

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



Paul Goldman

Plaintiff,

v.

Christopher Piper, et al,

Defendants.

Civil No. 3-21:cv-00420-DJN-SDT-RAJ

PROSPECTIVE PLAINTIFF THOMAS' MOTION TO INTERVENE

Pursuant to the Court's October 12 Order directing that "by October 29, 2021, any prospective intervenors who wish to intervene in this case must file a Motion to Intervene" (ECF 41, par. 5), prospective Plaintiff Jeffrey Thomas, Jr. ("Thomas") hereby files his Federal Rules of Civil Procedure Rule 24 Motion to Intervene.

Factual Statements

Thomas meets the three-prong test as an intervenor under Rule 24(a)(2). Thomas is a registered voter in Virginia's House of Delegates District 71 ("HD 71"), a majority-minority district in Richmond. HD 71 has a large population that exceeds constitutional standards. Voting for the 2021 House of Delegates elections has begun and is being carried out under unconstitutional maps that harm Thomas. Thomas voted in the 2021 general elections and intends to vote in the 2022, 2023 and 2024 general elections. Thomas intends to continue residing at his current address in 2022, 2023 and 2024. Thomas and all other qualified voters and residents of HD 71 have had their voting rights and political representation unconstitutionally diluted or weakened by

Defendants' failure to enact, facilitate or oversee constitutional redistricting or elections under constitutional districts. The voting rights and political underrepresentation, dilution and/or weakening in HD 71 is greater than the 10% threshold adopted by the Supreme Court in *Brown v. Thomson* (1983) under which the burden of proof for inequitable redistricting shifts from the people to the state, as well as the 5% threshold permissible under Virginia Code.

Thomas' interests are thus substantially different from and not adequately represented by Plaintiff Goldman (HD 68) or prospective Plaintiff Joshua Stanfield (HD 93) (Motions for Joinder and to Intervene denied). First, both Goldman and Stanfield live in districts whose populations according to the 2020 Census data provided by the Virginia Redistricting Commission are lower than the mean average House of Delegates district population, not higher, as HD 71 is. While redistricting could in theory diminish Plaintiff Goldman and prospective Plaintiff Stanfield's voting strength and political representation, redistricting cannot possibly diminish Thomas' voting strength and political representation. Second, to the extent that Thomas shares any injuries with Goldman and Stanfield, Thomas' injuries are greater because his voting rights and rights to equal political representation are more severely harmed. Third, Thomas lives in a majority-minority district, while Plaintiff Goldman and prospective Plaintiff Stanfield do not. Fourth, Thomas requests different relief than Plaintiff Goldman and prospective Plaintiff Stanfield.

Memorandum of Legal Authorities:

Thomas Meets Rule 24(a)(2) Standards for Intervention

The Court properly denied prospective Plaintiff Stanfield's Motions for Joinder and to Intervene. The Court ruled that Stanfield's interests were generalizable to all Virginia voters and that "Stanfield has not shown that Plaintiff cannot represent his interests... Plaintiff and Stanfield make the same legal arguments and request the same relief. Nothing suggests that Plaintiff will

not continue to adequately represent Stanfield's interests as a voter in a relatively populous House of Delegates district, or as a Virginia voter concerned about the commission's delay in drawing an updated legislative apportionment plan" (ECF 31, p. 9).

Thomas' interests are different. According to 2020 Census data provided by the Virginia Redistricting Commission pursuant to Stanfield's August 2021 Freedom of Information Act request (ECF 22-1, pp. 4-5), the population of Plaintiff Goldman's district (68) is 85,223, the population of Stanfield's district (93) is 82,347, and the population of Thomas' district (71) is 93,525. The population of Virginia according to the 2020 Census is 8,631,393.¹ One hundred equal House of Delegates districts would each contain 86,313 (or 86,314) people. Thus, Goldman and Stanfield's districts are below the mean average and Thomas's district is substantially above. Thomas' district is $93,525/86,314$, or 8.354% underrepresented compared to the mean average.

