2] **EC-A.37 Bill Discussion**, available here: https://www.reddit.com/r/ModelEasternState/comments/76g14w/a37_third_constitution_of_the_commonwealth_of/
[3] **7th Assembly Voting Record**, available here**:** https://docs.google.com/spreadsheets/d/1JeC1zroKXPWoe6pH0bXlQvfNn1I7aPSryxHDEkOmhKE/edit#gid=985601637

from the very beginning of the session that have required a new constitution to be written in order to amend these problems. Here, you will find the third constitution of our commonwealth which adds only some minor changes."[4] Expanding on this, Deputy State Clerk /u/Kingthero explained, in a TL/DR,[5] that "*this new constitution adds what we've added via amendments, given extra power to independents, cuts the governor's power in appointments to the d'hont list, vacancy exception to constitutional replacement, and thats it.*"[6] (*sic*). The text of EC-A.037 itself states, in Article I, Section 2, that "*[t]his Constitution shall be known as the 'Third Constitution of the Commonwealth of Chesapeake' and shall take supremacy over all legislation, prior amendments, and all prior constitutions."*

Initially, the vote on EC-A.037 appears to have failed by a vote of 8-1 with no abstentions.[7] However, a second Results thread listed immediately thereafter, EC-A.037 is listed as having passed, 6-1, with 2 members not voting, and no abstentions or governor action.[8] Confusingly, the Spreadsheet Docket lists the Amendment as having passed, but the EC-A.037 column on the Voting Spreadsheet still lists the action as having failed, 8 to 1, with no governor action.

On November 11, 2017, Petitioner requested certiorari so that the constitutionality of EC-A.037 could be reviewed. As set forth by the petition filed in this matter, there are two issues for this Court to consider:

1. Whether A.037 was passed in the proper manner, pursuant to the methods listed in the Second Eastern State Constitution for passing a new Constitution. A.037 was written by and submitted by /u/ZeroOverZero101, as stated on both the Docket and Bill Discussion page. Article XVII of the Second Eastern State Constitution states that "Any Commonwealth of Chesapeake General Assemblyman, Governor, or Lieutenant Governor may propose a constitution to replace the current constitution." /u/ZeroOverZero101, at this time, was none of the aforementioned positions permitted to submit a new Constitution.

2. Whether A.037 met the requirements to have been passed into law, pursuant to the methods listed in Article XVII, Section 6 of the Second Eastern State Constitution. This article states that "If the proposal passes under the conditions stated in Article XVII, Section 3 and is signed by the Governor, the proposed in-sim constitution will replace the current in-sim constitution immediately." Governor /u/ninjjadragon did not sign A.037 into law.

Before ruling on this matter, this Court asked several questions of Petitioner and /u/clads, the Chesapeake Attorney General and duly authorized representative of the State. This Court also

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[4] **/u/ZeroOverZero101 comment**, available here: https://www.reddit.com/r/ModelEasternState/comments/76g14w/a37_third_constitution_of_the_commonwealth_of/dodosw0/.
[5] Too Long, Didn't Read. Some may wish for a TL/DR at the end of this opinion.
[6] **/u/Kingthero comment**, available here: https://www.reddit.com/r/ModelEasternState/comments/76g14w/a37_third_constitution_of_the_commonwealth_of/dodzbwu/
[7] **Bill Results: B.158, A.37, A.23, B.160,** available here: https://www.reddit.com/r/ModelEasternState/comments/76nxft/bill_results_b158_a37_a23_b160/
[8] **Results: A.37, Lt. Governor Confirmation Vote,** available here: _https://www.reddit.com/r/ModelEasternState/comments/77cc46/results_a37_lt_governor_confirmation_vote/

provided ample time for both parties to submit their briefs and rebuttals, and for interested third parties to submit amicus briefs pursuant to Rule 2(d) of the R.P.P.S. With arguments for this matter now concluded, this matter is now ripe for review.

II. CONSTITUTIONAL PROVISIONS RELATING TO GENERAL ASSEMBLY ENACTMENTS

The Chesapeake Constitution has set forth procedures for enactments by the Chesapeake General Assembly that can be separated into a rough hierarchy, with progressively more onerous requirements depending on the type of change to be instituted. As best as this Court can determine, these enactments fall into three categories: “Legislation”, “Constitutional Amendment”, and “Constitutional Replacement.”

