

**IN THE SUPREME COURT OF VIRGINIA**

**Record No. \_\_\_\_\_**

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**Future of School, Inc.,**

***Petitioner,***

**v.**

**Stride, Inc.,**

***Respondent.***

**On Petition for Appeal from the Court of Appeals of Virginia  
Record No. 0316-24-4**

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**FUTURE OF SCHOOL, INC.'S PETITION FOR APPEAL**

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## **ASSIGNMENTS OF ERROR**

1. The Court of Appeals erred by upholding the Circuit Court’s Demurrer of Future of School’s counterclaim for promissory estoppel on the basis that Virginia does not recognize the doctrine of promissory estoppel, where Stride’s LOI to donate funds to Future of School—signed by both parties—provided that the Letter of Intent “shall be governed under the laws of Delaware” and where Delaware recognizes a cause of action for promissory estoppel. (Error Preserved at R. at 114–16, 132–39, 141–47, 170–71, 1365–98; Opening Brief of Petitioner before the Court of Appeals at 20–45; Reply Brief of Petitioner before the Court of Appeals at 9–15; Petitioner’s Petition for Rehearing *En Banc* before the Court of Appeals at 12–25.)

## **INTRODUCTION**

Future of School, Inc. (“Future of School”) petitions this Court for appeal of the Court of Appeals of Virginia’s order upholding the trial court’s grant of Stride, Inc.’s (“Stride”) demurrer to Future of School’s promissory estoppel claim (the “Opinion”), which refused to apply a Delaware choice-of-law provision that both parties expressly agreed to, signed, and have never disputed. If allowed to stand, the Opinion substantially curtails, if not rewrites, the rule set forth by the Virginia Supreme Court 35 years ago in *Paul Business Systems, Inc v. Canon U.S.A., Inc.*, that Virginia has adopted the “modern view” of dispute resolution clauses, like forum selection clauses and choice-of-law provisions, to “recognize[] the present nationwide and worldwide scope of

business relations which generate potential multi-jurisdictional litigation” by ***strongly favoring enforcement of such provisions***. See 240 Va. 337, 342 (1990) (citing *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972)).

The Court of Appeals’ invalidation of the parties’ Delaware choice-of-law provision (i) ignored numerous Virginia cases that applied *Paul Business Systems* and held accordingly that the parties’ intent as expressed in a choice-of-law provision controls the scope of its application, as opposed to any default rule; and (ii) contradicted decades of Virginia case law holding that choice-of-law provisions are binding upon the parties in the absence of evidence of fraud, mistake, or other unusual circumstances directly targeted at the choice-of-law provision itself, as opposed to at the contract as a whole.

Notably, the Court of Appeals’ holding upends parties’ mutual efforts to ensure that, even absent an enforceable contract, their mutual promises are enforceable under the laws of other states via a promissory estoppel claim. Indeed, if the Court of Appeals’ holding stands, parties in Virginia will ***never*** be able to agree that a promissory estoppel claim is available if their contract is later held invalid.

This Court’s review of the merits is necessary to correct the Court of Appeals’ wholesale revision of Virginia law and to effectuate the parties’ express agreement that Delaware law would govern disputes among them.

## NATURE OF CASE

This case arises from Stride’s refusal to honor a promise to donate a total of \$3.5 million to Future of School pursuant to a written Letter of Intent. \$2.3 million of Stride’s promised donation remains unpaid to Future of School, which has directly impacted Future of School’s very ability to operate.

Future of School and Stride unequivocally agreed that Stride’s promise to donate \$3.5 million to Future of School would be governed by Delaware law, which allows for claims of promissory estoppel. The parties memorialized this promise in a Letter of Intent (“LOI”). After Stride ultimately reneged on its promise and brought an action for a declaratory judgment that the LOI was not enforceable, Future of School alleged a counterclaim for promissory estoppel under Delaware law—something the parties clearly intended when they expressly selected Delaware law to “govern” their “Letter of Intent.”

Nonetheless, the Court of Appeals disregarded the parties' mutually agreed upon choice-of-law provision, ignored Virginia's clearly established fundamental public policy that favors enforcement of choice-of-law provisions, and instead affirmed the Circuit Court's dismissal of Future of School's promissory estoppel claim. The Opinion rested on an erroneous premise: the Court of Appeals reasoned that because the LOI **generally** was unenforceable, it was precluded from honoring a choice-of-law provision within the LOI. *Future of Sch., Inc. v. Stride*, 2025 WL 1160921, at \*4–5 (Va. Ct. App. Apr. 22, 2025). This conclusion was legally erroneous for two independent and dispositive reasons.