Furthermore, HD 71 is a majority-minority district. According to the Virginia Redistricting Commission, the post-*Bethune Hill* demographics of HD 71 are: 59.0% Black; 34.7% white; 4.0% Asian; 2.5% Hispanic; 0.9% multiple races; 0.5% American Indian or Alaska Native; and 0.1% Hawaiian Pacific Islander.² The constitutional harm to Thomas and the 93,524 other residents in HD 71 elevates the state's heavy burden to justify its "prima facie" unconstitutional violations of the equal protection rights of Thomas and other HD 71 residents under federal precedent.

The Supreme Court has long acknowledged that "some deviations from population equality may be necessary to permit the States to pursue other legitimate objectives such as "maintain[ing] the integrity of various political subdivisions" and "provid[ing] for compact districts of contiguous territory." *Reynolds v. Sims*, 377 U.S. 533, 578," as Justice Powell wrote

¹ <https://www.census.gov/quickfacts/VA>. "Virginia: Population, Census, April 1, 2020."

² https://virginiaredistricting.org/2010/Data/House%20Plans/Final_Remedial_Plan/final%20remedial%20plan.pdf, p. 6, HD 71.

for the majority. “But an apportionment plan with population disparities larger than 10% creates a prima facie case of discrimination and therefore must be justified by the State, the ultimate inquiry being whether the plan may reasonably be said to advance a rational state policy and, if so, whether the population disparities resulting from the plan exceed constitutional limits.”

Brown v. Thomson, 462 U.S. 835, (1983).

Because the 10% standard relates to “disparities” as measured between the smallest and largest districts, Virginia’s failure to properly redistrict “must be justified by the State, the ultimate inquiry being whether the plan may reasonably be said to advance a rational state policy.” The State has not done so in regards to Thomas’ district, or any other.

A range of 8.354% above the *mean average* for Thomas’ legislative district is suspect under constitutional grounds: an equal range of 8.354% below the mean would constitute a 16.708% difference in legislative districts. A population of 93,525 would be constitutionally suspect under any redistricting plan in Virginia. This would be the case merely if Thomas’ district *arguendo* had the highest population in Virginia and no districts were disproportionately lower.

The legal argument against the high population in Thomas’ district is much stronger. “Districts shall be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district. A deviation of no more than five percent shall be permitted for state legislative districts.” Va. Code Ann. § 24.2-304.04(1). Any legal redistricting in Virginia cannot possibly create any district with a population of more than 93,525, or 8.354% above the mean average. The five percent deviation creates a maximal upper bound of $86,314 \times 1.05 = 90,630$ residents in any redistricting.³ The HD 71 population is so large that all residents

³ In fact, the maximal bound would be lower than 90,630 because the remaining 99 districts could therefore not be precisely 86,314 people: for any district above the mean average, at least one district must be below the mean average. The figure of 90,630 at five percent above the mean average is for representative purposes only in order to

in Thomas' district will necessarily gain voting strength and political representation under any forthcoming redistricting. Thus, all residents in HD 71 are harmed by Defendants' failure to facilitate, conduct or oversee constitutional elections. This, again, makes Thomas' district and interests distinct from Plaintiff Goldman and prospective plaintiff Stanfield.

Furthermore, ten percent or five percent malapportionment is not the current situation in HD 71. The 8.354% figure represents the variation of Thomas' district as compared with a hypothetical mean average district. The "deviations" in *Brown v. Thomson* are measured by comparing a target legislative district against the smallest legislative district, not the mean. According to census data released by the Virginia redistricting commission, the smallest district (HD 3) has a population of 71,122 and the largest district (HD 87) has a population of 130,082 (ECF 22-1, pp. 3-4). This 130,082/71,122 ratio between highest and lowest population districts in Virginia is an 82.900% disparity. Residents and voters in Thomas' district, a majority-minority district, face 93,525/71,122, or 31.315% underrepresented, diluted or weakened voting rights and political representation compared to voters in HD 3, which is not a majority-minority district. Thus, HD 71 is clearly unconstitutional by federal standards and illegal under Virginia Code and the Virginia Constitution, which incorporates federal law in Article II, Section 6. ("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.") Defendants have chosen not to carry out their constitutional duties but to conduct unconstitutional elections that harm Thomas and every other resident of HD 71. Defendants' unconstitutional actions will

illustrate that HD 71's current population of 93,525 is impossibly high under any upcoming Virginia redistricting scheme.

continue to harm Thomas and the 93,524 other residents in HD 71 by leaving them underrepresented in the General Assembly for years to come, until new elections are held in 2023 and the winners are sworn in in 2024.

