

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

DAWN CURRY PAGE,)	
et al.,)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	Civil Action No. 3:13cv678
)	
VIRGINIA STATE BOARD)	
OF ELECTIONS, et al.,)	
)	
<i>Defendants.</i>)	
)	

MOTION TO INTERVENE AS PLAINTIFFS
BY THE VIRGINIA STATE CONFERENCE OF NAACP BRANCHES

The Virginia State Conference of NAACP Branches (“Virginia NAACP”) seeks to participate as intervening plaintiffs in the above-captioned lawsuit for the limited purposes of assisting the Court in its review of any legislative remedy: if necessary, assisting in the crafting the remedy to be ordered by the Court; if necessary, asserting objections to the remedy ordered or approved by the Court; and, if necessary, appealing the Court’s order on the remedy.

For the reasons discussed in the memorandum in support, filed concurrently herewith, the Virginia NAACP is entitled to intervene in this case as a matter of right under Federal Rule of Civil Procedure 24(a)(2). In the alternative, the Virginia NAACP requests permissive intervention pursuant to Rule 24(b). In accordance with Rule 24(c), a proposed complaint in intervention is attached as Exhibit A.

The Virginia NAACP has conferred with the other parties in this matter. Plaintiffs consent to the intervention. Based on the understanding that the Virginia NAACP will not seek

to reopen discovery in connection with its limited intervention, unless the Court itself should invite it, Defendants do not oppose this motion.¹ Intervenor-Defendants state that they are unable to take a position on this proposed intervention unless and until they know the remedy that the proposed intervenors will be seeking and whether a remedial phase, if any, will occur in this case.

WHEREFORE, the Virginia NAACP prays that the Court grant leave to the Virginia NAACP to intervene as plaintiffs in the above-captioned matter and to file the proposed complaint that is attached as Exhibit A.

Respectfully submitted this 5th day of May, 2015.

/s/ David O. Prince

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¹ With regard to the potential of the Virginia NAACP filing an appeal, should it object to the remedial plan, Defendants take no position at this time whether the Virginia NAACP would have standing to do so.

Attorneys for the Virginia State Conference
of NAACP Branches

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of May, 2015, a true and correct copy of the foregoing Motion to Intervene was delivered to Plaintiffs, Defendants and Defendant-Intervenors via the United States District Court, Eastern District of Virginia, Richmond Division, CM/ECF system.

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EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

GLORIA PERSONHUBALLAH,)
an individual, and JAMES FARKAS,)
an individual,)

Plaintiffs,)

THE VIRGINIA STATE CONFERENCE)
OF NAACP BRANCHES,)

Plaintiff-Inteviewer,)

v.)

Civil Action No. 3:13cv678

VIRGINIA STATE BOARD)
OF ELECTIONS; JAMES B. ALCORN,)
in his capacity as Chairman of the Virginia)
State Board of Elections; CLARA BELLE)
WHEELER, in her capacity as Vice-Chair)
of the Virginia State Board of Elections;)
SINGLETON V. MCALLISTER, in her)
Official capacity as Secretary of the)
Virginia State Board of Elections; MARK)
HERRING, in his capacity as Attorney)
General of Virginia,)

Defendants.)

**COMPLAINT IN INTERVENTION OF THE VIRGINIA STATE CONFERENCE
OF NAACP BRANCHES**

The Virginia State Conference of NAACP Branches (“Plaintiff”) hereby intervenes in this action and brings this complaint against Defendants. Plaintiff seeks declaratory and injunctive relief and alleges as follows:

NATURE OF ACTION

1. This action is brought pursuant to 42 U.S.C. § 1983 to secure declaratory relief for Defendants' unlawful deprivation of Plaintiff's rights, privileges, and immunities guaranteed by the Fourteenth Amendment to the Constitution and the laws of the United States.

2. Plaintiff is a not-for-profit organization that provides support and advocacy for its members, people of color in the Commonwealth of Virginia—voters who were unnecessarily packed via the racial gerrymander of Virginia's Congressional District 3 in violation of the Equal Protection Clause of the Fourteenth Amendment. Congressional District 3 packs African-American voters into a single district, thereby diminishing their influence and opportunity to participate in the political process in surrounding districts. Drawn with race as its predominant purpose, and no longer justified by Section 5 of the Voting Rights Act of 1965, *see Shelby County v. Holder*, 570 U.S. ___, 133 S. Ct. 2612 (2013), Congressional District 3 cannot pass constitutional muster.

