RECORD NO. 21-2180

In The

United States Court Of Appeals For The Fourth Circuit

PAUL GOLDMAN,

Plaintiff – Appellee,

v.

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 – Appellants,

and

VIRGINIA STATE BOARD OF ELECTIONS; RALPH NORTHAM, Governor of Virginia, in his official capacity

Defendants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA AT RICHMOND

PROPOSED SUPPLEMENTAL APPENDIX

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(*Pro Se*)

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

Paul Goldman,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Civil Action No. 3:21-CV-420**
	)	
Ralph Northam, et al.,	)	
	)	
Defendants.	)	

DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS SECOND AMENDED COMPLAINT

In his Second Amended Complaint, ECF 18, Plaintiff asks this Court to order Defendants to set an election in 2022, though district plans based on the 2020 Census data have not been established and Defendants have no authority to establish district plans. Furthermore, Defendants have no statutory authority to schedule a general election. Defendants have not waived sovereign immunity. The Eleventh Amendment to the United States Constitution bars suit against Defendants—the Governor, all State Elections Officers, and the state agency that oversees elections—because these state actors lack the authority to establish district plans and lack the authority to set a general election. Accordingly, Plaintiff's Second Amended Complaint fails on all counts.

STATEMENT OF FACTS

1. Plaintiff's suit names the following defendants: Ralph S. Northam (Governor Northam), in his official capacity as the Governor of Virginia; the State Board of Elections (SBE); Robert H. Brink, John O'Bannon, Jamilah D. LeCruise, in their official capacities as the Chairman, Vice-Chairman, and Secretary, respectively, of the SBE; and Christopher E. Piper, in his official

capacity as the Commissioner of the Virginia Department of Elections (the SBE members and the Commissioner are collectively referenced as the State Elections Officers).

2. Article V, Section 7 of the Virginia Constitution establishes the executive and administrative powers of the Governor of the Commonwealth, including being commander-in-chief of the armed forces of the Commonwealth, interacting with foreign states, and fill[ing] vacancies in all offices of the Commonwealth for the filling of which the Constitution and laws make no other provision[1].

3. No provision of the Virginia Constitution or the Virginia Code grants the Governor the authority to establish district plans or to set a general election.

4. The SBE and Chairman Brink, Vice-Chairman O'Bannon, and Secretary LeCruise must "supervise and coordinate the work of the county and city electoral boards and of the registrars to obtain uniformity in their practices and proceedings and legality and purity in all elections," as well as prescribe regulations and forms for voter registration and elections. Va. Code § 24.2-103(A).

5. No provision of the Virginia Constitution or the Virginia Code grants the SBE or its members the authority to establish district plans or to set any election.

6. Commissioner Piper is the "principal administrative officer" of the Virginia Department of Elections (ELECT). Va. Code § 24.2-102(B).

7. ELECT conducts the State Board of Elections' administrative and programmatic operations and discharges the board's duties consistent with delegated authority.

[1] There are no vacancies in offices in question in the current suit. Further, gubernatorial appointments to fill vacancies in offices which are filled by election by the General Assembly or by appointment by the Governor which is subject to confirmation by the Senate or the General Assembly, made during the recess of the General Assembly, shall expire at the end of thirty days after the commencement of the next session of the General Assembly. Va. Const. Art. V, sec. 7.

8. Among those duties, ELECT is authorized to establish and maintain a statewide automated voter registration system to include procedures for ascertaining current addresses of registrants, to require cancellation of records for registrants no longer qualified, to provide electronic application for voter registration and absentee ballots, and to provide electronic delivery of absentee ballots to eligible military and overseas voters.

9. No provision of the Virginia Constitution or the Virginia Code grants the Commissioner or ELECT the authority to establish district plans or to set any election.

10. In Count One of his Second Amended Complaint, Plaintiff claims that Defendants have violated the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, ECF 18 at ¶¶ 121-134, even though none of the Defendants have the authority to alter the status quo with respect to establishing districts or scheduling elections.

11. Plaintiff asserts that Defendants are proper parties. *Id.* at ¶ 127.

12. In Count Two of his Second Amended Complaint, Plaintiff claims that Defendants have failed to adopt the "required redistricting plan" under the Virginia Constitution. ECF 18 at ¶ 136.

13. Plaintiff does not allege that any such redistricting plan exists or that Defendants even have the authority to establish such a redistricting plan. *Id.* at ¶¶ 135-142.

14. Plaintiff asks this Court to declare Defendants to be in violation of the Constitution of the United States and the Virginia Constitution, to limit to one year the term of those candidates elected at the November 2, 2021 election, and to set an election for the House of Delegates in November 2022. *Id.* at p. 13.

STANDARD OF LAW

"Federal Rule of Civil Procedure 12(b)(1) permits a party to move to dismiss an action for lack of subject matter jurisdiction." *Allen v. College of William & Mary*, 245 F. Supp. 2d 777, 782 (E.D. Va. 2003). A Rule 12(b)(1) challenge "assert[s] that, as a factual matter, the plaintiff cannot meet the burden of establishing a jurisdictional basis for the suit." *Id*. (citing *Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982)). Once the issue of the court's subject matter jurisdiction is raised, "the plaintiff bears the burden of proof to preserve jurisdiction." *U.S. ex rel. Willoughby v. Collegiate Funding Servs., Inc*., No. 3:07-cv-290, 2010 U.S. Dist. LEXIS 139989, at *19 (E.D. Va. Sept. 21, 2010) (citing *Richmond, Fredericksburg & Potomac R.R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991)). "[T]he evidentiary standard depends upon whether the challenge is a facial attack on the sufficiency of the pleadings, or an attack on the factual allegations that support jurisdiction." *Allen*, 245 F. Supp. 2d at 782-83 (internal quotation omitted). As explained by the Fourth Circuit:

> When a defendant makes a facial challenge to subject matter jurisdiction, "the plaintiff, in effect, is afforded the same procedural protection as he would receive under a Rule 12(b)(6) consideration. In that situation, the facts alleged in the complaint are taken as true, and the motion must be denied if the complaint alleges sufficient facts to invoke subject matter jurisdiction. In the alternative, the defendant can contend—as the Government does here—that the jurisdictional allegations of the complaint [are] not true. The plaintiff in this latter situation is afforded less procedural protection: If the defendant challenges the factual predicate of subject matter jurisdiction, "[a] trial court may then go beyond the allegations of the complaint and in an evidentiary hearing determine if there are facts to support the jurisdictional allegations, without converting the motion to a summary judgment proceeding. In that situation, the presumption of truthfulness normally accorded a complaint's allegations does not apply, and the district court is entitled to decide disputed issues of fact with respect to subject matter jurisdiction.

Kerns v. United States, 585 F.3d 187, 192 (4th Cir. 2009) (internal quotes and citations omitted).

As the Fourth Circuit has reiterated, the defense of sovereign immunity is a jurisdictional bar, as "sovereign immunity deprives federal courts of jurisdiction to hear claims, and a court

finding that a party is entitled to sovereign immunity must dismiss the action for lack of subject-matter jurisdiction." *Cunningham v. Gen. Dynamics Info. Tech.*, 888 F.3d 640, 649 (4th Cir. 2018); *see also* Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."); *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006) ("[W]hen a federal court concludes that it lacks subject-matter jurisdiction, the court must dismiss the complaint in its entirety."); *Bodin v. Vagshenian*, 462 F.3d 481, 484 (5th Cir. 2006) ("[Sovereign] immunity deprives federal courts of subject matter jurisdiction." (citing *Chapa v. U.S. Dep't of Justice*, 339 F.3d 388, 389 (5th Cir. 2003)).