The Court described the three elements an intervenor must meet to satisfy Rule 24(a)(2). A prospective intervenor must show: “(1) an interest in the subject matter of the action; (2) that the protection of this interest would be impaired because of the action; and (3) that the applicant’s interest is not adequately represented by existing parties to the litigation.” (citing *Teague v. Bakker*) (ECF 31, p. 7). The Court found that prospective Plaintiff Stanfield met the first two elements: he “clearly has an interest in the subject matter of the litigation, and the action might impair the protection of that interest.” Thomas has a stronger claim to those interests than either Stanfield or Goldman because Thomas’ injury and the injury to the other 93,524 residents in HD 71 are unambiguous, more severe and will continue until at least 2024 under the current scheme. However, unlike Stanfield, Thomas also meets the third prong of the Rule 24(a)(2) test because Thomas’ interests are distinct from Plaintiff Goldman and clearly not represented by Plaintiff Goldman. Thomas is actively harmed by having his vote and political representation unconstitutionally weakened and will continue to be harmed for years to come because of Defendants’ unconstitutional actions. Any redistricting under Virginia law would necessarily redress the constitutional equal protection injuries suffered by Thomas and all other residents in HD 71 due to their populous district’s underrepresentation in the General Assembly. Thomas lives in a majority-minority district, while Plaintiff Goldman and prospective Plaintiff Stanfield do not. Thomas also requests one identical and one distinct remedy as compared to Plaintiff Goldman.

As a threshold matter, Thomas agrees with Plaintiff Goldman that the *Cosner* remedy of 2022 House of Delegates elections is the most sensible for the reasons outlined in *Cosner*.

However, Thomas disagrees with Plaintiff Goldman as to the relief requested in two parties. First, he disagrees with Plaintiff Goldman's request for relief under Virginia law and agrees with the Court's interpretation of that matter. Thomas also disagrees that anyone should receive reimbursement for attorney's fees as a *pro se* Plaintiff.

Thomas requests different relief. Thomas attended the Court's October 12 hearing on this matter. Thomas is concerned about the way politicians in the Commonwealth have brought us to this untenable situation. The arguments offered by the people's attorneys in the October 12 hearing were unconvincing, and, at times, disrespectful. They refused to tell the Court in direct violation of the Court's Order (October 8, 2021 Order, ECF 34) when the Attorney General received a request from Delegate Lee Carter to address this precise issue (ECF 36). They further tried to submit a bunch of gobbledygook about how the word "shall" does not mean "shall" (ECF 36). The attorneys from the Office of the Attorney General refused even to acknowledge to the Court that the Attorney General was their boss (October 12, 2021 hearing, transcript pending). The Commonwealth's attorneys are supposed to represent the people's interests. It is clear that the Commonwealth chooses not to represent the interests of the voters, in Thomas' district or elsewhere, and has a political agenda.

Reimbursement for comparable attorney's fees for *pro se* litigants would not act as a deterrent to the appointed officials and politicians responsible for taking away the people's rights so incumbents of both parties can have an easier time facing re-election and serve their unconstitutional terms longer than under the *Cosner* precedent. In fact, given the conduct of the people's attorneys, a failure to coerce the Commonwealth into compliance may have the effect of encouraging identical violations of citizens' constitutional rights for political gain. Dilatory tactics have quadruply harmed the people by taking away their rights to constitutional districts, burdening

this Court and now Circuit, wasting valuable taxpayer dollars to litigate this matter against the voters, and potentially conducting additional elections. Citizens should not have to plead with state officials who work for them to abide by the Constitution and protect their voting rights. Thomas requests the Court order the Commonwealth to endow an independent fund modeled after Judge Merhige's creation of the Virginia Environmental Endowment to ensure that voters' rights are protected beyond the reach of politics.

Conclusion

Pursuant to Rule 24(c), Thomas has served his Motion to Intervene "on the parties as provided in Rule 5. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought." Thomas is appending his Complaint to this Motion to Intervene.