First, the Opinion incorrectly limited the enforcement of choice-of-law provisions to only those found within binding contracts. This contradicts Virginia's time-honored choice-of-law rules, which require courts to prioritize the parties' intent, even when a choice-of-law provision is embedded in a non-binding document. Second, the Opinion erroneously concluded that the LOI's choice-of-law provision was unenforceable—even though it independently met all requirements for a binding contract, which Stride never challenged. Courts in Virginia have

long severed choice-of-law provisions from otherwise unenforceable contracts in similar situations.

Absent the Court of Appeals' legal errors, Future of School would have a meritorious and valid promissory estoppel claim under Delaware law. Future of School therefore petitions this Court to consider this appeal on the merits, to apply Virginia's clear law in favor of enforcing choice-of-law provisions, and to reinforce Virginia's longstanding public policy in favor of enforcing such provisions.

Accordingly, this Court should hear this appeal and reverse the Court of Appeals' opinion, with instructions that the case be remanded to the trial court to proceed to trial on Future of School's promissory estoppel counterclaim.

## **STATEMENT OF FACTS**

### **I. The Parties**

Future of School is a non-profit education organization that is dedicated to promoting the benefits of personalized learning.<sup>1</sup> Its mission is to “mobiliz[e] change in American K-12 education from a one-size-fits-all system to one that ensures that all students reach their unbounded

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<sup>1</sup> Future of School was previously known as Foundation for Blended and Online Learning. (R. at 5.)

potential no matter where their learning takes place.” (R. at 36.) Future of School is incorporated in Delaware and maintains a principal place of business in Colorado. (R. at 4.)

Stride is a for-profit, publicly traded company that provides online and blended education programming. (R. at 35.) Stride is also incorporated in Delaware and maintains a principal place of business in Virginia. (R. at 35.)

Stride and Future of School have a long history. Indeed, a former Stride chief executive officer (“CEO”) founded Future of School in 2015. (R. at 9, 36.) And Stride has been intimately involved with Future of School since its inception. For example, Stride assisted Future of School with filing its formation papers with the Internal Revenue Service; has been involved on Future of School’s Board and in its accounting, marketing, and operations divisions; and has helped Future of School work toward and achieve numerous goals and projects. (R. at 36.) Stride has also knowingly served as the organization’s sole funder. (R. at 36.) To date, Stride has donated approximately \$7 million to Future of School.

## **II. The Letter of Intent**

In January 2021, Stride transitioned to a new CEO. (R. at 36.) To ensure Stride's continued support in the face of this leadership change, Future of School contacted Stride on several occasions in early 2021 to confirm its intent to continue funding Future of School. (R. at 37.) On April 6, 2021, Stride's new CEO advised Future of School that Stride remained "very supportive and [was] willing to continue to be the largest funder [of Future of School] for a number of years." (R. at 38.)

On June 30, 2021, Stride went even further: Stride's CEO emailed Future of School's Executive Director ("ED") to expressly outline Stride's commitment to Future of School. He stated, "I'm comfortable making a multi-year commitment to the [Future of School's] program. That commitment would be for \$3.5 million over a period of up to 5 years and would not have any conditions attached to it." (R. at 38.) Future of School's ED replied that she "gladly accept[ed] this extremely generous donation from Stride." (R. at 38.) Stride's Assistant Controller then requested that Future of School "provide a commitment letter stating [Future of School's] acknowledgment and consent to this additional contribution." (R. at 38.)

In accordance with Stride’s request, the parties memorialized their agreement in a Letter of Intent (“LOI”) executed on July 13, 2021. (R. at 15–16.)<sup>2</sup> Three of the LOI’s provisions are relevant here. First, a provision titled “**The Donation**” stated:

[Stride] wishes to donate the following to [Future of School]:

\$3.5 million over the next five years (2022-2027)  
Terms of the donation is based on a July 1-June 30 fiscal year  
Funds currently committed for the 2022FY: \$1.2 million  
Remaining funds would be allocated at the discretion of Stride  
Learning Inc.

(R. at 15 (emphasis in original).) Second, the LOI included a choice-of-law provision titled “**Governing Law**,” which provided: “This Letter of Intent shall be governed under the laws of the State of Delaware.” (R. at 16 (emphasis in original).) Finally, the LOI’s provision on “**Acceptance**” explained that if the parties “[were] agreeable to the aforementioned terms” they were to “sign and return a duplicate copy of this Letter of Intent.” (R. at 16.) Stride and Future of School both signed and dated the document. (R. at 16.)

