

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

GOLDEN BETHUNE-HILL, *et al.*,

Plaintiffs,

v.

VIRGINIA STATE BOARD OF
ELECTIONS, *et al.*,

Defendants.

Civil Action No. 3:14-cv-00852-REP-GBL-BMK

DEFENDANT-INTERVENORS' PRE-TRIAL BRIEF

E. Mark Braden (*pro hac vice*)
Jennifer M. Walrath (VSB No. 75548)
Katherine L. McKnight (VSB No. 81482)
Richard B. Raile (VSB No. 84340)
BAKER & HOSTETLER LLP
1050 Connecticut Ave NW, Suite 1100
Washington, DC 20036
Tel: (202) 861-1500
Fax: (202) 861-1783
mbraden@bakerlaw.com
jwalrath@bakerlaw.com
kmcknight@bakerlaw.com
rraile@bakerlaw.com

*Counsel to the Virginia House of Delegates
and Virginia House of Delegates Speaker
William J. Howell*

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In *Wilkins v. West*, 264 Va. 447 (2002), the Virginia Supreme Court rejected a racial gerrymandering “*Shaw*” challenge to multiple districts in the 2001 House of Delegates redistricting plan (the “2001 Plan”), including the same numbered Districts challenged in this case (the “Challenged Districts”). The Court found that race was not the predominant motivation for the 2001 plan, given the numerous other factors that guided the legislature.

In 2011, the legislature made changes to the 2001 Plan in light of significant population shifts in Virginia. The legislature used essentially the same criteria that guided it in 2001. The 2011 House plan (the “Plan”) is at least as compact, preserves communities of interest to the same degree, and respects other redistricting criteria to a greater extent than the 2001 Plan ratified in *Wilkins*. In fact, the legislature resolved district specific irregularities that were criticized in the 2001 Plan. Besides implementing the other traditional criteria, the Plan’s architect, Delegate Jones, made incumbent protection and continuity of representation a priority. However, whenever there are substantial population shifts in a state, some incumbent members in any new plan will lose their seats, open seats will be created, and some will be paired in districts with other members. Democratic members bore the brunt of the changes necessitated by the continued population shift to northern Virginia. Still, the Plan passed with an overwhelming vote that included a majority of the Republican, Democratic and Black Caucus members. Why? Because the Plan was crafted to address the concerns of individual members and the communities they represent, an impossible task if race was the predominant factor.

The House now finds itself defending this Plan from the same arguments rejected in *Wilkins*. The redistricting process is political. Plaintiffs are unhappy with recent election results because too few Democrats won. Because there is no plausible claim based on the predominant considerations of electoral and legislative politics, Plaintiffs have framed their lawsuit as a

“*Shaw*” racial gerrymander claim. But consideration of race does not invalidate a plan. Race was a factor in drawing the Challenged Districts because it had to be: federal law—including the Voting Rights Act—is supreme. If that alone were the basis for applying strict scrutiny, every legislative plan, except possibly those in Vermont and Maine, would be constitutionally suspect. Because the Plan lacks any of the truly bizarre districts, the hallmark of “*Shaw*” claims, Plaintiffs cherry-pick facts, obfuscate on objective measures of compactness, and offer flawed statistical analyses in an effort to meet their heavy burden of showing that race predominated over all other factors in any district. As will be shown at trial, numerous other redistricting criteria shape the Plan and the challenged districts. Plaintiffs’ challenge should be rejected, as it was in *Wilkins*.

FACTS

The Virginia constitution vests all “legislative power” in “a General Assembly, which shall consist of a Senate and House of Delegates.” Art. IV, Sec. 1. The House consists of one hundred Delegates, who are elected from “electoral districts established by the General Assembly.” Va. Const. Art. II, Sec. 6. Districts are redrawn every 10 years. *Id.*

In redistricting, all state legislatures are bound by “two overarching conditions”: (1) the equal representation standard under federal law and (2) the mandates of Sections 2 and 5 of the Federal Voting Rights Act, which prohibit dilution or diminution of the ability of minority groups to elect their preferred candidates of choice. *Jamerson v. Womack*, 244 Va. 506, 511 (1992); accord *Ala. Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257, 1270 (2015). These conditions are “part of the redistricting background, taken as a given” in reapportionment. See *Alabama*, 135 S. Ct. at 1270. Additionally, the Virginia constitution requires that each district must be “composed of contiguous and compact territory” and must be drawn to give “as nearly as is practicable” equal representation to Virginia citizens. Va. Const., Art. II, Sec. 6; see also,

e.g., Jamerson, 244 Va. at 514; *Wilkins*, 264 Va. at 461-64.