For the reasons described above, prospective Plaintiff Jeffrey Thomas, Jr., respectfully requests that the Court grant his Motion to Intervene under Federal Rules of Civil Procedure Rule 24(a)(2). If the Court does not find that Thomas has met his Rule 24(a)(2) burden, he respectfully requests permissive intervention under Rule 24(b). A proposed Order is attached.

Respectfully submitted,



Dated: October 15, 2021

Jeffrey Thomas, Jr.
301 Virginia St. Unit 1514
Richmond, VA 23219
(804) 418-0252
jeffburkethomas@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this 15th of October, 2021, I caused to be served on Plaintiff Goldman goldmanusa@aol.com and counsel for Defendants Jessica Merry Samuels jsamuels@oag.state.va.us, Carol Lewis clewis@oag.state.va.us, Calvin Brown cbrown@oag.state.va.us, and Brittany McGill bmcgill@oag.state.va.us, via electronic mail a copy of the foregoing pleading.

I requested via email and received via email written consent from Mr. Goldman to serve him electronically at goldmanusa@aol.com.

I requested via email Ms. Samuels' consent for electronic service "pursuant to Federal Rules of Civil Procedure Rule 5(b)(2)(E)." Ms. Samuels is listed as the "Counsel for Defendants" on the Certificate of Service she signed and filed with the Court on October 9, 2021 (ECF 38, p. 6). The email address for Ms. Samuels is also listed on ECF 38, p. 5. I received a reply from Carol Lewis stating that "the Office of Attorney General is not authorized to accept service on behalf of any of the remaining Defendants. Accordingly, those individuals must be served as normally required." Ms. Lewis then listed the email addresses of the "counsel of record for the remaining Defendants," including herself and Ms. Samuels (Exhibit 1).

Under Federal Rules of Civil Procedure Rule 24(c): "A motion to intervene must be served on the parties as provided in Rule 5. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought." Under Rule 5(b)(1): "If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party." The Court has not ordered service on the party. Therefore, "service under this rule must be made on the attorney." Thomas served the

counsel of record at the email addresses provided by Ms. Lewis, one of the attorneys for Defendants.

Thomas apologizes for this long explanation. Thomas assumes that Ms. Lewis was acting in good faith and providing the email addresses of Defendants' attorneys for service under Rules 5 and 24 rather than attempting a delaying tactic and wasting his and the Court's time.

Jay Thomas 10-15-21

Local Civil Rule 83.1 Pro Se Certification

I declare under penalty of perjury that:

1. No attorney has prepared or assisted in the preparation of this document.

Plaintiff Jeffrey Thomas, Jr.

Signed: Jeffrey Thomas, Jr.

Executed on: 10-15-21 (date)

Exhibit



Jeff Burke Thomas <jeffburbkethomas@gmail.com>

Goldman v. Northam, Piper, et al. - Rule 5(b)(2)(E) conferral

Lewis, Carol L. <CLewis@oag.state.va.us>

Thu, Oct 14, 2021 at 5:38 PM

To: "jeffburbkethomas@gmail.com" <jeffburbkethomas@gmail.com>

Cc: PAUL GOLDMAN <goldmanusa@aol.com>, "Lockerman, Heather Hays" <HLockerman@oag.state.va.us>, "Samuels, Jessica Merry" <JSamuels@oag.state.va.us>, "Brown, Calvin C." <CBrown@oag.state.va.us>, "McGill, Brittany A." <BMcGill@oag.state.va.us>

Jeff,

The Office of the Attorney General is not authorized to accept service on behalf of any of the remaining named Defendants. Accordingly, those individuals must be served as normally required.

As stated in my previous email (attached), counsel of record for the remaining named Defendants are as follows:

Jessica Samuels: JSamuels@oag.state.va.us

Carol L. Lewis: CLewis@oag.state.va.us

Calvin Brown: CBrown@oag.state.va.us

Brittany McGill: BMcGill@oag.state.va.us

Regards,

Carol

Carol L. Lewis
Assistant Attorney General
Office of the Attorney General
202 North 9th Street
Richmond, Virginia 23219
(804) 692-0558 Office
CLewis@oag.state.va.us
<http://www.ag.virginia.gov>



From: Jeff B. Thomas <jeffburkethomas@gmail.com>
Sent: Thursday, October 14, 2021 2:31 PM
To: Samuels, Jessica Merry; Paul Goldman
Subject: Re: Goldman v. Northam, Piper, et al. - Rule 5(b)(2)(E) conferral

Please provide me the courtesy of a response regarding acceptance of electronic service. I am hoping to get this litigation off on the right foot. If not, I will serve you physically tomorrow. Thank you.