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<sup>2</sup> The LOI’s first paragraph explains, “This donation letter of intent (the ‘Letter of Intent’) represents the basic terms for an agreement that shall be considered [empty checked box] binding [empty checked box] non-binding.” (R. at 15.) Neither party selected either box. (R. at 15.)

### **III. Stride Renounces Its Donation**

Prior to execution of the LOI, Stride always followed through with its donation promises. (R. at 44.) And that was true of the first \$1.2 million Stride promised to Future of School in the LOI, which Stride timely provided. (R. at 44.) However, during a June 28, 2022 meeting, Stride's CEO denied Future of School's request for further disbursement of the funds pledged in the LOI. (R. at 44.) Stride's CEO unequivocally stated that Stride would not honor its commitment to make the residual \$2.3 million donation promised in the LOI. (R. at 39, 44.)

Future of School strenuously and repeatedly objected. (R. at 44–46.)

## **MATERIAL PROCEEDINGS BELOW**

### **I. Stride's Initial Lawsuit**

Despite having signed an LOI promising millions of dollars in donations to Future of School, in June 2022, Stride attempted to renounce its promise. When Future of School objected to Stride's refusal to allocate the remaining \$2.3 million it owed under the LOI, Stride rushed to sue first, filing this lawsuit in a Virginia court on October 26, 2022, seeking a declaratory judgment that the LOI did not legally require it to allocate the remaining \$2.3 million to Future of School. (R. at 1–17.)

On December 7, 2022, Future of School filed an Answer and

Counterclaims against Stride: (i) seeking a declaratory judgment regarding whether the LOI created a binding contract; (ii) alleging a breach of contract; and (iii) asserting a claim for promissory estoppel under Delaware law. (R. at 24–85.)

On January 17, 2023, Stride filed a demurrer to Future of School’s promissory estoppel claim. (R. at 114–16.) Stride argued that because “promissory estoppel is not a cognizable cause of action in the Commonwealth,” “Virginia does not allow the application of a choice-of-law provision to a claim of promissory estoppel.” (R. at 132–39.) Future of School filed its opposition on April 21, 2023. (R. at 141–47.) Future of School argued that Virginia law requires courts to apply choice-of-law provisions, like the one embedded in the LOI, and because the parties mutually agreed to Delaware law—which recognizes promissory estoppel claims—Future of School’s claim could not be dismissed. (R. 141–47.)

Ultimately, without meaningful explanation, the Circuit Court sustained Stride’s demurrer and dismissed Future of School’s promissory estoppel counterclaim with prejudice. (R. at 170–71.) The court concluded “that you don’t even get to the choice-of-law analysis because there’s not

a comparable claim in the Commonwealth of Virginia.” (R. at 170–71, 1385–86.)

Thereafter, Stride filed a Motion for Partial Summary Judgment and Future of School filed a cross-Motion for Partial Summary Judgment on the question of whether Stride committed an anticipatory breach of contract by repudiating its donation of the \$2.3 million under the LOI. (R. at 559–632, 720–814, 1103–54.) After oral argument, the Circuit Court granted Stride’s Motion, denied Future of School’s cross-Motion, and entered final judgment in favor of Stride on all remaining counts, disposing of the case in its entirety. (R. at 1346–47, 1442–44.)

## **II. Future of School’s Appeal**

Future of School appealed the Circuit Court’s decision on February 23, 2024 (R. at 1350–53), and filed its opening brief on May 22, 2024. Future of School challenged both the Circuit Court’s dismissal of its promissory estoppel claim and its summary judgment decision. Relevant here, Future of School argued that the Circuit Court’s demurrer ruling mistakenly discarded the Delaware choice-of-law provision that the parties agreed upon in the LOI in contravention of Virginia law. (Op. Br. at 20.) Indeed, Future of School spent most of its brief explaining why

Virginia law demanded enforcement of the parties' choice-of-law provision, irrespective of the enforceability of the LOI as a contract. (Op. Br. at 20–45.) Future of School spent the remainder of its brief arguing that the Circuit Court's summary judgment decision should also be set aside because, under Delaware law, the LOI was ambiguous as to whether the parties intended it to be binding, and extrinsic evidence demonstrated that they did. (R. at 46–61.)