ARGUMENT

I. The Eleventh Amendment Prohibits Plaintiff's Count I Federal Law Claims

A. The SBE Is Immune From Plaintiff's Federal Law Claims Under The Eleventh Amendment

It is well-established that the Eleventh Amendment bars suit in federal court by a private citizen against any non-consenting state, as states are generally immune from suit in federal court. *See Edelman v. Jordan*, 415 U.S. 651, 662-63 (1974). This bar from suit, or immunity, is not limited to the state itself, but extends to arms of the state, including a state's agencies, divisions, departments, and officials. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101-02 (1984). "A suit against the State Board of Elections is . . . functionally equivalent to a suit against the Commonwealth of Virginia, and the State Board of Elections is entitled to the same protections of sovereign immunity as the Commonwealth itself." *Libertarian Party of Va. v. Va. State Bd. of Elections*, No. 1:10-cv-615 (LMB/TCB), 2010 U.S. Dist. LEXIS 97177, at *12-14 (E.D. Va. Sep. 16, 2010).

The SBE is a state agency and has not waived its sovereign immunity; thus the SBE is not subject to this Court's jurisdiction.[2] Even if the SBE was not afforded the same protections of sovereign immunity as the Commonwealth itself, the SBE does not possess the authority to grant the relief that Plaintiff seeks. Accordingly, Plaintiff's Second Amended Complaint must be dismissed on all counts as to the SBE under the Eleventh Amendment to the Constitution of the United States.

B. The State Officer Defendants Are Immune From Suit Under The Eleventh Amendment

In general, state officers sued in their official capacities—in this case, the Governor, the Chairman, Vice-Chairman, and Secretary of the SBE, and the Commissioner of ELECT—are "entitled to Eleventh Amendment protection" because such a suit "'is not a suit against the officer but rather is a suit against the officer's office.'" *Lytle v. Griffith*, 240 F.3d 404, 408 (4th Cir. 2001) (quoting *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989) (citations omitted)).

Plaintiff may attempt to claim that the state officer defendants are subject to suit because *Ex Parte Young* creates an exception to the Eleventh Amendment immunity of government officials, but *Ex Parte Young* clearly dictates otherwise. In *Ex Parte Young*, 209 U.S. 123 (1908), the Supreme Court recognized a limited exception to the general rule of immunity that permits federal courts to grant prospective injunctive relief against a state officer when that officer acts in violation of federal law. As the Court explained, that doctrine is based on the "fiction" that an officer who acts unconstitutionally is "stripped of his official or representative character" and may

[2] The *Ex Parte Young* exception, discussed *infra*, does not apply to state agencies: "the legal fiction of the *Ex parte Young* doctrine only allows suit for injunctive or declaratory relief against individual officers or officials of a state or local government, not against a state or state agencies." *Lighthouse Fellowship Church v. Northam*, 2020 WL 2614626, at *14 (E.D. Va. May 21, 2020).

therefore be "subject[]" to "the consequences of his individual conduct" in federal court. *Id*. at 159–60.

Although *Ex Parte Young* provides an avenue for plaintiffs seeking injunctive and declaratory relief against States, "[t]he purpose of allowing suit against state officials to enjoin their enforcement of an unconstitutional [law] is not aided by enjoining the actions of a state official *not directly involved in enforcing the subject [law]*." *Waste Mgmt. Holdings, Inc. v. Gilmore*, 252 F.3d 316, 332 (4th Cir. 2001) (emphasis added). Accordingly, the *Ex Parte Young* exception is limited to situations where a plaintiff can show: (1) a "special relation" between the officer sued and the challenged policy; and (2) that the officer has "acted or threatened" to enforce the policy. *McBurney v. Cuccinelli*, 616 F.3d 393, 399, 402 (4th Cir. 2010). These requirements ensure both that "the appropriate party is before the federal court, so as not to interfere with the lawful discretion of state officials" and that "a federal injunction will be effective with respect to the underlying claim." *South Carolina Wildlife Fed. v. Limehouse*, 549 F.3d 324, 333-34 (4th Cir. 2008).

1. Governor Northam is Immune From Suit

In *Gilmore*, the Fourth Circuit dismissed Virginia's Governor from a case alleging constitutional infirmity with five statutes involving the transportation and disposal of municipal solid waste. "[A]lthough Governor Gilmore [was] under a general duty to enforce the laws of Virginia by virtue of his position as the top official of the state's executive branch," the Court explained, "he lack[ed] a specific duty to enforce the challenged statutes." 252 F.3d at 331 (emphasis added). In *Allen v. Cooper*, 895 F.3d 337 (4th Cir. 2018), the Fourth Circuit likewise declined to apply the *Ex Parte Young* exception to a suit against North Carolina's Governor, explaining that when a plaintiff sues "to enjoin the enforcement of an act alleged to be

unconstitutional, the exception applies only where a party defendant in [such] a suit . . . has some connection with the enforcement of the Act." *Id*. at 355 (quotation marks omitted). Numerous other decisions from within this circuit also reject attempts to sue governors under *Ex Parte Young*. *See, e.g.*, *Kobe v. Haley*, 666 Fed. Appx. 281, 300 (4th Cir. 2016); *Lighthouse Fellowship Church v. Northam*, 2020 WL 2614626, at *4-*5 (E.D. Va. May 21, 2020); *Virginia Uranium, Inc. v. McAuliffe*, 147 F. Supp. 3d 462, 467-68 (W.D. Va. 2015); *Harris v. McDonnell*, 988 F. Supp. 2d 603, 606 (W.D. Va. 2013); *North Carolina State Conference of NAACP v. Cooper*, 397 F. Supp. 3d 786, 800-02 (M.D.N.C. 2019).

Here, Plaintiff has named Governor Northam as a defendant without alleging, much less demonstrating, that Governor Northam has any special relation to the election provisions in question. Like Governor Gilmore, Governor Northam's general duty to enforce the laws of the Commonwealth does not amount to a specific duty or even authority to enforce the statutory election provisions complained of by Plaintiff. Nowhere in the Virginia Constitution or the Virginia Code is Governor Northam given authority to regulate the time, place, manner, conduct and administration of elections or establish voting districts. *See* Va. Const. Art. 2 §§ 4, 6, and 6A (outlining the procedures for setting elections and establishing voting districts). The *only* electoral authority of the Governor specifically with respect to elections is to postpone an election in the event of a state of emergency[3] and to set a special election when vacancies in office occur.[4] Plaintiff asks for relief that the Governor does not have the authority to grant. Additionally, Plaintiff does not—and cannot—allege that Governor Northam "has . . . acted or threatened to act" to enforce a challenged policy. *McBurney*, 616 F.3d at 402.

[3] Va. Code § 24.2-603.1.
[4] Va. Code § 24.2-207, -209, and -216.

Accordingly, the *Ex Parte Young* exception does not apply, and Governor Northam is immune from suit pursuant to the Eleventh Amendment on all counts of Plaintiff's Second Amended Complaint.

