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UNITED STATES COURT OF APPEALS FOR THE 4TH CIRCUIT

Paul Goldman)	Case No: 21-2180
Pro se)	
)	
Plaintiff,)	
v.)	MOTION FOR AN EXPEDIATED HEARING
)	
Robert Brink, Chairman of the State Board)	
of Elections, in his official capacity)	
John O'Bannon, Vice Chair of the State)	
Board of Elections, in his official capacity)	
Jamilah D. LeCruise, Secretary of the State)	
Board of Elections, in her official capacity)	
Christopher Piper, Commissioner of the)	
State Board of Elections, in his official)	
capacity)	
)	
Defendants.)	

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U.S. COURT OF APPEALS
FOURTH CIRCUIT

MOTION FOR AN EXPEDIATED HEARING

Now comes Plaintiff Paul Goldman, *pro se*, requesting an expediated hearing for the reasons herein discussed, believing same to be in the public interest, further believing there is no legitimate governmental interest to the contrary.

ARGUMENT IN SUPPORT OF THE MOTION

1. The constitutional gravamen to my complaint has remained clear since initially filed last June.
2. In 1981, the Constitution of Virginia required the Commonwealth to reapportion the House of Delegates into new electoral districts pursuant to the new 1980 U.S. Census.
3. Such redistricting had to comply not merely with the applicable state mandates but also the Equal Protection Clause of the 14th Amendment to the Constitution of the United States, as interpreted by *Reynold v. Simms*, 377 U.S. 533 (1964), and its progeny, including the seminal Virginia redistricting cases of *Davis v Mann*, 377 U.S. 678 (1964)(Davis was a member of the Virginia State Board of Elections), and *Mahan v. Howell*, 410 U.S. 315 (1973)(Mahan likewise a member of the Va. State Board of Elections).

4. Those responsible for enacting the new reappointment plan enacted their plan into law on August 11, 1981. *Cosner*, *infra*.

5. But on August 25, 1981, *Cosner v Dalton*, 522, F. Supp. 350, 354 (E.D. Va 1981) ruled the plan “violate(d) the Equal Protection Clause of the Fourteenth Amendment.”

6. *Cosner* has been cited favorably in subsequent cases. *See, e.g.*, the opinion by then District Court Judge Roger Gregory in *Harris v McCrory*, 156 F. Supp. 3d 600, 627 (M.D. North Carolina 2016).

7. *Cosner* found the time remaining between the upcoming primary and general elections for members of the House of Delegates left the Court no choice practical choice except to hold the elections under the unconstitutional redistricting plan. *Cosner*, *supra*, 364.

8. However, the Court further found “Virginia’s citizens are entitled to vote as soon as possible for their representatives under a constitutional apportionment plan.” *Id.*

9. Therefore, the Court limited the legislative term of those elected pursuant the unconstitutional plan to one- year, half the normal two-year term. *Id.*

10. At all times, Defendants and their lawyer, the Attorney General of Virginia, knew 2021 to likewise be a reappointment year.

11. The Constitution of Virginia says “members...of the House of Delegates of the General shall be elected from electoral districts established pursuant to Section 6 A of this Constitution.” Article II, Section 6.

12. The Constitution of Virginia says the “Commonwealth shall be reapportioned into electoral districts in accordance with this section and Section 6 A in the year 2021 and thereafter.” *Id.*

13. The Constitution of Virginia says, “districts delineated in the decennial reappointment law shall be implemented for the November general election for...House of Delegates...that is held immediately prior to the expiration of the term being served in the year that the reapportionment is required to be enacted.” *Id.*

14. The recently completed November general election for the House of Delegates failed to abide by this Constitutional command.

15. Rather, for the first time in the history of Virginia since *Reynolds*, indeed upon information and belief anywhere in the country, state government decided it had the inherent discretionary power to hold the 2021 November general election using the old, existing districts crafted pursuant to the 2010 U. S. Census.

16. Upon information and belief, at no time to did Defendants avail themselves of their right under the Code of Virginia to seek the guidance of the Supreme Court of Virginia in this matter. Va. Code 24.2 103(F).

17. At all times, Defendants and the Attorney General of Virginia had reason to know using such old, outdated districts, given the uneven population changes among regions of the Commonwealth since the 2010 U.S. Census, would do “great harm to the principle of one person, one vote.” *Cosner*, *supra* at 363.”

18. In the Docketing Statement filed by Counsel for Defendants, it says the issue in the instant matter is “(w)hether the Eleventh Amendment bars plaintiff’s claims against state elections officials sued in their official capacity.”

19. While this statement is considered a “Non-binding statement of issues on appeal,” it does appear to capsulize the Defendants legal position as best Plaintiff can understand said position.

20. In *Libertarian Party of Virginia v Judd*, 718 F. 3d. 308, 311 (4th Cir. 3013), the 4th Circuit allowed a Virginia citizen to sue a member of the Virginia State Board of Elections “in their official capacities as administrators of the Commonwealth’s election law.”

21. With all due respect, the cases cited *infra* are merely a small sample of Supreme Court, 4th Circuit and District Court cases making clear the Defendant’s 11th Amendment argument is not well grounded in the law.

22. As Justice Oliver Wendell Holmes famously said, the life of the law is experience, not logic.

23. Last year, I filed a Motion for an Expediated Hearing because I believed it important that voters know, prior to casting a vote, the length of term of the House of Delegate candidates winning seats in the upcoming November election.

24. That Motion was denied.

25. Now, I file a Motion for an Expediated Hearing, believing it is in the best interests of the Commonwealth and the respect for the rule of law that citizens know the length of the term of those scheduled to take their seats in the House of Delegates prior to their taking said seats.

26. Should my suit succeed, the result may well reduce the length of the GOP majority from two years to one year., requiring a special election for all one hundred House of Delegates seats in 2002.

27. That I filed this case while the Democrats held the majority, and thus against the wishes of my party, will be lost in all the partisan political rhetoric.

28. Therefore, the speedy resolution of this matter, along with my Complaint, prior to the opening of the 2022 Session of the General Assembly, will go a long way to avoid turning a complaint based solely on important constitutional principles from depiction as something it is not.

29. In all candor, and as a citizen who has a praised public record for expanding what President Barack Obama called the “audacity of hope” for millions of citizens in the public arena, I must confess my profound disappointment in the irresponsible manner by which the elected leaders of my state have put their own political interests above the public interest in this matter despite the clear command of case law extending back more than fifty years.

30. As I file this motion, Counsel for Defendants has not yet informed me of their position.

REMEDY

For the reasons stated above, Plaintiff requests an expediated hearing.

Submitted by:

A handwritten signature in black ink, appearing to be 'Paul', with a long horizontal stroke extending to the right.

Paul Goldman

Pro se

Richmond, Virginia

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CERTIFICATE OF SERVICE

I hereby certify that on November 10th, 2021, I filed by mail this Motion For An Expediated Hearing with the Clerk of the Court. I true copy has also been sent, via first class mail, to:

Calvin Brown

Carol Lewis

Brittany McGill

202 North 9th Street

Richmond, VA 23219

Submitted,


Paul Goldman

Pro se

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