The procedures for enacting **Legislation** are set forth in Articles II and III, and includes bills, bill amendments, and resolutions. Procedurally, this is the simplest enactment to create:

- Any member of the /r/ModelUSGov simulation can propose.
- Must be submitted to the State Clerk or Deputy Clerks to reach the floor.
- Passage requires a simple majority of a quorum, and the Lt. Governor can break a tie.
- Discussion must last between 1 day and 3 days.
- Voting sessions must last between 2 days and 5 days.
- The Governor must sign or veto all legislation, with an abstention deemed passage without signature.

Like legislation, the procedures for enacting **Constitutional Amendments** are also set forth in Articles II and III, though the process is distinctly different:

- Any member of the /r/ModelUSGov simulation can propose.
- Must be submitted to the State Clerk or Deputy Clerks to reach the floor.
- Passage requires 2/3rds majority of a quorum, and the Lt. Governor has an ineffective tiebreaker vote.[9]
- Discussion must last between 1 day and 3 days.
- Voting sessions must last between 2 days and 5 days.
- The Governor has NO ROLE or power to approve or disapprove Amendments, and his signature does not appear to be required.

The process for Amendment and Legislation are in all respects identical, except that Amendments require 2/3rds vote and no governor action, while Legislation requires a simple majority and governor action. However, the procedures for enacting **Constitutional Replacements** are very different, and are set forth in a separate section of the Constitution (Article XVII):

[9] Per Article IV(2), the Lieutenant Governor theoretically has a tiebreaker vote in Constitutional Amendments, but this effectively is of no consequence since there are 9 Assembly members and passage requires 2/3rds majority of a quorum. Therefore, there will be no “tie” to break.

- Not just anyone may propose – only Chesapeake General Assemblymen, Governor, or Lieutenant Governor may propose a constitution to replace the current constitution.
- Must be submitted to the State Clerk or Deputy Clerks to reach the floor.
- Passage requires 2/3rds majority, with every member voting and no role for the Lt. Governor.
- Discussion must last between 2 days and 5 days, not 1 to 3.
- Voting sessions must last between 3 days and 6 days, not 2 to 5.
- The Governor must sign or veto. An "abstention" does not equal assent, because the new Constitution can only replace the old one if it "is signed by the Governor."

Clearly, the process to replace a Constitution differs greatly from those processes used to enact legislation or amend constitutions. The questions presented to us require us to determine what kind of enactment the General Assembly intended to pass, and whether it used the proper process in doing so.

III. ANALYSIS

Petitioner argues that EC-A.037 was passed improperly as a Constitutional Replacement, both because it was improperly proposed and because it was improperly passed by the General Assembly. We address both claims below:

a. IMPROPER PROPOSAL

First, Petitioner argues that EC-A.037 was improperly proposed as a Constitutional Replacement because /u/ZeroOverZero101 was not a "Chesapeake General Assemblyman, Governor, or Lieutenant Governor" when he "proposed" EC-A.037 for discussion. The theory here is that /u/ZeroOverZero101 could propose legislation or amendments under Article II, but not Constitutional Replacements under Article XVII.

The Court notes that this argument has *some* merit. /u/ZeroOverZero101 listed himself as the submitter of EC-A.037 in the Bill Discussion Thread for same and mirrored that designation in the Master Spreadsheet. Based solely on that, this process would be invalid under Article XVII. However, /u/Clads and various *amici* noted that Assembly Speaker /u/Jmanrocks was a sponsor of EC-A.037, and as Speaker, /u/Jmanrocks was among those empowered to propose a Replacement Constitution. /u/ZeroOverZero101 was undisputedly the author of EC-A.037, but Article XVII only requires that a Constitutional Replacement be "proposed" by a person empowered to do so. It does not hinge on authorship, or in whose mind the germ of the idea sprouted. In our view, simply expressing on the record an endorsement of a drafted replacement or a desire to see it considered is enough to be deemed a "proposal."

Simply put, we find that "proposing" includes both sponsorship, endorsement, and authorship. The proposal requirements of Article XVII have therefore been met for the purposes of EC-A.037, and Petitioner's objection to the proposal method is rejected.

b. IMPROPER PASSAGE

The harder question posed to this Court is whether EC-A.037 was passed properly. This question is made difficult because there are facts that point both to this enactment being an *Amendment* and it being a *Replacement*. If this Court were to determine that it was an Amendment, it likely would pass muster under the requirements set forth in Part II of this opinion, *supra*, since it passed with a 2/3rds majority and Governor action was not required. If this Court determines that it was a Replacement, it would not pass muster, given that it was not acted upon the Governor as required.