After oral argument, the Court of Appeals affirmed the Circuit Court's decision. *Future of Sch., Inc.*, 2025 WL 1160921, at \*1. Taking Future of School's arguments out of order, the Court of Appeals first concluded that the LOI was unambiguously not an enforceable contract to donate funds. *Id.* at \*3–4. It reasoned that the LOI only memorializes Stride's "wish to donate" without a term sufficient to impose a legal obligation. *Id.* at \*4. Turning to the second issue, the Court of Appeals perfunctorily held: "While our Commonwealth does enforce and respect choice-of-law clauses, [the Court] cannot apply a choice of law provision within an unenforceable agreement." *Id.* at \*5. And, because "Virginia law does not recognize a claim for promissory estoppel," the Court concluded there was nothing left for it to consider. *Id.*

Because the Court of Appeals erroneously disregarded the parties' mutually agreed upon choice-of-law provision and Virginia's choice-of-law rules that strongly favor judicial enforcement of choice-of-law provisions, even when embedded in an unenforceable contract, in the absence of fraud, mistake, or other unusual circumstances ***specifically targeted at the choice-of-law provision itself***, Future of School now petitions for appeal. Indeed, the Court of Appeals' decision contradicted many prior decisions of courts in this state, which have uniformly enforced choice-of-law provisions in like circumstances.<sup>3</sup>

### **AUTHORITIES AND ARGUMENT**

The Court of Appeals misapplied decades of clear Virginia law, resulting in material prejudice to Future of School. Left uncorrected, this clear misapplication of Virginia law results in an erosion of litigants' ability to freely select the law that will govern their rights and obligations. This Court should therefore grant Future of School's Petition

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<sup>3</sup> On May 6, 2025, Future of School petitioned the Court of Appeals for rehearing *en banc*. That petition was denied via a summary order just two weeks later on May 20, 2025. Pursuant to Rule 5:14(a) of the Rules of the Supreme Court of Virginia, Future of School filed a notice of appeal in the Court of Appeals on June 17, 2025.

and reaffirm Virginia courts’ long-held commitment to enforcing choice-of-law provisions.

## **I. Standard of Review**

The trial court decided Future of School’s promissory estoppel claim on demurrer. Because the decision whether to grant a demurrer involves issues of law, appellate courts review the judgment *de novo*. *Dunn McCormack & MacPherson v. Connolly*, 281 Va. 553, 557 (2011); *Sales v. Kecoughtan Housing Co., Ltd.*, 279 Va. 475, 479 (2010) (citing *Mark Five Construction, Inc. v. Castle Contractors*, 274 Va. 283, 287 (2007)). This Court reviews *de novo* the Court of Appeals’ interpretation of the contract. *Schuiling v. Harris*, 286 Va. 187, 192, (2013); *Bolton v. McKinney*, 299 Va. 550, 554 (2021) (holding that a trial court’s “interpretation of a contract is a question of law that th[e] court reviews *de novo*.”).

This Court has repeatedly warned trial courts against “short-circuiting” litigation before trial. *CaterCorp, Inc. v. Catering Concepts, Inc.*, 246 Va. 22, 24 (1993); *Assurance Data, Inc. v. Malyevac*, 286 Va. 137, 139 (2013) (“[A] demurrer cannot be used to decide the merits of a case, lest a trial court may incorrectly short-circuit litigation pretrial and

determine a dispute without permitting the parties to reach a trial on the merits.”); *Riverview Farm Assocs. Va. Gen. P’ship v. Bd. of Supervisors of Charles County*, 259 Va. 419, 427 (2000) (“At the demurrer stage, it is not the function of the trial court to decide the merits of the allegations set forth in a complaint, but only to determine whether the factual allegations pled and the reasonable inferences drawn therefrom are sufficient to state a cause of action.”) This type of short-circuiting—accompanied by blatant disregard of basic principles of contract law—is exactly what took place here.

Because the Court of Appeals’ holding departs from established Virginia precedent, this petition for appeal should be granted.

## **II. The Court of Appeals Improperly Disregarded Numerous Virginia Cases and Failed to Enforce the Parties’ Agreed Upon Choice-of-Law Provision**

The Court of Appeals concluded that it could not apply the parties’ express choice-of-law provision because it determined that the LOI, as a general matter, was not enforceable. That was wrong for two reasons: (1) it contradicted Virginia courts’ emphasis on prioritizing the parties’ intent and decades of Virginia cases recognizing and enforcing choice-of-law provisions; and (2) it ignored the fact that courts in Virginia have

long severed and applied choice-of-law provisions contained within otherwise unenforceable contracts.

