No. 21-2180 (L)

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PAUL GOLDMAN,
Plaintiff-Appellant,

v.

ROBERT H. BRINK, in his official capacity, *et. al.*,
Defendants-Appellees.

On Appeal from the United States District Court for
the Eastern District of Virginia

MOTION FOR EXPEDITED HEARING

PAUL GOLDMAN

Pro Se Appellee

P.O. Box 17033

Richmond, Virginia 23226

July 6, 2022

THE OPINION IS A "SERIOUS JOLT" TO THE SETTLED PRINCIPLE OF ONE PERSON ONE VOTE – TO USE CHIEF JUSTICE ROBERTS' PHRASE IN *DOBBS V. JACKSON*.

1. Since Plaintiff believes *MTM, Inc v. Baxley, Attorney General of Alabama*, 420 U.S. 799 (1975) decrees the 4th Circuit has jurisdiction over an appeal on the standing issue, this motion is timely made as it serves the best interests of both Plaintiff and those similarly situated. See *Baker v. Carr*, 369 U.S. 186 (1962).
2. *Reynolds v. Sims*, 377 U.S. 533 (1964) holds: "(S)imply stated, an individual's right to vote for state legislators is unconstitutionally impaired when…diluted when compared with votes of citizens living (in other districts). Id at 568.
3. As District Judge Novak recognized from the beginning, *Goldman v. Brink* "is a *Reynolds* case." JA 113.
4. The Stipulated Facts proved the apportionment scheme used for the 2021 House of Delegates election had a maximum population deviation at least 7 times greater than deemed constitutionally suspect in the leading case of *Harris v. Arizona Independent Redistricting Commission*, 136 S. Ct. 1301 (2016).
5. The Stipulated Facts proved the maximum population deviation between the 100 districts to be at least 4 times greater than deemed the outer limits of constitutional tolerance in the seminal Virginia redistricting case of *Mahan v. Howell*, 410 U.S. 315 (1973).
6. The Stipulated Facts proved the population deviation between Plaintiff's district and that of the least populated district to be roughly equal to the population deviation deemed "facially unconstitutional" in *Cosner v. Dalton*, 522 F. Supp. 350, 358 (E.D. Va. 1981).
7. Simply put, never in the history of *Reynolds* jurisprudence has the 4th Circuit, much less the Supreme Court of the United States, ever held constitutional such gross population deviations in a state legislative scheme used to elect the people's representatives.
8. In that connection, Plaintiff is unaware of any Supreme Court case law, or 4th Circuit opinion, holding that a citizen, who is registered to vote, and did vote (the position of the lower court in this issue as laid out in that opinion is a complete bafflement to this *pro se* plaintiff, since defendants had always known Plaintiff voted, for they are the top officials of the very

governmental agency required to keep state voting records, and since Plaintiff not only told the Court he had voted, but filed an Affidavit to that effect, under oath, moreover the matter below being a Motion To Dismiss, his affidavit is taken as a fact unless the Court or the Defendant has proof otherwise) in a district with such a gross population deviation from another district lacks the constitutional harm required to sue. Plaintiff's Affidavit, ECF 81, provided roughly 2 months before the opinion.

9. Thus, the opinion below, which Judge Novak seemingly suggests he crafted for the three-judge court, is best seen as an extension of his unique application, and reading of *Gill v. Whitford,* 138 S. Ct. 1916 (2018), despite the decision written by Chief Justice Roberts pointing out *Gill, supra,* is a "partisan gerrymandering" case, not a *Reynolds* case.
10. Moreover, *Gill* lacks actual precedential value in this instant matter for the following reason: the Roberts opinion merely remanded back to the court below for further proceeding since the record had been deemed lacking.
11. Starting with the initial hearing on the matter back on October 12, 2021, Judge Novak believed there to be an exception to the *Reynolds* one person one vote doctrine not found in any of the dozens of such cases decided by the U.S. Supreme Court or the 4th Circuit in a similar challenge to a state legislative redistricting. JA 088.
12. Judge Novak believes if a Plaintiff's district has less population than the hypothetical "ideal" district the court uses in its analysis (Virginia's total state population in a particular census divided by 100), then this citizen has no *Reynolds* rights irrespective of the population deviation between his or her district and any other district in the apportionment scheme used in the election. Id.
13. Not surprisingly, *Gill* never uses the term "ideal district" since it is not a *Reynolds* case, and thus there would be no need to conduct the *Reynolds* analysis required for the last 58 years.
14. Judge Novak said: "In fact, he's overrepresented…Mr. Goldman's district, 68, has a population of 85, 223 when the average ideal district should be 86,313.93…meaning not only is Mr. Goldman not underrepresented, he's actually overrepresented". JA 089.
15. Moreover, Judge Novak's "ideal" district analysis is based on using a hypothetical "ideal" district *not* used in crafting the 100 districts actually contested in the election at issue, a situation, to the best of Plaintiff's