2. The State Elections Officer Defendants Are Also Immune from Suit

The remaining defendants, the State Elections Officers, are also immune from suit because the *Ex Parte Young* exception does not apply to them. Like Governor Northam, the State Elections Officers do not have authority to execute the remedies sought by Plaintiff. The State Elections Officers are charged with, in the case of the SBE officers, "supervis[ing] and coordinat[ing] the work of the county and city electoral boards and of the registrars to obtain uniformity in their practices and proceedings and legality and purity in all elections," *see* Va. Code § 24.2-103(A). They are not authorized to establish district plans or set elections. Similarly, the Commissioner of ELECT is responsible for carrying out the electoral administrative and programmatic operations in the Commonwealth. Va. Code § 24.2-102. No provision of either the Virginia Constitution or Virginia Code permits the Commissioner to establish district plans or set elections.

The State Elections Officers are not authorized to establish district plans nor can they set elections. Accordingly, the *Ex Parte Young* exception does not apply, and the State Elections Officers are immune from suit pursuant to the Eleventh Amendment on all counts of Plaintiff's Second Amended Complaint.

II. Count Two of the Second Amended Complaint is also Barred by Sovereign Immunity.

Plaintiff fails to establish that this Court has jurisdiction with respect to the matters alleged in Count Two of his Second Amended Complaint. Plaintiff avers that Virginia's Constitution requires that new district plans be established every ten years and elections for House of Delegates be held using the new district plans in the same year. ECF 18 ¶¶ 78-82. In Count Two of his Second Amended Complaint, Plaintiff claims that Defendants have failed to adopt the "required

redistricting plan" under Article II, Sections 6 and 6-A of the Virginia Constitution. *Id.* ¶ 136. Plaintiff does not allege that any such district plan exists or that Defendants even have the authority to establish such a redistricting plan. *Id.* ¶¶ 135-142. Plaintiff alleges that the failure to *ultra vires* establish district plans and set a new election is a violation of the Virginia Constitution on the part of the State Elections Officer Defendants.

Setting aside the fact that the named State Elections Officer Defendants do not have the authority to *sua sponte* redraw the Commonwealth's district plans and set a new election as they please, any requirement under the Virginia Constitution is *state*, not federal, law. Plaintiff cannot use *Ex Parte Young* to enforce compliance with state law. *Antrican v. Odom*, 290 F.3d 178, 187 (4th Cir. 2002); *see also Bragg v. West Virginia Coal Ass'n*, 248 F.3d 275, 296 (4th Cir. 2001) (rejecting effort to use *Ex Parte Young* exception "to compel a State official to comply with the State's law"). Further, the Commonwealth has not in any way waived its Eleventh Amendment immunity, nor does the Plaintiff allege or demonstrate that this Court has jurisdiction over a claim relating to state law. Accordingly, Count Two of Plaintiff's Second Amended Complaint fails against all Defendants.

CONCLUSION

Plaintiff asks the Court to require the Defendants to set a general election in November 2022, though Defendants have no authority under the Virginia Constitution or Virginia Code to set such an election. Plaintiff further asks this Court to require Defendants to set such an election when district plans have not yet been established to govern the November 2022 election and Defendants do not have authority to establish such district plans. Moreover, this Court lacks subject matter jurisdiction, given that the relief requested by Plaintiff to have this federal court enforce a state law clearly violates both the Eleventh Amendment to the Constitution of the United

States and is not permissible under the *Ex Parte Young* exception. In light of the foregoing, Defendants respectfully request that this case be dismissed with prejudice.

Respectfully submitted,

By: */s/Carol L. Lewis*

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on September 23, 2021, I electronically filed the Memorandum in Support of Defendants' Motion to Dismiss with the Clerk of Court using the CM/ECF system. A true copy of said Memorandum in Support of Defendants' Motion to Dismiss was also sent, via first class mail, to:

Paul Goldman
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Pro se Plaintiff

/s/ Carol L. Lewis
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** Attorney for Ralph Northam, Robert H. Brink, John O'Bannon, Jamilah D. LeCruise, and Christopher E. Piper, in their official capacities, and the Virginia State Board of Elections*

DISTRICT	TotalPop (adj)
1	71,586
2	96,224
3	69,778
4	72,931
5	78,018
6	76,390
7	82,981
8	82,098
9	76,904
10	104,692
11	83,113
12	81,243
13	101,230
14	78,168
15	83,612
16	75,751
17	84,690
18	84,986
19	79,522
20	83,925
21	87,850
22	82,760
23	85,090
24	79,192
25	91,062
26	86,062
27	84,285
28	90,803
29	89,508
30	88,108
31	90,436
32	101,629
33	96,362
34	83,140
35	92,753
36	85,829
37	86,691
38	83,379
39	83,248
40	86,899
41	82,777
42	84,495
43	86,528
44	85,097
45	94,400
46	87,974
47	92,826
48	89,089

49	91,576
50	92,192
51	91,673
52	96,930
53	90,071
54	93,176
55	88,547
56	94,455
57	90,112
58	86,113
59	79,656
60	74,068
61	76,144
62	86,642
63	87,170
64	91,032
65	98,655
66	87,951
67	85,661
68	85,344
69	85,416
70	87,631
71	94,095
72	86,401
73	85,730
74	84,083
75	67,404
76	90,446
77	86,467
78	90,250
79	74,282
80	81,488
81	86,242
82	82,669
83	87,414
84	81,188
85	86,895
86	88,618
87	130,192
88	102,556
89	81,785
90	81,452
91	79,414
92	81,885
93	82,273
94	81,676
95	83,667
96	92,618
97	89,878

98	80,018
99	82,761
100	81,217

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

MOTION FOR RECONSIDERATION OFDENIAL OF PLAINTIFF'S MOTION FOR TEMPORARY INJUNCTION

Paul Goldman)
)
)
Pro se)
)
Plaintiff.)
)
v.) Civil Action No. 3:21-cv-420
)
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.)

MOTION FOR RECONSIDERATION OF THE DENIAL OF PLAINTIFF'S MOTION FOR A TEMPORARY INJUNCTION

Now comes Plaintiff Paul Goldman, *pro se*, requesting a reconsideration of the denial of his Motion for a Temporary Injunction based on the fact the Defendants and the *pro se* Plaintiff have different interpretations of a state statute that, on its face, seems to prohibit the issuance of the certificates of election at issue in this matter.

ARGUMENT IN SUPPORT OF THIS MOTION FOR RECONSIDERATION

1. *Pro se* Plaintiff filed his Motion For a Temporary Injunction by first class mail on November 17, sending a true copy by mail to the Defendants on the same day. The Court filed and entered Plaintiff's Motion into PACER on November 19.
2. Likewise, according to PACER, Defendants filed their response electronically on November 19, 2021, sending a true copy by mail to *pro se* Plaintiff.
3. The Court entered the Motion into PACER on the same day.
4. November 19th is a Friday.