On Thu, Oct 14, 2021 at 8:39 AM Jeff B. Thomas <jeffburkethomas@gmail.com> wrote:


Mr. Goldman and Ms. Samuels,

I intend to file a Motion to Intervene in the Goldman v. Northam, Piper, et al. case pursuant to the Court's October 12 Order (ECF 41, par. 5).

Please let me know by close of business today if you would like me to serve you electronically with my filings in this matter at these email addresses pursuant to Federal Rule of Civil Procedure Rule 5(b)(2)(E). If you prefer a different email address do not hesitate to let me know.

Thank you.

Jeff

 **RE. Goldman v. Northam, Piper, et al. - Rule 5(b)(2)(E) conferral.MSG**
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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

Jeffrey Thomas, Jr.
301 Virginia St. Unit 1514
Richmond, VA 23219

Plaintiff,

v.

Christopher Piper, et al,

Defendants.

Civil No. 3-21:cv-00420-DJN-SDT-RAJ

COMPLAINT

This is an action by Plaintiff Jeffrey Thomas, Jr. against Defendants Christopher Piper, Commissioner of the Virginia Department of Elections, and Robert Brink, John O'Bannon, and Jamilah LeCruise, Chair, Vice Chair and Secretary of the Board of the Virginia State Board of Elections, respectively, to seek relief for injury arising from their violation of Plaintiff's constitutional rights under the Equal Protection Clause of the United States Constitution.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 1983.
2. This Court has personal jurisdiction over Defendants, who are employees or agents of Virginia government with their main offices in Richmond.
3. Venue is appropriate in this Court, as all relevant actions alleged to be unlawful were committed in Richmond within the jurisdiction of the Eastern District of Virginia.
4. Plaintiff is a resident of Richmond, Virginia.

FACTUAL ALLEGATIONS

1. Plaintiff is a qualified voter in Virginia's House of Delegates District 71 (HD 71).
2. HD 71 is a majority-minority district.
3. According to the Virginia Redistricting Commission, the post-*Bethune Hill* demographics of HD 71 are: 59.0% Black; 34.7% white; 4.0% Asian; 2.5% Hispanic; 0.9% multiple races; 0.5% American Indian or Alaska Native; and 0.1% Hawaiian Pacific Islander.¹
4. Plaintiff voted in the 2021 general elections.
5. Plaintiff intends to continue residing at his current address in 2022, 2023 and 2024.
6. Plaintiff intends to vote in the 2022, 2023 and 2024 general elections.
7. Plaintiff and all other voters and residents in HD 71 have had their voting strength and political representation unconstitutionally diluted or weakened by the failure of Defendants to conduct, enact or oversee decennial constitutional reapportionment, redistricting or elections.
8. The voter underrepresentation, dilution or weakening in HD 71 is greater than the 10% threshold adopted by the Supreme Court in *Brown v. Thomson*, under which the burden of proof for inequitable redistricting shifts to the state.
9. According to 2020 Census data provided by the Virginia Redistricting Commission pursuant to a Freedom of Information Act request (ECF 22-1, p. 4), the population of Plaintiff's district, HD 71, is 93,525.
10. The population of Virginia according to the 2020 Census is 8,631,393.²
11. One hundred equal House of Delegates districts would each contain 86,313 or 86,314 people.

¹ https://virginiaredistricting.org/2010/Data/House%20Plans/Final_Remedial_Plan/final%20remedial%20plan.pdf, p. 6, HD 71.

² <https://www.census.gov/quickfacts/VA>. "Virginia: Population, Census, April 1, 2020."