Additionally, all redistricting in Virginia occurs against the backdrop of Virginia’s “history of public racial discrimination,” including literacy tests, poll taxes, separation of candidate names by race on ballots, segregated schools, racial segregation, and a bar on interracial marriage. *See, e.g., Neal v. Coleburn*, 689 F.Supp. 1426, 1428 (E.D. Va. 1988). Virginia government entities are frequently sued under Section 2. One example is *Henderson v. Board of Supervisors of Richmond County*, 1988 WL 86680, at *7-8 (E.D. Va. 1988), where this Court found Richmond County liable under Voting Rights Act Section 2 because the plan allowed the black population in a cohesive majority-minority district to fall to 63.1 percent from above 65 percent. Similarly, this Court in *McDaniels v. Mehfoud*, 702 F.Supp. 588, 591-96 (E.D. Va. 1988), held Henrico County liable under Section 2, finding, *inter alia*, severe racial bloc voting, a history of discrimination, discrimination in government services, and minimal representation in public office. *See also Collins v. City of Norfolk*, 883 F.2d 1232 (4th Cir. 1989).

Besides Section 2, Virginia was—until the Supreme Court’s 2013 decision in *Shelby County v. Holder*—subject to Voting Rights Act Section 5, which required it to submit changes in voting laws to the U.S. Department of Justice (“DOJ”) for preclearance or to file a declaratory judgment action in federal court. 52 U.S.C. § 10304. The burden was on Virginia to prove “the absence of discriminatory purpose and effect.” *Pleasant Grove v. United States*, 479 U.S. 462, 469 (1987). In 2006, Congress amended Section 5 to adopt the position of Justice Souter’s dissent in *Georgia v. Ashcroft*, 123 S. Ct. 2498, 1529 (2003), that Section 5 prohibits a covered jurisdiction from leaving “minority voters with less chance to be effective in electing preferred candidates than they were before the change.” *See Alabama*, 135 S. Ct. at 1273

Over the past four decades, DOJ has objected to numerous Virginia redistricting plans submitted for preclearance, repeatedly citing “persistent and severe polarization along racial lines,” a pattern it found at times “ha[d] intensified” from previous submissions.¹ Ex. 1, DOJ Voting Determination Letter (“DOJ Letter”) (June 20, 1994); Ex. 2, DOJ Letter (Feb. 16, 1993). *See also, e.g.*, Ex. 3, DOJ Letter (May 19, 2003), Ex. 4, DOJ Letter (Apr. 29, 2002); Ex. 5, DOJ Letter (Sept. 28, 2001). One example is DOJ’s 2002 objection to a board-of-supervisors redistricting plan in Cumberland County that had reduced the Black Voting Age Population (“BVAP”) in a majority-minority district from 55.7 percent to 55.2 percent. Ex. 6, DOJ Letter (July 9, 2002).

The Challenged Districts evolved in this context. In 1981, DOJ objected to the newly passed House of Delegates plan because districts covering Southside Virginia (including Brunswick, Greensville, Sussex, Surry, Nottoway and Dinwiddie Counties) drew multiple majority-black counties into majority-white districts. Ex. 7, DOJ Letter (July 31, 1981). The House responded with a new plan, but that plan was rejected by this Court on population-inequality grounds in *Cosner v. Dalton*, 522 F. Supp. 350 (E.D. Va. 1981). The House passed yet another plan, and DOJ objected again, this time to districts in the Tidewater region, asserting that the use of multi-member districts would dilute black voting power where “a fairly apportioned plan of single member districts would provide for two districts with substantial black majorities.” Ex. 8, DOJ letter (March 12, 1982). Then, in 1991, DOJ objected to the House redistricting plan passed that year because it submerged a compact 4,000-member black community in Charles City County into a majority-white district, when it could be drawn into the majority-black districts in the Richmond area. Ex. 9, DOJ Letter (July 16, 1991).

¹ DOJ Voting Determination Letters for Virginia are also available at http://www.justice.gov/crt/records/vot/obj_letters/state_letters.php?state=va.

Since 1991, Virginia House plans have included 12 majority-minority districts (the Challenged Districts): two in Southside (HD63, HD75), six in Tidewater (HD77, HD80, HD89, HD90, HD92, HD95), and one (HD74) connecting Charles City County to the Richmond suburbs. The other three cover the Richmond area (HD69, HD70, HD71). In *Wilkins v. West*, 264 Va. 447 (2002), the Virginia Supreme Court upheld all of these districts against claims that they were racially gerrymandered. Déjà vu, they are all challenged again here.

