

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA



Paul Goldman )  
P.O. Box 17033 )  
Richmond, Virginia 23226 )  
*Pro se* )

Case No: 3:21-CV-420

Plaintiff, )

MOTION FOR EXPEDITED HEARING

v. )

Ralph Northam, Governor of Virginia, in his )  
official capacity )

Virginia State Board of Elections )

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. )

**PLAINTIFF'S MOTION FOR EXPEDITED HEARING**

Plaintiff Paul Goldman, *pro se*, hereby respectfully requests an expedited hearing. Early voting in the November General Assembly elections begins on September 17, 2017. Voters have a right to know, as early as possible, whether they are voting for House of Delegates candidates to serve a one-year or two-year term. An expediated hearing to resolve this issue is therefore in the public interest, and presents no hardship to Defendants, since the fundamental facts and law herein, as well as in Plaintiff's Amended Complaint, are no longer in meaningful dispute.

**FACTUAL AND LEGAL ARGUMENT**

1. The Constitution of Virginia requires state leaders to take care that the legislative districts to the General Assembly are reapportioned every ten years pursuant to the current U.S. Census. Va. Cons., Article II, Sec. 6.
2. The last such reapportionment occurred in 2011 pursuant to the 2010 U.S. Census. Chapter 1 of the Acts of Assembly of the 2011 Special Session, codified in Va. Code Section § 24.2-304.3
3. The year 2021 has long been known as the next reapportionment year. Va. Cons., Article II, Sec. 6.
4. In 2020, the voters approved changes to Article II, Section 6 and the addition of a companion Section 6A.  
<http://results.elections.virginia.gov/vaelections/2020%20November%20General/Site/Referendums.htm>
5. The voters created a Virginia Redistricting Commission to begin drawing the required new district lines to the House of Delegate seats in a reapportionment year pursuant to the 2020 U.S. Census. Va. Cons., Article II, Section 6A.
6. The Virginia Redistricting Commission has made clear the Constitution of Virginia expects the general election for the House of Delegates scheduled for November 2021 to be conducted with new district lines drawn pursuant to the 2020 Census.  
[www.virginiaredistriking.org](http://www.virginiaredistriking.org), Commission News for February 12, 2021.
7. Since the passage of the Constitution of Virginia, no such House of Delegates election in a reapportionment year has been conducted in House districts whose district lines were crafted according to the obsolete Census data now eleven years out of date. See 1971, 1981, 1991, 2001, and 2011 election records. *Mahan v Howell*, 410 U.S. 315 (1973) [1971 elections], *Cosner v. Dalton*, 52 F. Supp. 310 (E.D. Va. 1981) [1981 elections], *Republican Party of Virginia v. Wilder*, 774 F. Supp. 400 (W.D. Va. 1991), *Wilkins v. West*, 571 SE 2d 100 (Va. Sup. Ct. 2002) [2001 elections], *Bethune v. State Board of Elections*, 137 U.S. 788 (2017) [2011 elections]. As to reapportionment year elections held under an older, no longer valid version of the state constitution, all would have occurred prior to *Reynolds v.*

*Simms*, 377 U.S. 533 (1964). Plaintiff is unaware of any such prior election in a reapportionment year held using the old districts in violation of any contrary constitutional command.

8. However, state leaders, led by the Defendant Governor, and his top election law appointees, also Defendants, along with the leaders of the General Assembly, without seeking an opinion from the Attorney General of Virginia, nor seeking guidance, much less permission, from the Virginia Supreme Court, decided to conduct the upcoming 2021 election for the House of Delegates under current district lines drawn pursuant to obsolete, eleven-years-old U.S. Census data. Attorney General opinions can be found at [www.oag.state.va.us](http://www.oag.state.va.us). Plaintiff did not find any such opinion. Opinions of the Supreme Court of Virginia are available at [www.courts.state.va.us](http://www.courts.state.va.us). Plaintiff found no record any such guidance nor permission. This Honorable Court may take Judicial Notice of the fact there has been no such effort by state leaders to seek guidance nor permission from any federal authority. Fed. Rules of Evid. 201.
9. Virginia voters this past November added language to Article II, Section 6 of the Constitution of Virginia requiring state officials to take care that “[E]very electoral district shall be drawn in accordance with... [among other laws] the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States...and **judicial decisions interpreting such laws.**” (Emphasis added)
10. *Cosner v. Dalton*, 52 F. Supp. 350 (E.D. VA. 1981) is one such judicial decision.
11. *Cosner* was decided on August 25, 1981.
12. The remedy option chosen in *Cosner* also received favorable mention in *McGhee v. Greeneville County, N.C.*, 860 F.2d 110, 121 (Fourth Cir. 1988).
13. The fundamental rationale for the *Cosner* remedy received favorable mention by then-District Court Judge (now Chief Judge of the Fourth Circuit), the Honorable Roger Gregory, in his opinion in *Harris v. McCrory*, 159 F. Supp. 3d. 609 (M.D. NC 2016) [“Those citizens are entitled to vote as soon as possible for their representatives under a constitutional apportionment plan.” *Page v. Va. State Board of Elections*, 2015 WL 3604029, at 18 (quoting *Cosner v Dalton*, 522 F. Supp. 350, 364 (E.D.Va. 1981)].