**A. The Court of Appeals Erroneously Ignored the Parties' Express Intent to Have Delaware Law Govern Stride's Promise**

By failing to enforce the parties' unequivocal decision to have Delaware law govern their relationship, the Court of Appeals disregarded numerous Virginia cases that make clear that the parties' intent determines the application of any choice-of-law provision. Indeed, courts around the country have long interpreted choice-of-law provisions with the goal of “protect[ing] the justified expectations of the parties [before them]” to “make it possible for them to foretell with accuracy” what their “rights and liabilities” under a particular agreement will be. Restatement (Second) of Conflict of L. § 187 cmt. e (Am. L. Inst. 1971). Virginia courts have followed suit, holding that the “true test for the determination of the proper law” of an agreement is “the intent of the parties.” *Tate v. Hain*, 181 Va. 402, 410 (1943). The purpose of this axiom is clear: to ensure that the intent of the parties, “whether express or implied, will *always* be given effect except under exceptional circumstances.” *Id.* (emphasis added).

Accordingly, when parties to an agreement “expressly declare[] that the[ir] agreement shall be construed as made with reference to the law of a particular jurisdiction, [the Court] recognize[s] such agreement and enforce[s] it, applying the law of the stipulated jurisdiction.” *Paul Bus. Sys., Inc. v. Canon U.S.A., Inc.*, 240 Va. 337, 342 (1990). This “comports with traditional concepts of freedom of contract and recognizes the present nationwide and worldwide scope of business relations which generate potential multi-jurisdictional litigation.” *Id.* And it ensures that the “will” of the parties—“not the law”—governs their agreements. *Union Cent. Life Ins. Co. v. Pollard*, 94 Va. 146, 151 (1896) (citation omitted).

To “ascertain the parties’ intent,” “courts must examine” and give “full effect” to the “words they have used.” *Run Them Sweet, LLC v. CPA Glob. Ltd.*, 224 F. Supp. 3d 462, 466 (E.D. Va. 2016); *see also Layne v. Henderson*, 232 Va. 332, 337 (1986) (explaining that the parties’ intent is determined by “examin[ing]” the instrument and “giving full effect to the words the parties actually used”). However, rather than analyzing the words used in their choice-of-law provision or in any way considering the parties’ intent, the Court of Appeals perfunctorily concluded that it could

not “apply a choice-of-law provision within an unenforceable agreement.” *Future of Sch.*, 2025 WL 1160921, at \*5. This was error.

While it is true that most litigated choice-of-law provisions arise from contracts, there is no authority holding that an agreement to a choice-of-law provision loses all force merely because the larger instrument within which it appears is deemed unenforceable. *Cf. Kirdassi v. White*, 84 Va. App. 260, 274 (2025) (noting that two non-contractual documents—a business plan and a term sheet—did not “designate[] the laws of any specific jurisdiction as controlling on” them, indicating that the parties’ choice-of-law would have governed if they had selected one); *Zaklit v. Glob. Linguist Sols., LLC*, 2014 WL 3109804, at \*5 (E.D. Va. July 8, 2014) (“Virginia has long recognized that parties to a contract may agree in advance which jurisdiction’s laws will apply to their *transaction*.” (emphasis added)).

To the contrary, the sweeping language used by Virginia courts regarding choice-of-law provisions suggests that it is the parties’ intent—and not a formal contract—that matters when determining whether to apply a choice-of-law provision. *Accord Canal Ins. Co v. Lebanon Ins. Agency, Inc.*, 504 F. Supp. 2d 113, 119 (W.D. Va. 2007) (applying a choice-

of-law provision to an individual who was not a party to a contract because “[a]pplying [the] choice of law provisions” would “effectuate the intent of the contracting parties” consistent with the “rationale underlying the Virginia Supreme Court’s decision[s]”).<sup>4</sup> Indeed, this Court has made clear that the parties’ intent regarding the applicable