A. The House Begins New Redistricting Cycle

Virginia's House districts had to be redrawn in 2011. Va. Const. Art. II, Sec. 6. Virginia is unusual in that it conducts elections in odd-numbered years, including for all House seats. The time frame for assimilating the census data, drawing and passing a redistricting law, and obtaining preclearance is "very, very tight," the shortest of any state. Ex. 10, Public Hr'g Tr. 5-6, Dec. 2, 2010. DOJ was permitted 60 days to review preclearance submissions, and it spent 59 days for that review in 2001. *Id.* at 6. Primaries in Virginia are typically scheduled for June.

On February 3, 2011, the federal government released the census counts for Virginia, the first release of the 2010 data. Portions of that data were erroneous. The Census Bureau required an additional two weeks to make official notification of the error and partial corrections. Because the data were released toward the end of the regular legislative session, a special session was called, requiring the part-time Delegates to remain in Richmond to work on the new districts.

Growth was uneven across Virginia, and all districts had to be reworked due to a general trend of higher population growth in northern Virginia compared to other areas. Population deviations ranged from 19.9 percent below the ideal of equal population, to 138.3 percent of the

ideal. Hood 3.² Most Challenged Districts lagged in population, and altogether they “only contained enough population to draw 11 districts.” Hofeller ¶ 68.

The House of Delegates Committee on Privileges and Elections (the “Committee”) was responsible for managing the redistricting process and evaluating redistricting plans. The Committee conducted two rounds of public hearings statewide: one prior to the release of census data and another after that release. Hearings were conducted statewide, including in Roanoke, Norfolk, Fairfax County, Danville, Fredericksburg, Richmond, Hampton, Leesburg, and Abingdon , among other places, with some localities holding more than one hearing. Hearings were attended by Committee members and other Delegates, who received comments from residents and local officials. Some meetings were conducted jointly with the Virginia Senate. Public comments also were submitted to the Committee by e-mail.

Delegate Chris Jones, a Republican from Suffolk (HD76), was a Committee member and chaired a joint reapportionment committee that also included Senate members. Other Committee members included Black Caucus leaders Lionel Spruill (HD77) and Rosalyn Dance (HD63).

In March 2011, The Committee adopted a list of criteria for redistricting. The resolution is similar to those used for past Virginia House plans, including the 2001 Plan. *See Wilkins*, 264 Va. at 468 n.7; *Jamerson*, 244 Va. at 512. The first criterion was compliance with a “one-person-one-vote” deviation of plus-or-minus one percent from perfect equality. *See Ex. 11*, House Committee on Privileges and Elections Committee Resolution No. 1 – House of Delegates District Criteria (“Committee Resolution”). The second criterion was compliance with the Voting Rights Act and the U.S. Constitution. The requirement included no numerical threshold for BVAP in any districts. Additionally, since states may not choose whether or not to comply

² Cites to “Hood,” “Hofeller,” “Katz,” and “Ansolabehere” are to the respective expert reports of those individuals, submitted to the Court during the week of June 15, 2015.

with federal law, *see* Const. Art. VI, Par. 2, the first two criteria were controlling in the event of conflict, *see Jamerson*, 244 Va. at 514. The third criterion required districts to be contiguous and compact as defined by Virginia law. The fourth criterion required that all districts be single-member districts. The fifth criterion adopted the custom of protecting communities of interest, which incorporated considerations including “incumbency protection.”³

Politics played a key role in the Plan. The Republican Party held a strong majority of House seats. Per request of House leadership, Jones took responsibility for crafting a Plan that would be accepted by as many Delegates as possible. He was assisted by consultant John Morgan. They prepared for this process in 2010 before the census release with workshops and research, and they obtained the most commonly used redistricting mapping software, “Maptitude.” Jones devoted hundreds of hours to the process. He met with most Delegates, including Delegates from the Challenged Districts, some on multiple occasions. Delegates made requests, inquiries, and suggestions about their district, and some played an active role in drawing lines. Jones consulted with legal counsel with redistricting experience and expertise.