5. According to PACER, the Court's order was filed and entered on November 23, 2021.
6. Plaintiff did not see his mailed copy of the Defendant's response until November 23, 2021.
7. Therefore, Plaintiff is filing this Motion For Reconsideration only four business days from the date the Defendants filed their response.
8. Defendants' Response indicates "the members of the SBE signed the required certificates of election" on "Monday, November 15, 2021." Response, paragraph #3.
9. Defendants' Response says the SBE, through the Department of Elections, transmitted the signed certificates of election on Tuesday, November 16, 2021. Response, paragraph #4.
10. According to Defendants' Response, the "SBE [was] required...without delay" to "complete and transmit the certificates under its seal of office," citing Va. Code Section 24.2-680 and its language as the statutory authority for their assertion. Response, paragraph #2, fn. 2.
11. With all due respect to the Defendants and their able counsel, *pro se* Plaintiff believes this is not the correct interpretation of the statute cited as the authority for the actions of the Defendants (hereinafter the "Herring Defendants").
12. In pertinent part, Va. Code Section 24.2-680, titled "Certificates of election" says the following very clearly: "***Subject to the requirements of [Virginia Code Section] 24.2 948.2***, the State Board shall without delay compete and transmit to each of the persons declared to be elected a certificate of his election, certified by it under its seal of office." (Emphasis added).
13. Accordingly, there is a clearly defined condition precedent to the authority of the SBE, and the Herring Defendant Members of the SBE, before they can legally sign these certificates and issue them under the authority of state.
14. There is furthermore a reason for this condition precedent as Va. Code Section 24.2-948.2 makes clear.
15. In pertinent part, Va. Code Section 24.2-948.2A says the following very clearly: "A. No person shall be permitted to qualify for any office...until he has filed the campaign finance reports required in subdivision A 3 through ***A 9 of [Virginia Code Section] 24.2 947.6***." (Emphasis added).
16. The clear state policy is to ensure those who qualify for any office, or receive any such power or authority thereof, must have first complied with the required campaign finance reports, to give the Department of Elections and the SBE time to review said reports before being issued the official certificates of election.
17. Indeed, Virginia Code Section 24.2 948.2A makes this clear to the Herring Defendant members of the SBE: ***"[n]o officer authorized*** by the laws of the Commonwealth to issue certificates of election ***shall issue*** one to any person determined to have been elected to any such office, ***until copies of the reports cited above have been filed as required in this article***."
18. Accordingly, *pro se* Plaintiff believes a plain reading of the term "[no] officer" in Virginia Code applies to the Herring Defendant members of the SBE.
19. Va. Code Section 24.2-946.7 says clearly: "A.9. Not later than thirtieth day after the November election date complete through the twelfth day after the election date."
20. Thus, the report referenced in A.9 must include reportable campaign finance activity through November 25, 2021.
21. However, as Defendants' state in their Response, the Herring Defendant members of the SBE signed the certificates on November 15, 2021, and the SBE, through the Department of

Elections, transmitted the signed certificates on November 16, 2021. *Supra*, paragraphs #8 and #9.

22. Therefore, at the time Plaintiff filed his Motion for Temporary Injunction and at the time it was entered into PACER, the report required in paragraph # 19 could not have legally been filed by those who were sent the certificates of election at issue in this instant matter.

23. Since state officials are to be presumed to have acted according to the law, this means that the Herring Defendant members of the SBE did not believe the filing of the report required by Va. Code Section 24.2-947.A9 was a condition precedent to their having the authority to sign and issue a certificate of election to a candidate for the House of Delegates.

REMEDY

Now comes Plaintiff, *pro se*, asking the Court, for full and sufficient reason, to reconsider its denial of the Motion For Temporary Injunction, and to order the following, all in the public interest and without any harm to the Defendants:

(1) Rescind the Order issued November 23, 2021; and
(2) Declare the certificates of election previously issued null and void: and
(3) Issue a Temporary Injunction as originally requested by Plaintiff; and
(4) Order the Herring Defendants to explain the reasons they do not believe the filing of the report required by Virginia Code Section 24.2-947.6A.9 is a condition precedent to the issuance of the certificates of elections at issue in this instant matter; and
(5) Further Order the Herring Defendants to explain why they believe they have the authority to declare those elected to the House of Delegates this past November 2, 2021, are entitled to a two-year term when Virginia Code Section 24.2-680 948.2A merely says the SBE shall issue a "certificate of his election" with no reference to any term length; and
(6) Further Order the Herring Defendants to explain why when filing two Motions to Dismiss on the grounds the Defendants had no power to impact in any way the relief requested by Plaintiff (key to their 11th Amendment defense), they failed to mention they intended to use their power, right after the election, to put the Commonwealth of Virginia's authority behind the claim that those elected in unconstitutional districts in 2021 had the right to serve until the beginning of the 2024 Session of the General Assembly, a position unprecedented in Virginia or any state since *Reynolds v. Sims*, 377 U.S. 533 (1964) and for which Herring Defendants have not cited any such authority in the many months of this litigation; and
(7) Or, in the alternative to (3) through (6), Order an immediate hearing on such matters.

Submitted by,

Paul Goldman
Plaintiff
Pro se
Post Office Box 17033
Richmond, Va 23226
804.833.6313
Goldmanusa@aol.com

CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2021, this Motion For Reconsideration Of Denial Of Plaintiff's Motion For A Temporary Injunction was filed with the Clerk of the Court. A true copy has also been sent, via first class mail, to:

Brittany Record

Carol Lewis

Brittany McGill

202 North 9th Street

Richmond, VA 23219

Submitted,

Paul Goldman

Pro se

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No. 21-2180

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PAUL GOLDMAN,
Plaintiff-Appellee,

v.

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

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

MOTION FOR SUMMARY JUDGMENT

PAUL GOLDMAN
Pro Se Appellee
P.O. Box 17033
Richmond, Virginia 23226

December 2, 2021

JUDGE BRYAN'S POSITION

1. Circuit Court Judge Albert V. Bryan Sr. whose name now adorns one of the federal courthouses in Virginia, stated that "a suit against State officials acting pursuant to State laws [is] a type of action universally held appropriate to vindicate a Federally protected right," citing *Ex parte Young*, 209 U.S. 123, 155-56 (1908). *Mann, et al, v Davis*, et al, 213 F. Supp. 577, 579 (1962), *aff'd* on the merits, remanded for further proceedings, *Davis, Secretary, State Board of Elections, et al v Mann, et al,* 377 U. 678, 680 (Equal Protection Clause of the 14th Amendment to the Federal Constitution challenge to the appointment of the Virginia General Assembly).
2. Circuit Court Judge Bryan rejected the Defendants claim saying "[n]or is a suit against a State barred by the Eleventh Amendment, as Defendants contend." *Mann, supra* at 579.
3. In Davis, *supra*, the opinion, written by Chief Judge Earl Warren, said "[d]efendants, sued in their representative capacities, were various officials charged with duties in connection with state elections." *Id.*
4. In the instant matter before this Court, and contrary to the claims detailed below, Defendant members of the State Board of Elections, without any notice to the Court, decided to issue and sign certificates of election to those elected last month pursuant to the old House of Delegate districts drawn according to an obsolete 2010 census, stating those elected were entitled to a two-year term, thus putting the full weight of the state government behind the claim there could not be an election under newly drawn House of Delegates districts according to the new, current 2020 census until November 2023, an unprecedented delay since *Reynolds v. Sims*, 377 U.S. 533 (1964), in defiance of the plain wording of Article II, Section 6 of the Constitution of Virginia, whose wording was changed last year to specifically include the Equal Protection Clause of the 14th Amendment, along with "judicial decisions" enforcing those incorporated constitutional rights. Exhibit 1.

***PRO SE* APPELLEE'S ARGUMENT**

5. As Justice Oliver Wendell Holmes taught us, the only thing between civilized society and the jungle is the law, such law now under attack everywhere, by those who put their or their friends' partisan gains above the law. See, Holmes, *The Common Law* (1881).
6. At all times, as January 1, 2021 dawned, the Herring Defendants, the state's top election officials, their counsel, the Office of Attorney General of Virginia Mark Herring, along with the other top elected officials leading the state's executive and legislative branches, were aware that the voters of Virginia had added additional requirements to Article II, Section 6 of the Constitution of Virginia as delineated in paragraph #15, *infra* (along with a 6-A). https://www.elections.virginia.gov/proposed-constitutional-amendment-2020/
7. "Every electoral district shall be drawn in accordance with the requirements of federal and state laws that address racial and ethnic fairness, including the ***Equal Protection Clause of the Fourteenth Amendment*** to the Constitution of the United States and provisions of the Voting Rights Act of 1965, as amended, ***and judicial decisions interpreting such laws***." Article II, Sec. 6. (Emphasis added).