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<sup>4</sup> See also *Paul Bus. Sys.*, 240 Va. at 342 (stating that Virginia courts will “recognize” and “enforce” choice-of-law provisions where the parties “have expressly declared that the[ir] agreement shall be construed as made with reference to the law of a particular jurisdiction”); *Settlement Funding, LLC v. Von Neumann-Lillie*, 274 Va. 76, 80 (2007) (“[T]he parties’ choice of substantive law should be applied.”); *Hitachi Credit Am. Corp. v. Signet Bank*, 166 F.3d 614, 623–24 (4th Cir. 1999) (explaining that “Virginia law looks favorably upon choice of law clauses,” “giving them full effect except in unusual circumstances”); *EVODC, LLC v. Reliant Mgmt. Consultant, L.L.C.*, 2024 WL 2494607, at \*5 (E.D. Va. Feb. 26, 2024) (same); *Buckmire v. LaserShip, Inc.*, 2022 WL 4585523, at \*4 (E.D. Va. Sept. 29, 2022) (“Under Virginia law, choice-of-law provisions are looked upon favorably and courts should give such provisions ‘full effect except in unusual circumstances.’” (citation omitted)); *Great Midwest Ins. Co. v. WB Contracting Grp., Inc.*, 2024 WL 3823792, at \*5 (E.D. Va. Apr. 14, 2024) (same); *Tederick v. LoanCare, LLC*, 2023 WL 6465404, at \*6 (E.D. Va. Oct. 2, 2023) (“Virginia choice of law rules direct the Court [to] credit choice of law agreements between the parties.”); *Amazon.com, Inc. v. WDC Holdings LLC*, 2023 WL 2815140, at \*13 n.22 (E.D. Va. Apr. 6, 2023) (“Outside of unusual circumstances, Virginia law gives full effect to choice of law provisions.”); *Makina ve Kimya Endustrisi v. Kaya*, 2023 WL 2065673, at \*11 (W.D. Va. Feb. 17, 2023) (explaining that absent a showing that the choice of law clause was unfair, obtained by fraud, “or that the parties did not clearly intend for the designated law to govern the terms of the contract, [Virginia courts] will give full force to choice-of law provision[s]” (alterations in original) (citation omitted)).

law, “*express or implied*, will *always* be given effect.” *Tate*, 181 Va. at 410 (citation omitted) (emphasis added).

This conclusion is especially necessary in business agreements, like this one, given the “nationwide and worldwide scope of business relations which generate potential multi-jurisdictional litigation.” *Paul Bus. Sys.*, 240 Va. at 342. Parties should be able to develop mutually understood, justified expectations regarding what law will govern their relationship absent an enforceable contract. *See* Restatement (Second) of Conflict of L. § 187 cmt. e (Am. L. Inst. 1971). Indeed, as this case starkly demonstrates, the parties’ expectations in this respect can ultimately prove dispositive. But the Court of Appeals’ decision makes it altogether impossible for parties in Virginia to structure their relationship such that a promissory estoppel claim remains available to either party even if their written agreement is ultimately held to be unenforceable. That is wholly inconsistent with this Court’s mandate requiring prioritization of the parties’ intentions. *See Union Cent.*, 94 Va. at 151 (seeking to ensure that the “will” of the parties and “not the law” governs their agreements (citation omitted)).

Even a cursory analysis of the parties’ mutual choice-of-law provision compels the conclusion that they intended that provision to govern any claims or disputes arising out of the document in which the choice-of-law provision appeared. Future of School and Stride expressly agreed in writing that the conduct contemplated by the LOI—*i.e.*, Stride’s promise to donate \$3.5 million to Future of School over five years—would be governed by Delaware law. Indeed, the LOI states, “This Letter of Intent shall be governed under the laws of the State of Delaware.” (R. at 16 (emphasis in original).) The use of the phrases “Letter of Intent” and “governed under” are significant.

Most obviously, the term “Letter of Intent” compels a broader application of the choice-of-law provision than if the parties had used the terms “contract” or “agreement.” A “letter of intent” is a “written statement detailing the preliminary understanding of parties who plan to enter into a contract or some other agreement;” or a “noncommittal writing preliminary to a contract.” *Letter of Intent*, Black’s Law Dictionary (12th ed. 2024). The non-contractual nature of a letter of intent necessarily indicates that the parties intended to have their choice-of-law provision govern non-contractual claims relating to Stride’s

promise, such as any claim for promissory estoppel. Had the parties intended to limit their choice-of-law provision to only “contractual” claims, they would have used “contract” or some other word requiring a binding promise. But they did not, and courts must “give[] full effect” to the parties’ word choice. *Run Them Sweet*, 224 F. Supp. 3d at 466.

Similarly, the “phrase ‘governed [under]’ in a choice-of law provision ‘is a broad one signifying a relationship of absolute direction, control, and restraint,’ which ‘reflects the parties’ clear contemplation that “the agreement” is to be completely and absolutely controlled by’ the chosen law.” *Id* (citation omitted). The use of this phrase indicates that the parties clearly intended their choice-of-law provision to cover non-contract claims, such as promissory estoppel. *See id.* at 466–67 (concluding that the use of “governed by” in a choice-of-law provision “clear[ly]” evidenced the parties’ intent to have the provision cover non-contract claims, such as unjust enrichment). Thus, the parties’ decision to agree that the “Letter of Intent” would be “governed under” Delaware law undoubtedly demonstrates that they contemplated the application of Delaware law to **any** repudiation of Stride’s underlying promise, allowing for a promissory estoppel claim.