12. Plaintiff and all other residents or voters in Plaintiff's district are 93,525/86,314, or 8.354% diluted or weakened in their voting rights and in their political representation in the House of Delegates, compared to the mean average population district.
13. The Supreme Court has acknowledged that "some deviations from population equality may be necessary to permit the States to pursue other legitimate objectives such as "maintain[ing] the integrity of various political subdivisions" and "provid[ing] for compact districts of contiguous territory." *Reynolds v. Sims*, 377 U.S. 533, 578," as Justice Powell wrote for the majority. "But an apportionment plan with population disparities larger than 10% creates a prima facie case of discrimination and therefore must be justified by the State, the ultimate inquiry being whether the plan may reasonably be said to advance a rational state policy and, if so, whether the population disparities resulting from the plan exceed constitutional limits." *Brown v. Thomson*, 462 U.S. 835, (1983).
14. The 10% standard relates to "disparities" between the smallest and largest districts. *Brown v. Thomson*, 462 U.S. 835, (1983).
15. The 10% standard does not refer to differences between a legislative district population and the mean average population but to the maximal difference in any legislative redistricting plan between the smallest and largest districts.
16. It is mathematically impossible to construct a redistricting scheme where one district is above the mean average and no districts are consequently below.
17. A range of 8.354% above the mean average for Plaintiff's legislative district is suspect under constitutional grounds. A concomitant district of 8.354% below the mean would constitute a 16.708% difference in legislative districts.

18. According to census data released by the Virginia redistricting commission pursuant to a Freedom of Information Act request, the smallest district (HD 3) has a population of 71,122 and the largest district (HD 87) has a population of 130,082 (ECF 22-1, pp. 3-4).
19. This 130,082/71,222 ratio between largest and smallest House of Delegates district populations in Virginia represents an 82.900% disparity.
20. 130,082 residents in HD 71 have the same representation in the House of Delegates as the 71,222 residents in HD 3.
21. Voters and residents in Plaintiff's district, a majority-minority district, are 93,525/71,222, or 31.315% diluted or weakened compared to voters in HD 3, which is not a majority-minority district.
22. Thus, HD 71 is clearly unconstitutional by federal standards and illegal under Virginia Code and the Virginia Constitution, which incorporates federal law in Article II, Section 6. ("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.")
23. "Districts shall be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district. A deviation of no more than five percent shall be permitted for state legislative districts." Va. Code Ann. § 24.2-304.04(1).
24. A population of 93,525 would be constitutionally suspect at the 10% threshold under any possible redistricting plan in Virginia.
25. A population of 93,525 is impossible under Virginia Code at the 5% threshold under any possible redistricting plan in Virginia.

26. The Virginia Redistricting Commission adopted the guidance that the target population would be not greater than four percent. (“Each legislative district should be drawn to be as equal as practicable, with total population variances minimized, with a target of no more than plus or minus 2%, while considering the other principles listed below.”)³
27. Given the five percent maximum deviation under Virginia Code, after *any* redistricting, Plaintiff and voters and residents in his district will inevitably gain voting and political representation power merely equal to that now held by the majority of other Virginians.
28. Wherever the lines are drawn in redistricting, the districts cannot possibly include any districts as large as Plaintiff’s current district without being subject to “prima facie” constitutional scrutiny and violation of Va. Code Ann. § 24.2-304.04(1).
29. After any possible redistricting, Plaintiff and the voters and residents in his district will have their votes more fairly and equally counted and be more fairly and equally represented in the General Assembly.
30. “Districts shall be drawn in accordance with the requirements of the Constitution of the United States, including the Equal Protection Clause of the Fourteenth Amendment, and the Constitution of Virginia; federal and state laws, including the federal Voting Rights Act of 1965, as amended; and relevant judicial decisions relating to racial and ethnic fairness.” Va. Code Ann. § 24.2-304.04(2).
31. “No district shall be drawn that results in a denial or abridgement of the right of any citizen to vote on account of race or color or membership in a language minority group.
- No district shall be drawn that results in a denial or abridgement of the rights of any

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<https://www.virginiaredistricting.org/2021/Data/Ref/2021%20Redistricting%20Guidelines%20and%20Criteria%208-19-2021.pdf>.

racial or language minority group to participate in the political process and to elect representatives of their choice.” Va. Code Ann. § 24.2-304.04(3).