8. At all times, we can reasonably presume the Herring Defendants and/or their legal counsel were aware of the seminal case of *Cosner v. Dalton*, 52 F. Supp. 350, 354 (E.D. Va. 1981), a judicial decision interpreting the Equal Protect Clause of the Fourteenth Amendment to the Constitution of the United States (hereinafter "EPC").
9. At all times, we can reasonably presume the Herring Defendants, and/or at least their legal counsel, therefore knew *Cosner*, *supra,* had been included within the new language of Article II, Section 6.
10. At all times, as January 1, 2021, dawned, the Herring Defendants and their attorneys knew this was a reapportionment year, as the Constitution of Virginia is clear on this point ("The Commonwealth ***shall be reapportioned*** into electoral districts in accordance with this section (6) and Section 6-A ***in the year 2021***." Article II, Section 6. (Emphasis added).
11. At all times, the Herring Defendants were aware that Article 1 ("Bill of Rights") of the Constitution of Virginia declares all "power is vested in, and consequently derived from, the people, that magistrates are their trustees and servants, and at all times amenable to them." Article I, Sec. 2.
12. "That government is, or ought to be, instituted for the common benefit…of all the various modes and forms of government, which is best which is…most effectively secured ***against the danger of maladministration***…" Article I, Section 3. (Emphasis added).
13. At all times, the Herring Defendants, the Governor, every member of the General Assembly, and the Defendant Commissioner of Elections knew the Commonwealth had undergone significant population changes since the 2010 Census, with some areas of the state gaining significant population and other areas losing significant population. Amended Complaint, Exhibit 1.
14. At all times, it is reasonable to presume the Herring Defendants knew, as did the Governor, the General Assembly, and the Attorney General, that ***never in the history*** of the Commonwealth had a general election for the House of Delegates in a reapportionment year been held using the old, outdated electoral maps drawn to the now obsolete previous U.S. Census since *Reynolds*, *supra*, ruled the EPC applied to state legislative districts ("To the extent that a citizen's right to vote is debased, he is that much less a citizen…The Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens, of all places as well as of all races."). *Id* at 568.
15. Indeed, it is reasonable to presume that the Herring Defendants, as did the Governor, the General Assembly, and the Attorney General, knew that *Cosner*, *supra*, decided in the 1981 reapportionment year, said plainly "(a)llowing elections to proceeded under the 1971 [reapportionment] Act would greatly disadvantage the citizens in Virginia's rapidly growing areas and **would effect great harm to the principle of one-person, one-vote.**" *Id*, at 363. (Emphasis added).
16. Accordingly, it is reasonable to presume that as the year 2021 began, the Herring Defendants as the top election officials in the Commonwealth, along with the Attorney General, the top legal officer in the state, knew it would not merely be unprecedented but

unconstitutional to hold the November 2, 2021, general election for the House of Delegates using the old, outdated districts drawn to a now obsolete U.S. Census.

17. Indeed, Attorney General Herring had long been critical of former President Donald Trump for failing to adhere to the plain meaning of the U.S. Constitution as regards the 2020 U.S. Census, having attacked the Trump Administration for "blatant illegal politicization of the census" and its attempt to "manipulate" the numbers, such census data needed to allow states like Virginia to "perform critical governmental functions." Press release, Office of Attorney General, dated November 30, 2020, available on the AG's website. https://www.oag.state.va.us/media-center/news-releases/1884-november-30-2020-herring-defends-census-at-supreme-court-against-trump-administration-s-latest-attacks
18. It remains for the historians to determine the precise reason or reasons for the unprecedented late delivery of vital 2020 U.S. Census data to Virginia in the 2021 reapportionment year.
19. However, in terms of this instant matter, whether one wants to blame federal government census policies, the pandemic, or other factors, in whole or part, this following fact is not in dispute: as 2021 dawned, the leaders of Virginia's state government, along with the newly created Virginia Redistricting Commission, had good reason to be concerned about whether the U.S. Census data needed to draft the new districts as required by federal and state law would arrive in time to complete these constitutional duties in the normal time of years past.
20. Indeed, new Section 6-A added to Article II of the Constitution of Virginia by the voters last year had been written with these usual time frames in mind, which is to say neither the drafters nor the public considered the need to provide a specific remedy for what had now occurred in 2020. *See* Article II, Section 6-A.
21. It is unclear whether state leaders were at any time hopeful the new Biden Administration might be able to get the necessary census information on time.
22. But for whatever reason, the leaders of the General Assembly did something not done since the *Cosner* case: they decided not to push back the date of the June primary by several months to either late August or early September to give the maximum chance for the 2021 general election for the House of Delegates to be contested according to the new electoral districts as required by law.
23. As the leaders of the state government know, it would make no political or legal sense, much less common sense, to hold a June primary using the old districts, and then hold the general election in November using the new districts.
24. Those nominated in the June primary as the major party candidates for the House of Delegates, or those who filed by petition as independent or minor party candidates to run in an old district, would not be eligible to run in the new districts without repeating the entire nomination process.
25. This would not only mean the expense expended to be nominated in June had been for naught, but it would further mean there would not be time to hold a new primary to nominate House of Delegate candidates prior to the general election as this date is set in Article IV, Section 3 of the Constitution of Virginia.

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26. The effort to ensure electoral district alignments in the primary and general elections since the decision in *Mahan, Secretary, State Board of Elections, et al., v. Howell et al.*, 410 U.S. 315 (1973), must be seen as decisions made early in the reapportionment year process by state leaders to try and do precisely what the *Cosner* case would later decree, namely that "Virginia's citizens are entitled to vote as soon as possible for their representatives under a constitutional appointment plan," *Id* at 364. In accord: then-Judge Roger Gregory in *Harris v. McCory,* 159 F. Supp. 3d 600, 627 (2016), in which he found a redistricting plan in violation of the EPC and favorably cited this observation in *Cosner*.
27. Accordingly, unlike any previous Virginia State Board of Elections, any previous Governor, any previous Attorney General, and any previous General Assembly in the last 50 years, the leaders of state government in Virginia unilaterally decided that even if the Biden Administration managed to get the Census data delivered faster, the 2021 general election for the House of Delegates would be held using the old districts.
28. Therefore, the General Assembly, before the winter had ended, voted during the 2021 Special Session I to hold the primary in June, albeit one week later than normal. Chapter 239 of the Acts of Assembly of the 2021 Special Session I signed by the Governor on March 18, 2001. https://lis.virginia.gov/cgi-bin/legp604.exe?212+sum+SB1148
29. Admittedly, the Census data did arrive far too late to enable the 2021 general election for the House of Delegates to be held under newly drawn electoral districts.
30. But this fact cannot obscure the decision by state leaders to violate the Constitution, and the failure of the Herring Defendants to ensure the legality of said elections, which Defendants concede, *infra*, they are obligated to ensure.
31. In that connection, the Code of Virginia anticipates the need for the state's top election officials to demand formal guidance on such important questions of election law.
32. Va. Code Section 2.2-505(A) says the "Attorney General shall his advice and render official advisory opinions in writing" when requested in writing by one of the following: "the Governor; a member of the General Assembly…head of a state department…board."
33. Accordingly, the Herring Defendant members of the State Board of Elections through Chairman Brink, Defendant Commissioner of Elections, the Speaker of the House of Delegates, the Minority Leader of the House of Delegates, the Governor, indeed any member of the General Assembly could have asked the Attorney General to give formal guidance on these matters.
34. Despite *Pro se* Plaintiff having initially filed his Complaint in June, the Herring Defendants have never indicted they ever asked for such a formal opinion.
35. In addition, anticipating the need to seek guidance in extraordinary electoral situations, the Code of Virginia gives members of the Virginia State Board of Election a most extraordinary power, a power not cited by the Herring Defendants in this entire litigation.
36. Virginia Code Section 24.2-103(F) says the "State Board [of Elections] may petition a circuit court or the Supreme Court, whichever is appropriate, for a writ of mandamus or prohibition, **or other available legal relief, for the purpose of ensuring that elections are conducted as provided by law."** (Emphasis added).
37. Upon information and belief, the State Board of Election did not even consider using this power.