14. The *Cosner* case considered the central question raised in this instant matter: to wit, what is the proper constitutional remedy if state leaders intend to conduct a general election for the House of Delegates in a reapportionment year pursuant to a reapportionment plan that violates the Constitution of Virginia and the Constitution of the United States?
15. In *Cosner*, as in this instant matter, those responsible for producing a constitutional reapportionment plan in time for implementation in the upcoming House of Delegates election will have failed to fulfill that constitutionally mandated obligation. [*Cosner* was decided on August 25<sup>th</sup> and found it impossible to believe a constitutional plan could be in place by the November 3 election date. *Cosner*, at 363. It is now September 10, 2021. The Virginia Redistricting Commission, the first step in the new reapportionment process, is still in the process of drawing the required maps. They are aiming to be done sometime in October. At that point, their proposed reapportionment plan would be sent to the General Assembly for approval or rejection. Even assuming, *arguendo*, new district lines were available prior to the November 2, 2021, election date set by law, it is as impossible as in *Cosner* to have them contested on November 2, 1981]. [www.virginiaredistricting.org](http://www.virginiaredistricting.org)
16. As shown in the Amended Complaint, the use of district lines drawn to an obsolete, eleven-year-old Census in a reapportionment year House of Delegates election creates not merely an 82% population variation between the least and most populated districts but a situation where over 80% of state residents are now in House of Delegates Districts with populations in excess of allowable constitutional deviations. At least thirty of the one hundred districts have deviations more than double the constitutional marker now recognized by the U.S. Supreme Court. Amended Complaint, Exhibit # 1. See, e.g., *Harris v. Arizona Independent Redistricting Commission*, 136 U.S. 1301 (2016).
17. The state received the 2020 Census data on August 12, 2021. It has been available to Defendants at least since August 26, 2021. [www.virginiaredistricting.org](http://www.virginiaredistricting.org)
18. Defendants' claim that Plaintiff lacked standing is now disproved since the Census data confirms the population deviation where he resides, in his 68<sup>th</sup> District, far exceeds the standards set by the Supreme Court since 1973. See, e.g., *Mahan, Harris, infra*.

19. *Cosner* specifically warned Virginia government leaders that great damage to the concept of one person one vote occurs in a state like Virginia with regional growth differentials when an election is held using districts drawn to an obsolete 11-year-old Census. *Cosner*, at 363.
20. Virginia law provides a process where the Governor's Office, the State Board of Elections, and the Commissioner of Elections can seek a formal opinion on such constitutionality from the Attorney General of Virginia. Va. Code Section § 2.2-505.
21. There being no formal such opinion, it is clear no such guidance has been sought. See paragraph #8, *infra*.
22. There is nothing in Virginia law preventing the Attorney General from volunteering such an opinion. Va. Code Section § 2.2-505(B).
23. There is no Census data question yet to be answered as regards the 2020 Census data that changes the fundamental facts needed to decide whether a *Cosner* remedy is appropriate.
24. As "judicial decisions" not overruled, Virginia voters incorporated *Cosner*, *McGhee*, and *Harris* into the Virginia Constitution.
25. Moreover, as Chief Judge Gregory pointed out, when it comes to fixing a constitutional violation of the citizenry's right to equal legislative representation, this needs to be done as soon as possible. See paragraph #13.
26. Therefore, it logically follows that with early voting slated to start in Virginia on September 17, 2021, these same voters have a right, and surely their governmental leaders an obligation, to tell them as soon as possible whether they are casting a vote this year to give candidates for the House of Delegates a one-year term or a two-year term.

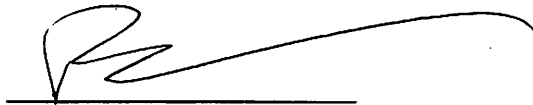
#### **REQUEST FOR RELIEF**

Therefore, Plaintiff, *pro se*, for himself and the in the public interest, asks this Honorable Court to:

- (1) Grant his Motion for an Expedited Hearing, such hearing to take place prior to the start of early voting on September 17, 2021.

- (2) If a hearing before the start of early voting will not take place, then order Defendants to ensure that local election officials post at all early polling places a message telling voters that the candidates running for the House of Delegates may not be elected to a two-year term, as this matter is subject to a federal court proceeding.
- (3) If such a hearing before the start of early voting will not take place, then order state election officials to notify all those who have requested a mail-in ballot with a written notification that those candidates running for the House of Delegates may not be elected to a two-year term, as this matter is subject to a federal court proceeding.
- (4) Ask Defendants to explain their legal authority to hold an election for the House of Delegates in this reappointment year using obsolete district lines without first seeking a court order granting them permission to violate the plain reading of the Constitution of Virginia which requires them to adhere to federal court decisions interpreting the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

Respectfully submitted by:



Paul Goldman  
P.O. Box 17033  
Richmond, Virginia 23226  
804 833 6313  
Goldmanusa@aol.com  
*Pro se*

**Certificate of service:**

THIS IS TO CERTIFY that on September 10, 2021, I delivered Motion for An Expedited Hearing by hand to Office of the Clerk of the Court in paper form. A true copy of said Motion was also sent, via first class mail, to:

Calvin Brown  
Carol Lewis  
Brittany A. McGill  
Office of the Attorney General  
202 North Ninth Street  
Richmond, Virginia 23219

A handwritten signature in black ink, appearing to read 'Paul Goldman', written over a horizontal line.

Paul Goldman  
P.O. Box 17033  
Richmond, Virginia 23219  
804 833 6313  
Goldmanusa@aol.com  
*Pro se*