Favoring the **Amendment** interpretation is the fact that EC-A.037 is listed as an Amendment in the Bill Discussion and Docket, it is numbered as an Amendment, and it passed as an Amendment because not everyone voted. Favoring the **Replacement** interpretation is the fact that EC-A.037 I is titled as a replacement ("Third Constitution of the Commonwealth of Chesapeake"), the comments made by /u/ZeroOverZero101 and /u/Kingthero in the Discussion thread indicate that the intent was to replace the Second Constitution, and the text of EC-A.037 itself by its own terms purports to replace "all prior Constitutions."

Courts generally prefer to avoid Constitutional issues, and every reasonable effort must be resorted to in order to save *statutes* from unconstitutionality. However, this discussion involves the Constitution itself, where the canons of "ordinary usage" and "plain meaning"[10] of the text are paramount. In light of the plain meaning of the words and the legislative discussion surrounding same, we hold that EC-A.037 was intended to be a complete and total replacement of the Second Constitution of the Commonwealth of Chesapeake. As a consequence, it is required to comport with the requirements of Article XVII – every member must vote, and the Governor must sign. Because these requirements have not been met, the Constitution was not properly passed and the Second Constitution of Chesapeake is still in effect.

Several arguments made on behalf of the Respondent by Attorney General /u/clads must be addressed. First, /u/clads argued that this could not be a replacement because it was labeled as an amendment on the docket, and Article XIX Section 1 states that the "word of or interpretation of the State Clerk . . . shall override anything stated in this Constitution." The Court believes that the State Clerk /u/ZeroOverZero101's comments are unhelpful in resolving this dispute and may even be the primary reason this dispute exists. Yes, the docketing of EC-A.037 was done as an Amendment. But his statements in the Bill Discussion states that it is a "new constitution." To take both statements as gospel leads to an absurd result where the Third Constitution is both valid AND invalid. That clearly can not be so. On balance, we believe the Text of the Third Constitution itself provides the intended interpretation, and by its own plain terms the Third Constitution claimed to replace the Second Constitution.

Attorney General /u/clads also argued that the signage requirement by the Governor was changed by passage of EC-A.015,[11] which modified the process for legislative enactments to

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[10] *See generally* Eig, L.M. Statutory Interpretation: General Principles and Recent Trends (December 19, 2011). Available at: https://fas.org/sgp/crs/misc/97-589.pdf

[11] That Amendment changed the process for legislative enactments: "Any legislation not acted on by the Governor for one week after having been passed by the Assembly shall be passed onto the Lieutenant Governor for their signature, veto, or abstention. If the Lieutenant Governor does not act on said legislation within one week it shall be treated as though they abstained. If the Lieutenant Governor of the Commonwealth abstains on legislation, that legislation will become law without their signature."

allow legislation to become law via abstention by the Governor. However, this Court finds that irrelevant for two reasons. First, EC-A.015 changed the process set forth in Article II for legislation, not the process set forth in Article XVII for constitutional replacements. Legislation and Amendment and Replacement are fundamentally different processes, as set forth above. Also, even if EC-A.015 *had* changed the signature requirement applicable to the Constitutional Replacement process, the Replacement would ***still*** be invalid because not every General Assemblyman voted on EC-A.037 as required by Article XVII.

Although the Third Constitution of Chesapeake was not properly passed and is therefore invalid, this does not necessarily invalidate every action taken thereunder. The changes that were solely implemented via EC-A.039 (the Third Constitution of Chesapeake) are invalid – *i.e. the "extra power to independents, the cuts in the governor's power of appointments to the d'hont list, and the vacancy exception to constitutional replacement"* per /u/kingthero, but this is a relatively narrow field of changes. No Amendments have been passed since A.037, but any that had passed and comported with the Amendment passage rules set forth in the Article II of the Second Constitution would still be valid. Same with legislation – any legislation passed under the Third Constitution that would have been valid under the Second Constitution remains valid. Finally, per a *meta* decision by /u/didicet, no new elections will take place and all incumbents remain in office.