38. However, Delegate Lee Carter has shown the media a letter he sent back in April to the Office of the Attorney General, asking the Attorney General to address the constitutionality of holding the general election for the House of Delegates under the old districts. https://www.courthousenews.com/delayed-census-data-throws-wrench-into-virginia-house-elections/
39. To date, Delegate Carter has not received a reply despite the seeming plain language of Va. Code Section cited in paragraph #32 *supra*.
40. When asked about this situation by District Court Judge Novak, the lead lawyer representing the Herring Defendants refused to confirm or deny receipt of the letter, citing Mr. Herring's policy on such letters (this attorney has now withdrawn from the case).
41. According to the Herring Defendants and their attorney, the relevant duties of the Defendant members of the State Board of Elections is to "supervise and coordinate the work of the county and city electoral boards and of the registrars to obtain uniformity in their practices and proceedings and legality and purity in all elections." Va Code Section 24.2 103 (A) as cited in Defendants Motion to Dismiss I at Page 2.
42. This description of their duties conveniently uses the terms "county and city" and makes it seem that the State Board of Elections is misnamed.
43. *Pro se* Plaintiff understands that Defendants were trying to say they had nothing to do with redistricting or the setting of the date of elections, saying none of them "are charged with the requirements relating to redistricting under either Title 24.2 of the Virginia Code or the Virginia Constitution." Motion To Dismiss I, page 10.
44. But even with that caveat, it is still striking that Defendants believed they could simply not cite Va. Code Section 24.2-679 and 680.
45. Va Code Section 24.2-679(A) says the "State Board shall…determine those persons who received the greatest number of vote and have been duly elected" to the House of Delegates.
46. Va. Code Section 24.2-680 says "Subject to the requirements of [Virginia Code Section] 24.2-948.2, the State Board shall without delay complete and transmit to each of the persons declared to be elected a certificate of election, certified by it under its seal of office."
47. The State Board never referenced either statute in either of its Motions To Dismiss.
48. Rather, in Motion To Dismiss II, in their Statement of Facts, the Herring Defendants say that "[n]o provision of the Virginia Constitution or the Virginia Code grants the SBE [State Board of Elections] or its members the authority to establish district plans or ***to set any election***." (Emphasis added). Motion To Dismiss II, at Page 2.
49. As the Herring Defendants fully know, *Pro se* Plaintiff never suggested the SBE had the power to establish districts.
50. The Herring Defendants go even further, saying, "none of the Defendants have the authority to alter the status quo with respect to establishing districts or *scheduling elections*." Motion to Dismiss II, at page 3. (Emphasis added).

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DEFENDANTS-APPELLANTS' SUBSEQUENT ACTIONS THAT REQUIRE THIS MOTION FOR SUMMARY JUDGMENT

51. Despite claiming they had no power to "alter the status quo with respect to establishing districts or scheduling elections," the Defendants have now used their power to do just that, albeit indirectly.
52. As indicated above, Defendants have not merely issued certificates of election, but these certificates say those winning on November 2, 2021 "were elected for a two-year term." Defendant's Response to Plaintiff's Motion For a Temporary Injunction. Exhibit 1.
53. Contrary to the assertions of the Herring Defendants, they always had the power to affect the status quo and indirectly set the date of elections, and it is a fair presumption for *Pro se* Plaintiff to now assume they always intended to use it since *Pro se* Plaintiff filed his initial Complaint.
54. It matters not, for purposes of this Motion for Summary Judgment, whether a federal court has the power to declare such certifications of election invalid or disregard them in terms of the constitutional issues raised by *Pro se* Plaintiff.
55. What matters, or at least what *Pro se* Plaintiff believes should matter, is that over all these months, the Herring Defendants filed motion after motion, saying they had nothing to do with state elections, they had no way to alter the status quo and no way to impact the scheduling of elections, that *Ex parte Young* made it clear they were not a proper party in these kinds of matters.
56. Now, however, we discover they always intended, should they succeed in delaying matters until after the election, to use their power to grant the winners on November 2, 2021, two-year terms, at least to the extent they had such power.
57. This is the reason *Pro se* Plaintiff believed he needed to recapitulate what had transpired to date in paragraphs #1 through #57.
58. Accordingly, *Pro se* Plaintiff submits the actions of the Herring Defendant members of the Virginia State Board of Elections fatally undermine their 11th Amendment claim, to the extent it had any legal merit since the ruling of Circuit Court Judge Bryan Sr. 59 years ago.

REMEDY

Pro se Plaintiff asks for the following remedy:

(A) The granting of his Motion for Summary Judgment; and

(B) In the alternative, the dismissal of the Defendants' appeal on the grounds they have now conceded they have the very power and have already done the very type of act that *Ex parte Young* intended to bring within the wise jurisprudence of a federal court for the protection of an American citizen's federally protected constitutional rights.

Respectfully Submitted,

PAUL GOLDMAN

Pro Se Appellee

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CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2021, this Motion for Summary Judgment was hand delivered to the Clerk of the United States Court of Appeals for the 4th Circuit Court. A true copy of this Motion was also sent, via first class mail, to the following attorneys at said address:

Brittany Record

Carol Lewis

Calvin Brown

Brittany McGill

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EXHIBIT #1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

Paul Goldman,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Civil Action No. 3:21-CV-420**
	)	
Robert Brink, et al.,	)	
	)	
Defendants.	)	

DEFENDANTS' RESPONSE TO
PLAINTIFF'S MOTION FOR TEMPORARY INJUNCTION

Defendants submit the following response to Plaintiff's Motion for Temporary Injunction (ECF No. 53). On Tuesday, November 16, 2021, the State Board of Elections issued the certificates of election for members-elect of the House of Delegates elected at the November 2, 2021 general election. Accordingly, this matter is moot, and Plaintiff's Motion for Temporary Injunction should be denied.

1. The State Board of Elections (SBE) is required to meet on the third Monday in November to certify the results of the November election.[1]

2. The SBE is required to, without delay, "complete and transmit to each of the persons declared to be elected a certificate of his election, certified by it under its seal of office."[2]

3. The SBE met on Monday, November 15, 2021 and certified the results of the November 2, 2021 general election, including the results for the election of members of the House of Delegates. At that meeting, the members of the SBE signed the required certificates of election for all individuals elected at the November 2, 2021 general election.

[1] Va. Code § 24.2-679(A).
[2] Va. Code § 24.2-680.