knowledge, never before faced by the 4th Circuit, much less the Supreme Court.

16. The reason the Supreme Court has never used a mere ideal v. plaintiff district analysis in a *Reynolds* case is clear from the following mathematical analysis.
17. Assume the ideal district used has a population of 100,000. Assume a Plaintiff's district has a population of 95,000. Assume the least populated district has a population of 47,500. Yet despite plaintiff's district being 200% larger in population, or as *Reynolds* analysis would say, his or her vote is weighted double of that of other citizens, Judge Novak's opinion says *Reynolds, Mahan, Cosner,* and *Harris* cannot ever possibly apply as a matter of law since plaintiff's district has a population less than the ideal district.
18. Thus the obvious question: If *Reynolds* and its progeny intended for this to be the law, then why hasn't such a radical exception to the plain language in *paragraph* #2 *supra* been spelled out for all litigants and jurists by the U.S. Supreme Court?
19. As Chief Justice Roberts might say, the lower court opinion is a "serious jolt" to our system of laws.
20. In sum, the lower court opinion is best understood as adopting Judge Novak's radical redefinition of the settled *Reynolds* principle of a constitutionally protected right of equal representation, thus abandoning the 58 year old constitutional policy of citizens having a constitutional right to be in a state legislative district of roughly equal population to the districts of their fellow citizens, and instead substituting a new radical view that population deviations long determined by the Supreme Court to be per se harmful to a citizen are now not per se constitutionally harmful even where a citizen's vote is doubly weighted, a situation discussed in *Reynolds, supra*.

CONCLUSION

21. At the October 12, 2021, hearing, Judge Novak said told the government attorneys "***I didn't expedite it*** (conducting a hearing on the Plaintiff's complaint initially filed in June of 2021) before… I was giving you (the government) the opportunity to do what you needed to do." JA 111 (Emphasis added).

22. Needless to say, this comment is most fascinating looking back given Judge Novak's recent remarks in another case, not stated during the pendency of this matter, discussing his views of whether Plaintiff was denied the normative fair process in this matter. *Thomas v Beals*, 3:22-cv-427, transcript of first hearing.
23. Given the fact the U.S. Supreme Court has now indicated an intention to return power to state legislatures to determine the existence of rights previously believed to be part of the federal Constitution, the issue of whether the House of Delegates is constitutionally apportioned as it makes such decisions would seem to be of the upmost importance as Plaintiff has previously maintained. *Dobbs, supra*.

REMEDY

Accordingly, now comes *pro se* Plaintiff, seeking the following:

(A) A waiver of the filing fee as Plaintiff was forced to spend a considerable amount of money to respond to the government's interlocutory appeal.
(B) A waiver of any additional briefing on the standing issue since, as this Court said last March, the government had essentially turned its interlocutory briefs into arguments on standing, thus an expedited Oral Hearing would seem appropriate.
(C) In support of (B) above, Plaintiff is *pro se*, he is alone in this case, he is up against the entire Office of Attorney General, and yet he is prepared to argue his case on 48-hour notice.
(D) If there isn't an expedited hearing, even if Plaintiff wins this appeal and then on the merits, there will not be sufficient time to implement the remedy Plaintiff first sought over a year ago.

Respectfully submitted,

By: /s/ Paul Goldman

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CERTIFICATE OF SERVICE

Per the instructions of the Court, this Motion is filed electronically on July 6, 2022. An electronic version has been sent to the following attorneys for the Defendants at email addresses on file:

Andrew Ferguson

Steven Popps

The Office of Attorney General

Richmond, VA 23219

/s/ Paul Goldman

Paul Goldman
July 6, 2022