IV. CONCLUSION

This Court finds that the Third Constitution must be overturned and revert back to the Second Constitution of the Commonwealth of Chesapeake. Changes to the Constitution are significant matters – replacements most of all – and have a major effect on the State of Chesapeake and its inhabitants. As a result, it is paramount that the processes set forth in the Constitution be followed to the letter. In this case, they were not, and to hold otherwise would be to ignore the will of the Chesapeople and make a mockery of their chosen form of government. This Court declines to do so. Therefore, the Third Constitution of the Commonwealth of Chesapeake is invalidated.

It is so ordered.

The Dissent in Part: Justice /u/Moderatepontifex

Here comes now /u/ModeratePontifex, Associate Justice of this Supreme Court of the Chesapeake, delivering an opinion that dissents in part and joins in part with the majority opinion:

It is the express right of the various courts of this federalist system of government to act as check and balance to the powers and actions of the legislatures and executives of this nation of ours. More specifically, it is the express right of this particular court to act as check and balance to the powers and actions of the General Assembly and Executives of the Commonwealth of the Chesapeake. This meaning that when called upon to do so, as the judiciary should not act of its own volition, this court must act in accordance with its express right and duty to the people and institutions of this Commonwealth.

As such, this court was called upon to deliver sound judgement to a question of fundamental law and to dispense such wisdom appropriate to its decision. It is the responsibility of this court to do so with much deliberative caution and regularity as it

can muster. The reason I explain these duties, rights, and responsibilities is to better inform the people of the Chesapeake Commonwealth as to why I dissent in part and join in part.

Of the second order, the simpler, and shorter, side to this opinion: the joining of the majority opinion. I join in my esteemed colleagues' opinion that this Constitution was improperly passed, and the legislature and executives should be ashamed to have completed this process in such a poorly planned and executed manner. I shall refrain from rehashing why this is improperly done as that is contained within the majority opinion. However, this is where my agreement ends, and my dissent begins.

Of the first order, why do I dissent then? I dissent for the sake of the regularity that is the responsibility of this court and the continuation of the popular and institutional support for sound judgement and appropriate wisdom. We are exercising our right to deliver this opinion, but we have failed to maintain appropriate wisdom and the regularity for the rule of law. It is the correct decision to invalidate this poor excuse for constitutional process but by refusing to invalidate all action taken in its name, we have given it implicit approval. Although this may seem like a non-issue, but lend me your imagination for a moment. The foundational principle of the Occidental law codes and more specifically the common law tradition of the Anglosphere is that hallowed principle of the rule of law. This principle means that all persons are subject to the Law of the Land, our constitutions, and that it reigns as the sovereign ruler rather than one individual or panel of judges. Furthermore, this principle means that by empowering this panel of judges with the discerning eye of what is a proper ruler or not, then we must exercise ourselves with absolute regularity should we utilize such power in order to maintain this sacrosanct principle unblemished. Do not misconstrue this argument to say that I support the improper passage of the Third Constitution; rather, I support the proper Second Constitution as the sovereign law.

In refusing to invalidate *all* actions taken under the inferior Third Constitution and giving it implicit approval, we are diminishing the sovereign rule of the Second Constitution. This flies in the face not only of its supremacy, which we have affirmed through the invalidation of the Third Constitution, but also in the rule of law by our irregular application of it.

Upon the approval and passage of a constitution, it supersedes its predecessors as the supreme, sovereign rule of law. This court finds that such approval and passage was irregular and improper, and therefore we must revert to the Second Constitution. Indeed, we can revert legally back to the Second Constitution, but this court has not the ability to time travel and therefore cannot take us back to the moment before the Third Constitution took effect. As it was a pretender to the throne of the rule of law, any action taken under this Third Constitution is and was and forever will be null and void as it had no true sovereign to guide its course. For the sake of the rule of law, the sovereignty of our legal principles, and the supremacy of the Second Constitution, we should have invalidated and repealed all actions taken under the constitutional pretender. As there is no action pending by this court to do so, I beg of the General Assembly and the Executive of this Commonwealth to take it upon themselves to repeal the actions taken under the banner of the Third Constitution, the now-deposed pretender to this Commonwealth's sovereign throne of the rule of law.

Respectfully submitted—

This Twelfth month in the year of our Lord, Two Thousand and Seventeen.