4. The SBE, through the Department of Elections, transmitted the signed certificates of election on Tuesday, November 16, 2021 to each individual elected to the House of Delegates at the November 2, 2021 general election.

5. In Plaintiff's Motion for Temporary Injunction, Plaintiff asks that an injunction "be issued preventing the Defendant members of the State Board of Election[s] from using the power granted them in their representative capacities to have the State Board of Elections issue Certificates of Election indicating those elected to the House of Delegates at the November 2, 2021, general election have the right to serve a two-year term." ECF No. 53, p. 1.

6. The relief that Plaintiff seeks, namely that the SBE be barred from issuing certificates of election to the members-elect of the House of Delegates indicating that they were elected for a two-year term, may not be granted. The SBE issued the relevant certificates of election to the members-elect of the House of Delegates five days ago. Accordingly, this matter is moot, and Plaintiff's Motion for Temporary Injunction should be denied.

Dated: November 19, 2021

Respectfully submitted,

ROBERT H. BRINK
JOHN O'BANNON
JAMILAH D. LECRUISE
CHRISTOPHER E. PIPER

By: */s/ Carol L. Lewis*
Carol L. Lewis (VSB #92362)*
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**Attorneys for Robert H. Brink, John O'Bannon, Jamilah D. LeCruise, and Christopher E. Piper, in their official capacities.*

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on November 19, 2021, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system. A true copy was also sent, via first class mail and electronically, to:

Paul Goldman
PO Box 17033
Richmond, VA 23226
Pro se Plaintiff

/s/ Carol L. Lewis
Carol L. Lewis (VSB #92362)
Counsel for Defendants

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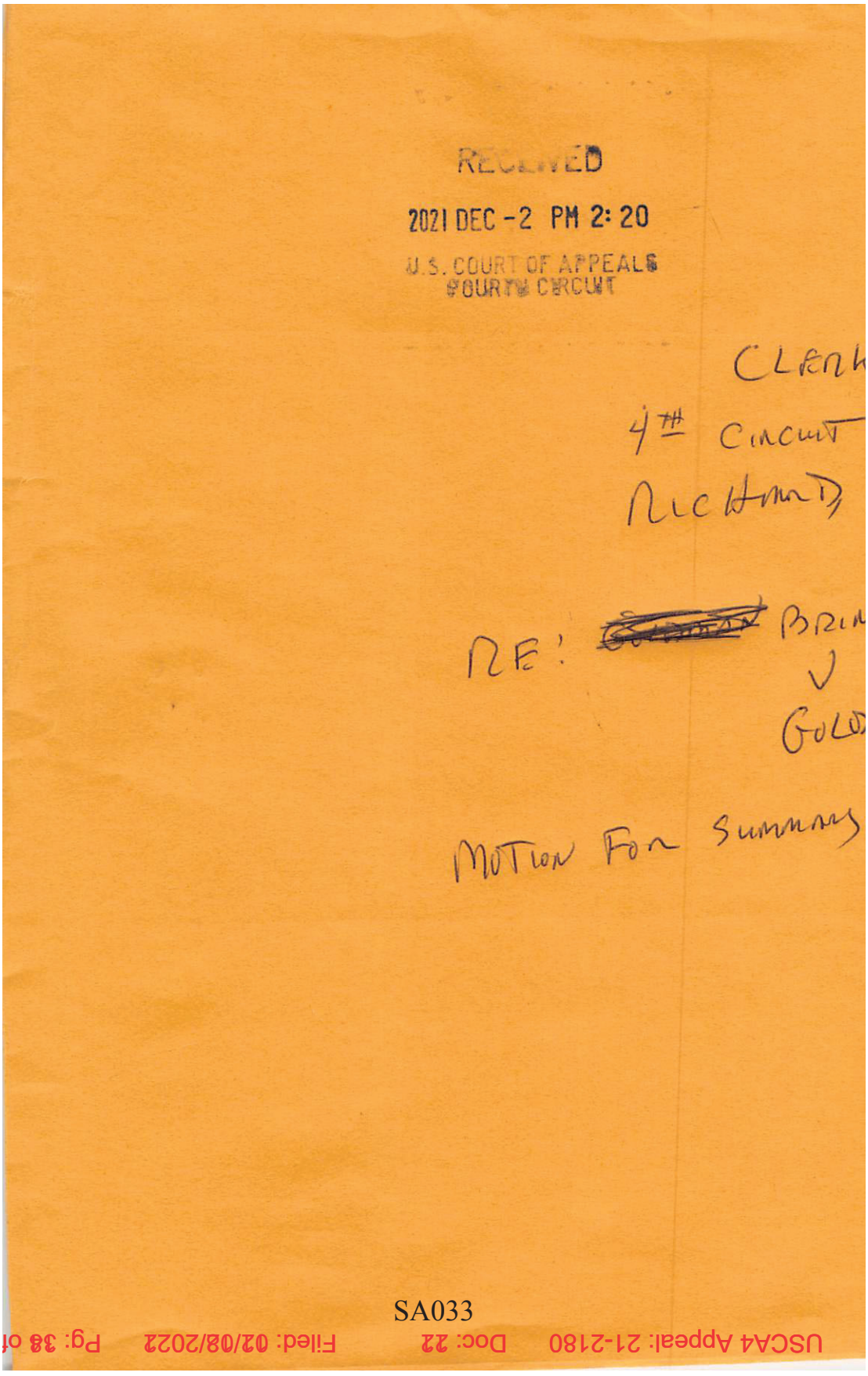

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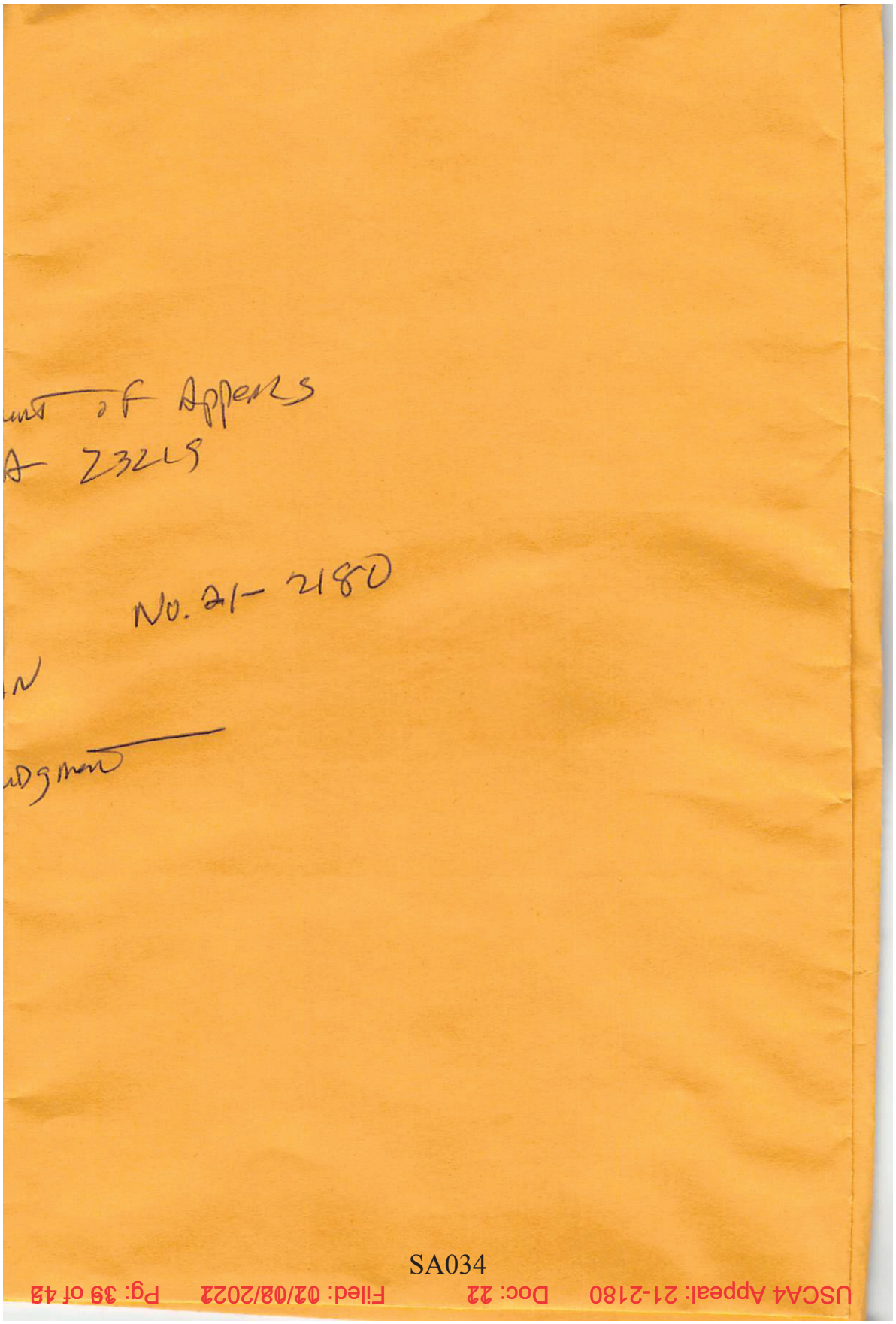