At bottom, had the Court of Appeals appropriately applied Virginia law—which prioritizes the parties’ intent over the law—it would have enforced the parties’ mutually agreed upon and carefully crafted choice-of-law provision regardless of whether the LOI was considered an enforceable contract. This Court’s review is necessary to correct this legal error.

**B. The Court of Appeals Erroneously Disregarded the Choice-of-Law Provision’s Enforceability Separate from the LOI**

Even if the Court of Appeals correctly concluded that choice-of-law provisions are only enforceable as part of a binding contract, the Court of Appeals incorrectly concluded that the entire LOI, including the choice-of-law provision, was unenforceable. Consistent with the Commonwealth’s strong policy favoring choice-of-law provisions, courts in Virginia routinely enforce choice-of-law provisions *even where the underlying agreement is found unenforceable*. Indeed, “[a]bsent a showing that the provisions *of the [choice-of-law] clause* are unfair or unreasonable, or are affected by fraud or unequal bargaining power, or that the parties did not clearly intend for the designated law to govern the terms of the contract, [Virginia law] will give full force to choice-of-

law provision[s] in a contract.” *Zaklit*, 2014 WL 3109804, at \*5 (alteration in original) (emphasis added) (citation omitted); *see also JTH Tax, Inc. v. Hines*, 2017 WL 9772103, at \*2 (E.D. Va. Dec. 15, 2017) (“[T]o avoid the operation of a choice-of-law provision . . . the party resisting the clause must establish by clear and convincing evidence that the clause itself, as opposed to the contract as a whole, was the product of impropriety,’ such as overreaching or fraud.” (alterations in original) (citation omitted)).

For example, in *Zaklit*, the court concluded that “general allegations of fraud and overreaching going to the contract ***as a whole***” were not “sufficient to invalidate a choice-of-law provision” within the contract. *Zaklit*, 2014 WL 3109804, at \*6 (emphasis added). The court reasoned that the “Virginia Supreme Court has indicated its willingness to apply a ‘more modern view’ and ‘hospitable attitude’ toward dispute resolution provisions such as choice-of-law and forum-selection clauses.” *Id.* (citing *Paul Bus. Sys.*, 240 Va. at 342). This “modern view” provides that “any fraud sufficient to vitiate [a] forum selection provision ***must be directed specifically at the insertion of the forum selection clause in the contract*** and be proven by clear and convincing evidence.” *Id.* (quoting *Ash-Will Farms, L.L.C. v. Leachman Cattle Co.*, 61 Va. Cir. 165

(2003)). Because the plaintiffs “failed to make the requisite showing to invalidate the choice-of-law provision,” the court concluded that it would apply the choice-of-law provision regardless of the enforceability of the rest of the contract. *Id.* at \*8.

Similarly, in *PNC Bank, National Association v. Dominion Energy Management, Inc.*, the court applied a contract’s choice-of-law provisions when considering a party’s claim that the contract had been procured by fraud. 2018 WL 1768061, at \*8–14 (E.D. Va. Apr. 12, 2018). The court reasoned that the defendants had not “alleged fraud with respect to any of the choice-of law provisions” and they were therefore “valid and enforceable.” *Id.* at \*5; *see also id.* at \*8 (concluding that the choice-of-law provision was “broad enough to encompass” the fraud claims).

Applying these cases, the parties’ selection of Delaware law in the LOI is enforceable. Stride has never alleged that the choice-of-law provision *itself* was unenforceable, or that it resulted from fraud or unequal bargaining power. *See JAA Tech. Servs., LLC v. Tetra Tech*, 2017 WL 4003026, at \*8 (E.D. Va. Sept. 11, 2017) (concluding that because “neither party challenge[d] the fairness or reasonableness of the choice-of-law provision, or claim[ed] that [it] was affected by fraud or unequal

bargaining power,” Virginia courts would enforce it). And it does not matter that ultimately portions of the LOI requiring Stride to donate funds were deemed unenforceable. The pertinent (and undisputed) fact is that the parties mutually agreed to have a particular set of laws govern disputes and claims arising out of the document. *See Adams v. Hazen*, 123 Va. 304, 319 (1918) (“If the parties are fully agreed, there is a binding contract[.]”).