3. To protect itself, its members, and thousands of Virginians like them from being classified solely on the basis of race in violation of the Equal Protection Clause of the Fourteenth Amendment, Plaintiff seeks a declaration that Virginia's Congressional District 3 is invalid and an injunction prohibiting Defendants from calling, holding, supervising, or taking any action with respect to Congressional elections based on Congressional District 3 as it currently stands.

PARTIES

4. The Virginia NAACP is a membership organization and part of the national NAACP, the oldest and largest civil rights organization in the United States. The Virginia NAACP, headquartered in Richmond, VA, has over one hundred statewide units, including members in Richmond, Petersburg, Norfolk, and Virginia Beach. The Virginia NAACP has approximately 16,000 members statewide. It has members throughout Congressional District 3,

in every congressional district adjacent to Congressional District 3 (including districts 1, 2, 4, and 7), and across the state. One of the priorities of the Virginia NAACP is to advance and defend the voting rights of its members, including the right to be free from racial discrimination in voting and to elect candidates of their choosing at every political level.

5. Defendant Virginia State Board of Elections is responsible for administering Virginia election laws, supervising and coordinating the work of local election officials to ensure legality in the conduction of all elections, and issuing rules and regulations for the administration of all elections in the Commonwealth.

6. Defendants James B. Alcorn, Clara Belle Wheeler, and Singleton B. McAllister, are sued in their respective official capacities as Chairman, Vice-Chair, and Secretary of the Virginia State Board of Elections.

7. Defendant Mark Herring is sued in his official capacity as Attorney General of Virginia. Defendant Herring is the chief legal officer of the Commonwealth of Virginia.

JURISDICTION AND VENUE

8. This Court has jurisdiction to hear Plaintiff's claim pursuant to 42 U.S.C. §§ 1983 and 1988, and 28 U.S.C. §§ 1331, 1343(a)(3), and 1357. This Court has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

9. Venue is proper under 28 U.S.C. § 1391(b).

FACTUAL ALLEGATIONS

10. The existing districts that elect Virginia's eleven members of Congress were passed on January 20, 2012. Va. Code Ann. § 24.2-302.2 (hereinafter "2012 Congressional Plan").

11. The 2010 decennial census data for Virginia was released by the Census Bureau on February 3, 2011, during the General Assembly's regular 2011 session. The General Assembly had not adopted a new congressional district plan before that legislative session ended. On February 27, 2011, the Governor of Virginia called for a special session to address redistricting.

12. The Virginia General Assembly failed to adopt a new congressional redistricting plan in the General Assembly's 2011 Special Session.

13. After the November 2011 elections for the Virginia General Assembly, Republicans maintained their majority in the Virginia House of Delegates and Democrats lost their majority in the Virginia Senate.

14. On January 12, 2012—one day after the General Assembly's 2012 Session began—the Virginia House of Delegates passed HB 251, which proposed new congressional districts for Virginia. That same day, the Virginia Senate also approved HB 251.

15. Virginia Governor Bob McDonnell signed HB 251 into law on January 25, 2012.

16. HB 251 was codified as Va. Code Ann. § 24.2-302.2.

17. Congressional District 3 is located in southeastern Virginia. It includes portions of Richmond, Petersburg, Newport News, and Norfolk. Parts of the district are non-contiguous, being separated by the James River and Chesapeake Bay.

18. A similar version of Congressional District 3 has existed since 1991, when the Virginia General Assembly adopted new congressional districts in light of the 1990 Census.

19. In 1997, a three-judge federal court concluded the version of Congressional District 3 drawn in 1991 was the result of unconstitutional racial gerrymandering. *See Moon v. Meadows*, 952 F. Supp. 1141, 1150 (E.D. Va. 1997), *aff'd*, 521 U.S. 1113 (1997).

20. On July 10, 2001, the Virginia General Assembly enacted a new congressional plan based on the 2000 Census. The 2001 version of Congressional District 3 was similar to its predecessor.

21. At the time of the 2010 Census, the 2001 version of Congressional District 3 had an African-American voting age population of 53.1%. In the 2012 Congressional Plan, the African-American voting age population in Congressional District 3 was increased to 56.3%.

22. The Virginia General Assembly increased the African-American population of Congressional District 3 by shifting African-American population out of neighboring districts into Congressional District 3. Congressional District 3 is surrounded by Congressional Districts 1, 2, 4, and 7. At the time of the 2010 Census, former Congressional District 1 had an African-American voting age population of 19.6%. In the 2012 Congressional Plan, the African-American voting age population decreased to 16.9%. The 2001 version Congressional District 2 had an African-American voting age population of 21.4% in 2010, which decreased to 21.3% under the current plan. Similarly, the African-American voting age population in Congressional District 4 decreased from 33.5% to 31.3%, and the African-American voting age population in Congressional District 7 decreased from 17% to 14.6%. The fact that the African-American population in each of these districts decreased while the African-American population in Congressional District 3 increased is evidence that the 2012 Congressional Plan's packing of African-American voters in Congressional District 3 was a decision driven primarily by race.