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VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday the 28th day of December, 2021.

Present: All the Justices

In Re: Decennial Redistricting Pursuant to
The Constitution of Virginia, art. II, §§ 6 to 6-A,
and Virginia Code § 30-399

FINAL ORDER ESTABLISHING VOTING DISTRICTS FOR THE SENATE OF VIRGINIA, THE HOUSE OF DELEGATES OF VIRGINIA, AND VIRGINIA'S REPRESENTATIVES TO THE UNITED STATES HOUSE OF REPRESENTATIVES

Following the process provided in § 30-399 of the Code of Virginia, upon the failure of the Virginia Redistricting Commission to submit a redistricting plan by the governing statutory deadlines, the Supreme Court of Virginia assumed responsibility for the establishment of voting districts for the Senate of Virginia, the Virginia House of Delegates, and for Virginia's representatives to the United States House of Representatives as provided by Article II, §§ 6 to 6-A of the Constitution of Virginia and Virginia Code § 30-399. The Constitution requires that this responsibility be completed "in the year 2021 and every ten years thereafter." Va. Const. art. II, § 6.*

The Court has reviewed the proposed final redistricting maps and the accompanying explanatory memorandum prepared by the Special Masters dated December 27, 2021 ("Final Memorandum"), and has considered the extensive public comment, including comments submitted in writing to the Clerk of Court, comments made on the online interactive maps, and comments made directly to the Court during its public hearings on December 15 and 17, 2021. The redistricting plan and maps, jointly prepared by the Court's Special Masters, Dr. Bernard Grofman and Mr. Sean Trende, include a single redistricting map for the Senate of Virginia, a single redistricting map for the Virginia House of Delegates, and a single redistricting map for Virginia's representatives to the United States House of Representatives as posted on the

* *See generally* A. E. Dick Howard, *Commentaries on the Constitution of Virginia* 416-17 (1974) (citing 1952 Op. Atty. Gen. 85).

Supreme Court of Virginia's public website at Supreme Court of Virginia Final Order and Approved Maps and labelled *SCV Final Map Congressional Districts 12.27.2021*, *SCV Final Map Senate Districts 12.27.2021*, and *SCV Final Map House of Delegates Districts 12.27.2021* (collectively referred to as "Final Redistricting Maps").

The Court unanimously finds that in preparing the Final Redistricting Maps, the Special Masters have followed the Court's instructions and have fully complied with federal and state law in the following order of precedence:

- The United States Constitution, particularly Article I, Section 2, and the Equal Protection Clause of the Fourteenth Amendment;
- Applicable federal statutes, particularly the Voting Rights Act of 1965, 52 U.S.C. § 10301;
- The Constitution of Virginia, particularly Article II, Sections 6 to 6-A; and
- Applicable Virginia statutes, particularly Code §§ 30-399(E), 24.2-304.04, and any other relevant provision in Chapter 3 of Title 24.2 of the Code of Virginia.

The Final Redistricting Maps prepared by the Special Masters are fully compliant with constitutional and statutory law applied, as the Court directed, in an apolitical and nonpartisan manner.

Accordingly, for the foregoing reasons and under the constitutional and statutory authority of the Supreme Court of Virginia, the Court unanimously ORDERS that:

(1) The Final Redistricting Maps and Final Memorandum prepared by the Special Masters and posted on the Supreme Court's public website at Supreme Court of Virginia Final Order and Approved Maps are incorporated herein by reference and are approved and adopted and, effective immediately, the Final Redistricting Maps shall constitute and establish the voting districts for the Virginia House of Delegates, the Senate of Virginia, and for Virginia's representatives to the United States House of Representatives;

(2) The State Board of Elections and the Virginia Department of Elections shall immediately implement the voting districts established by the Final Redistricting Maps to ensure that the 2022 Congressional elections, and any future regular primary or general elections that may be held for the Virginia Senate, Virginia House of Delegates, and Congress will proceed as scheduled. Any further use of current voting districts as set forth in Virginia Code §§ 24.2-304.03 (House of Delegates districts), 24.2-303.3 (Senate districts), and 24.2-302.2

(Congressional districts) for any regular primary or general election is prohibited. For any special elections that may be scheduled before the next regular primary or general election for the Virginia Senate, Virginia House of Delegates or United States House of Representatives, the State Board of Elections, and the Virginia Department of Elections will need to determine whether, under the particular circumstances presented, the Final Redistricting Maps should be used.

(3) The Clerk of Court shall forward copies of this Order to: the Honorable Richard L. Saslaw, Senate of Virginia; the Honorable Thomas K. Norment, Jr., Senate of Virginia; the Honorable Eileen Filler-Corn, Virginia House of Delegates; the Honorable C. Todd Gilbert, Virginia House of Delegates; the Honorable Susan Clarke Schaar, the Clerk of the Senate of Virginia; the Honorable Suzette Denslow, the Clerk of the House of Delegates of Virginia; Amigo R. Wade, the Director of the Division of Legislative Services; and to the Reporter of Decisions for publication in the Virginia Reports.

It is so ORDERED.

Donald W. Lemons
Chief Justice of the Supreme Court of Virginia
on behalf of a unanimous Supreme Court of Virginia

Justice S. Bernard Goodwyn

Justice William C. Mims

Justice Cleo E. Powell

Justice D. Arthur Kelsey

Justice Stephen R. McCullough

Justice Teresa M. Chafin

SCV Final House of Delegates Map (interactive)

SCV Final House of Delegates Map (pdf)

SCV Final Senate Districts Map (interactive)

SCV Final Senate Districts Map (pdf)

SCV Final Congressional District Map (interactive)

SCV Final Congressional Districts Map (pdf)

Special Masters' Final Memorandum (pdf) 12/27/2021