Consistent with *Zaklit* and *PNC Bank*, the Court should have severed the choice-of-law provision from the rest of the LOI. *Ass’n of of Am. Railroads v. U.S. Dep’t of Transp.*, 896 F.3d 539 (D.C. Cir. 2018) (“The presumption of severability enforces judicial restraint in constitutional adjudication by ensuring that, to the extent possible, courts limit the solution to the problem, severing any problematic portions while leaving the remainder intact.”); *Levick v. MacDougall*, 294 Va. 283, 302 (2017) (courts should decide cases “on the best and narrowest grounds available”). There was simply no reason to disregard the parties’ express intention that “This Letter of Intent shall be governed under the laws of the State of Delaware.” (R. at 16 (emphasis in original).) The Court of Appeals erred in holding otherwise.

### **III. The Court of Appeals’ Error Materially Prejudices Future of School**

Had the Court of Appeals properly applied Stride and Future of School’s agreed upon choice-of law provision, Future of School would have been permitted to pursue a promissory estoppel claim.<sup>5</sup> Unlike Virginia, Delaware law recognizes promissory estoppel claims.

A promissory estoppel claim requires that “(i) a promise was made; (ii) it was the reasonable expectation of the promisor to induce action or forbearance on the part of the promisee; (iii) the promisee reasonably relied on the promise and took action to his detriment; and (iv) such promise is binding because injustice can be avoided only by enforcement of the promise.” *Windsor I, LLC v. CWCapital Asset Mgmt. LLC*, 238 A.3d 863, 876 (Del. 2020) (citation omitted). Each element is present here.

Stride—Future of School’s primary funder—promised, through its Letter of Intent and other written and verbal exchanges, to donate \$3.5 million to Future of School over five years. Stride reasonably expected, or

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<sup>5</sup> Application of the choice-of-law provision also materially impacts any analysis of the enforceability of the LOI. *See Gillenardo v. Connor Broad. Del. Co.*, 2002 WL 991110, at \*6 (Del. Super. Ct. Apr. 30, 2002) (explaining that, under Delaware law, whether a letter of intent is enforceable “depends on the intent of the parties,” which is determined by “their outward and objective manifestations of assent”).

should have expected, that this promise would induce Future of School to continue its operations, expand staffing, and refrain from seeking additional funding besides Stride. (R. 48.) Similarly, Future of School acted with reasonable reliance, and ultimately to its detriment, when it added fundraising operations and staff to be able to meet the IRS public charity requirements and halted any search to locate an additional funding source. (R. 48.) Future of School took action in anticipation of the promised donation, and it will now lack the necessary funds to support its staff and operations. Therefore, enforcement of Stride’s promise serves the very purpose of a promissory estoppel claim, which sounds in equity—to do justice. *See Lord v. Souder*, 748 A.2d 393, 398 (Del. 2000) (“The purpose of the promissory estoppel doctrine is to prevent injustice.”).

Future of School should be permitted to pursue its promissory estoppel claim pursuant to the parties’ indisputably agreed-upon choice-of-law provision. That provision expressly selected Delaware law, which permits Future of School’s promissory estoppel claim.

## **CONCLUSION**

The Opinion disregards decades of Virginia cases that prioritize the parties' intent when it comes to enforcing choice-of-law provisions and *for the first time* concludes that a choice-of-law provision will not be enforced if it is within a document that is ultimately found unenforceable. For the reasons discussed above, this is a clear error that justifies this Court's review. Moreover, the issues at stake are of significant Commonwealth-wide importance, implicating the rights and prospects of any party (or set of parties) who wish to agree that their rights can be vindicated even if their agreement is later invalidated in part. This Court should grant Future of School's petition for review in order to fully consider the merits of this appeal.

Dated: June 20, 2025      Respectfully submitted,

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## **CERTIFICATE**

Pursuant to Va. Sup. Ct. R. 5:17(i), I hereby certify the following:

1. Future of School requests in-person oral argument. Va. Sup. Ct. R. 5:17(i)(5).
2. I have caused a copy of this Brief to be served on counsel for Appellees, as listed below, this 20th day of June 2025 via VACES and electronic mail. Va. Sup. Ct. R. 5:17(i)(1)-(2).

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3. This Brief complies with the word/page limits contained in Rule 5:17(f). This Brief contains 5,801 words as determined by the word processing program used to create it, exclusive of the cover page, table of contents, table of authorities, signature blocks, and certificate. This Brief has been prepared in proportionally spaced typeface using Microsoft Word for Office 365 with size 14 Century Schoolbook font. This Brief's margins are all one inch in width. Va. Sup. Ct. R. 5:17(i)(3).

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## Petition eCertificate

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