23. Congressional District 3 is not compact. Congressional District 3 also disregards key political subdivisions and geographical boundaries and subordinates other traditional districting principles, including splitting numerous communities of interest along the district.

24. When the 2012 Congressional Plan was enacted, Virginia was a covered jurisdiction under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. Thus, the 2012 Congressional Plan had to be precleared by either the United States Department of Justice or the United States District Court for the District of Columbia before it could take effect.

25. On February 2, 2012, the Commonwealth of Virginia submitted its submission under Section 5 to the United States Department of Justice.

26. The Commonwealth asserted that it had to move more black voters into Congressional District 3 in order to “retain[] minority strength in the redrawn Third District comparable to the minority strength of the [previous] Third District under the 2010 Census.”

27. On June 25, 2013, the United States Supreme Court struck down as unconstitutional the coverage formula for Section 5 of the Voting Rights Act, as provided in Section 4(b) of the Act. *Shelby County v. Holder*, 570 U.S. ___, 133 S. Ct. 2612 (2013). Therefore, the Commonwealth of Virginia is no longer a covered jurisdiction and need not meet preclearance requirements under Section 5.

28. Upon information and belief, Section 5 preclearance requirements were used as a justification to pack African-American voters into the non-compact Congressional District 3.

29. Race was the predominant consideration in the creation of Congressional District 3. No other factor explains the shape of this district, its failure to comply with traditional districting principles, the high concentration of African-American voters in the district, and the complete disregard of communities of interest.

30. The predominant and excessive use of race in drawing Congressional District 3 is not justified by a compelling state interest.

31. In particular, in the wake of *Shelby County*, Section 5 cannot justify the use of race as a predominant factor in drawing congressional district lines.

32. Section 5 of the Voting Rights Act did not compel the Commonwealth to significantly increase the African-American population in Congressional District 3, and did not compel the drawing of Congressional District 3 as a non-compact district. Section 5 was intended only to prevent retrogression in the ability of African-American voters to elect their candidates of choice.

33. Nor can Section 2 of the Voting Rights Act justify the use of race as a predominant factor in drawing Congressional District 3. African-American voters in this district had the opportunity to elect candidates of their choice without increasing their population in the district from 53.1% to 56.3% of the District's voting age population.

34. Even if there was a compelling state interest to create and maintain Congressional District 3 with race as the predominant factor, Congressional District 3 is not narrowly tailored to achieve that interest. There are other viable and constitutionally permissible alternatives to Congressional District 3.

CAUSE OF ACTION

(Denial of Equal Protection Under the Fourteenth Amendment of the United States Constitution)

35. Plaintiff realleges and incorporates by reference, as if fully set forth herein, the allegations in paragraphs 1-34 above.

36. The Fourteenth Amendment of the United States Constitution provides in relevant part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or

property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

37. Race was the predominant factor in the creation of Congressional District 3.

38. The use of race as the predominant factor with respect to Congressional District 3 is not narrowly tailored to advancing a compelling state interest.

39. Congressional District 3 violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

40. Plaintiff has no adequate remedy at law other than the judicial relief sought here. The failure to temporarily and permanently enjoin the conduct of elections based on Congressional District 3 will irreparably harm Plaintiff by violating its constitutional rights.

PRAYER FOR RELIEF

Accordingly, Plaintiff respectfully requests that this Court:

A. Declare that Congressional District 3 under the 2012 Congressional Plan is a racial gerrymander in violation of the Equal Protection Clause of the Fourteenth Amendment;

B. Issue a permanent injunction enjoining Defendants from enforcing or giving any effect to the boundaries of Congressional District 3 as drawn in the 2012 Congressional Plan, including an injunction barring Defendants from conducting any elections for the United States House of Representatives based on Congressional District 3;

C. Hold hearings, consider briefing and evidence, and otherwise take actions necessary to determine and order a valid plan for new congressional districts in the Commonwealth of Virginia; and

D. Grant such other or further relief the Court deems to be appropriate, including but not limited to an award of Plaintiff’s attorneys’ fees and reasonable costs.

Respectfully submitted this 5th day of May, 2015.

/s/ David O. Prince

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of May, 2015, a true and correct copy of the Complaint in Intervention of the Virginia State Conference of NAACP Branches was delivered to Plaintiffs and Defendants via the United States District Court, Eastern District of Virginia, Richmond Division, ECF system.

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