32. Electing House of Delegates members in 2021 to two-year terms ensures that Plaintiff and other residents and voters in HD 71 would not be constitutionally represented in the House of Delegates until 2024, when legislators are sworn in subsequent to 2023 elections.

33. Defendants’ failure to conduct 2021 House of Delegates elections under constitutional maps and refusal to hold House of Delegates elections under constitutional maps until 2023 clearly harms Plaintiff and all other similarly-situated voters and residents in his district and will continue to harm them through 2024.

34. Defendants oversee elections in Virginia and are proper parties in this case.

35. Defendants “facilitate the state’s elections, even if they do not draw the legislative district maps or set elections themselves.” ECF 40.

36. Defendants “oversee the execution of the General Assembly’s enactments.” Ibid.

37. Defendants “maintain the special enforcement relationship with the electoral process.” Ibid.

38. Defendants “each serve as individual state officers, and not as an arm of the state.” Ibid.

COUNT 1 – VIOLATION OF THE EQUAL PROTECTION CLAUSE

39. Defendants’ failure to facilitate, timely adopt or oversee the required constitutional elections, redistricting or reapportionment of the Virginia House of Delegates violates the Equal Protection Clause of the Fourteenth Amendment by causing Plaintiff and 93,524 other people in HD 71, a majority-minority district, to be underrepresented in the House of Delegates by a factor of more than 30% compared to other voters in less populous districts in Virginia.

40. Defendants' failure to facilitate, oversee or execute constitutional elections for the Virginia House of Delegates violates the equal protection rights of Plaintiff and the 93,524 other people in HD 71.
41. The deviations between the House of Delegate district populations violate the constitutional rights of Plaintiff and every qualified voter in his district to have their votes counted equally through their representatives elected to the General Assembly.
42. The deviations between the House of Delegate district populations violate the constitutional rights of Plaintiff and 93,524 other people in HD 71 to have equal political representation in the General Assembly.
43. Assuming that constitutional districts are enacted in time for the 2023 House of Delegates elections, Defendants and/or others in Virginia government deliberately conducting unconstitutional elections in 2021 for two-year House of Delegates terms will continue these constitutional violations and subject Plaintiff and 93,524 other underrepresented people in HD 71 to ongoing harm and violation of their constitutional rights until 2024.

REQUEST FOR RELIEF

As a direct and proximate result of Defendants' conduct, Plaintiff has suffered injury to his constitutional rights justifying relief.

WHEREFORE, Plaintiff prays that the Court enter judgment against Defendants and requests the following relief, and such other relief as this Court deems fair and appropriate.

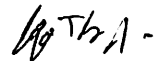
1. Plaintiff requests that the Court order House of Delegates elections to be held under constitutional maps at the time of the 2022 general elections. The *Cosner* (E.D. Va. 1981) remedy is the most sensible for the reasons outlined in *Cosner*.

However, the *Cosner* precedent and its incorporation into the Virginia Constitution, Article 6 through a vote of the people in November 2020, was clearly not sufficient to coerce Defendants, or state politicians in Virginia generally, to perform their legal duties to protect people's constitutional rights to equal voting and representation. Defendants have deliberately played games with the Court and the people's rights for political reasons. Favoring provincial electoral prospects over the constitutional rights of the people is illegal and immoral.

2. Plaintiff requests that the Court order the Commonwealth to endow a permanent fund modeled on Judge Merhige's creation of the Virginia Environmental Endowment sufficient to pay three full-time attorneys to work on matters of equal protection and voting rights in Virginia. It is clear that Defendants and the Office of the Virginia Attorney General chose to burden this Court and kick the can down the road so unconstitutional elections would be held rather than do his job and protect the rights of the people. If there is no penalty, then we will all be back here in another decade, or our children will be in a generation.

Plaintiff respectfully submits that there are no facts actually in dispute in this case and that the facts giving rise to this case would never have come to pass if there were attorneys independently representing the people beyond the reach of politics.

Respectfully submitted,



Dated: October 15, 2021

Plaintiff Jeffrey Thomas, Jr.
301 Virginia St. Unit 1514
Richmond, VA 23219
(804) 418-0252
jeffburkethomas@gmail.com

Declaration of Jeffrey Thomas, Jr.

Pursuant to 28 U.S.C. § 1746, I, Jeffrey Thomas, Jr., hereby declare:

1. My name is Jeffrey Thomas, Jr. I am a United States citizen, am over 18 years of age, and have personal knowledge of the facts set forth in this Declaration.
2. I am a registered voter in Virginia's House of Delegates District 71 (HD 71).
3. I voted in the 2021 general elections.
4. I intend to vote in the 2022, 2023 and 2024 Virginia general elections.
5. I was born in Virginia in 1984.
6. I am a doctoral student at Virginia Commonwealth University and my anticipated degree completion date is in 2024.
7. I intend to continue residing at my current address in Richmond in 2022, 2023 and 2024.
8. According to 2020 Census data provided by the Virginia Redistricting Commission pursuant to the Freedom of Information Act and docketed in this case (ECF 22-1, pp. 3,-4), the population of HD 3 is 71,122 and the population of HD 71 is 93,525.
9. The population of Virginia according to the 2020 Census is 8,631,393.
(<https://www.census.gov/quickfacts/VA>.)

I declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true and correct.

Jeffrey Thomas, Jr.

Signed Jeffrey Thomas, Jr.

Executed (date) 10-15-21

Local Civil Rule 83.1 Pro Se Certification

I declare under penalty of perjury that:

1. No attorney has prepared or assisted in the preparation of this document.

Plaintiff Jeffrey Thomas, Jr.

Signed: Jeffrey Thomas, Jr.

Executed on: 10-15-21 (date)

CERTIFICATE OF SERVICE

I hereby certify that on this 15th of October, 2021, I caused to be served on Plaintiff Goldman goldmanusa@aol.com and counsel for Defendants Jessica Merry Samuels jsamuels@oag.state.va.us, Carol Lewis clewis@oag.state.va.us, Calvin Brown cbrown@oag.state.va.us, and Brittany McGill bmcgill@oag.state.va.us, via electronic mail a copy of the foregoing pleading.

I requested via email and received via email written consent from Mr. Goldman to serve him electronically at goldmanusa@aol.com.

I requested via email Ms. Samuels' consent for electronic service "pursuant to Federal Rules of Civil Procedure Rule 5(b)(2)(E)." Ms. Samuels is listed as the "Counsel for Defendants" on the Certificate of Service she signed and filed with the Court on October 9, 2021 (ECF 38, p. 6). The email address for Ms. Samuels is also listed on ECF 38, p. 5. I received a reply from Carol Lewis stating that "the Office of Attorney General is not authorized to accept service on behalf of any of the remaining Defendants. Accordingly, those individuals must be served as normally required." Ms. Lewis then listed the email addresses of the "counsel of record for the remaining Defendants," including herself and Ms. Samuels (Exhibit 1).

Under Federal Rules of Civil Procedure Rule 24(c): "A motion to intervene must be served on the parties as provided in Rule 5. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought." Under Rule 5(b)(1): "If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party." The Court has not ordered service on the party. Therefore, "service under this rule must be made on the attorney." Thomas served the

counsel of record at the email addresses provided by Ms. Lewis, one of the attorneys for Defendants.

Thomas apologizes for this long explanation. Thomas assumes that Ms. Lewis was acting in good faith and providing the email addresses of Defendants' attorneys for service under Rules 5 and 24 rather than attempting a delaying tactic and wasting his and the Court's time.

DeWitt Thomas - 10-15-21

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

Paul Goldman

Plaintiff,

V.

Christopher Piper, et al,

Defendants.

Civil No. 3-21:cv-00420-DJN-SDT-RAJ

[PROPOSED] ORDER

Upon consideration of Jeffrey Thomas, Jr.'s Motion to Intervene and Federal Rules of Civil Procedure Rule 24, the Motion is hereby **GRANTED**.

It is hereby

ORDERED that the Clerk shall add Thomas as a Plaintiff to this case and docket his Complaint.

IT IS SO ORDERED.

Date: _____

HON. RAYMOND A. JACKSON
HON. DAVID J. NOVAK
HON. STEPHANIE D. THACKER

Copies to: Jeffrey Thomas, Jr., jeffburkethomas@gmail.com
Paul Goldman, goldmanusa@aol.com
Jessica Merry Samuels, jsamuels@oag.state.va.us