Jones and others involved in the process also benefitted from a wealth of statistical information, including information on voting patterns in the Maptitude system and in the possession of the Virginia Division of Legislative Services (“DLS”). DLS information could be accessed by all Delegates in the DLS office through another software package, AutoBound. Delegates who had redistricting requests for Jones were able to visit DLS, review a copy of the draft map, enter changes to propose to Jones, and review the effect of those changes as to a number of political and demographic categories.

The DLS software however, expressed BVAP differently from Maptitude, the most

³ Unlike the 1991 House criteria, the 2001 and 2011 criteria provided that precincts lines would be entitled to no greater weight than other communities of interest. Committee Resolution.

widely used software designed exclusively for redistricting. Maptitude includes a demographic field termed DOJ Black VAP (“DOJ Black”).⁴ The census has numerous ethnic and racial data fields from the individual self-designation responses. DOJ Black is calculated by combining the two-question census format and is comprised of non-Hispanic single-race Black and non-Hispanic multi-race Black and White. The DLS system’s Black VAP includes Hispanic Black responses, and thus, in the DLS numbers, some individuals are counted twice, meaning that the total population figures for districts will exceed 100 percent of the actual population. DOJ Black does not count anyone twice. DLS therefore reported a different calculation of BVAP than Jones used on his system for drafting. The DLS Black VAP figure is higher than DOJ Black. Most Delegates, assisted by DLS, were using the DLS—not the DOJ—calculation in plans, discussions, and floor speeches.⁵

However, Jones and Morgan had access to DOJ Black figures through Maptitude and used those figures in originally crafting the Plan, since DOJ would evaluate the plan using DOJ Black. Thus, when a given Delegate proposed a change to the Plan via the DLS software, Jones and the Delegate would have a slightly different understanding of how the change affected BVAP in a given district. Jones’s understanding of the base number for the review to be conducted by DOJ was informed by the overstatement of the DLS BVAP number.

B. The Black Caucus Members Play a Lead Role in Crafting the Plan

Delegate Jones worked closely with leaders in the Black Caucus in drawing the Plan, including Black Caucus leader Delegate Spruill. “[M]ostly every member of the Black Caucus”

⁴ The Maptitude field name is NH18+_DOJ_Black:Race (non-Hispanic, Age 18+): DOJ Summary: Black (including Black and White)2000 PL94-171:P0040006 + P0040013.

⁵ For a comparison of the DLS and DOJ BVAP figures, refer to Exs. 12 and 13, Black BVAP Percentages as reported by DLS and as calculated by DOJ Guidelines for the Benchmark Plan (“Benchmark BVAP”) and Enacted Plan (“Plan BVAP”), respectively.

approached Delegate Jones with “concerns” about the redistricting Plan, and Jones “answered [their] concerns.” Ex. 14, Floor Debate Tr. 142, Apr. 5, 2011; Ex. 26, Floor Debate Video, Apr. 5, 2011 (Del. Spruill).⁶ Spruill’s main concern “was to make sure that we have the numbers” of black voters in the Challenged Districts. Ex 14, Floor Debate Tr. 147, Apr. 5, 2011; Ex. 26, Floor Debate Video, Apr. 5, 2011 (Del. Spruill). That worry was warranted by specific facts and local concerns.

Voter Turnout. Black voter registration turnout is historically lower than white voter turnout in Virginia, meaning that bare majority voting strength would not necessarily avoid retrogression. Ex. 15, Floor Debate Tr. 45, Apr. 4, 2011; Ex. 24, Floor Debate Video, Apr. 4, 2011 (Del. Dance); Ex. 16, Comm. Hr’g Tr. 23-24, Apr. 4, 2011; Ex. 14, Floor Debate Tr. 41-42, Apr. 5, 2011; Ex. 25, Floor Debate Video, Apr. 5, 2011 (Del. Jones).

Trend of Declining BVAP. BVAP had declined over ten years in many Challenged Districts, and Black Caucus members believed that the Plan should account for the trend to continue—*i.e.*, “if you don’t have an effective voting strength then there’s a good chance that over the time of 10 years you will see a dilution of [the minority’s] ability” to elect its candidate of choice until the next redistricting cycle. Ex. 14, Floor Debate Tr. 41, Apr. 5, 2011; Ex. 25, Floor Debate Video, Apr. 5, 2011 (Del. Jones).

Past Elections. Historically, it was questionable whether minorities had been able to elect their preferred candidates of choice in all Challenged Districts. Ex. 14, Floor Debate Tr. 144-45, Apr. 5, 2011; Ex. 26, Floor Debate Video, Apr. 5, 2011 (Del. Spruill). For example, Delegate Joseph Morrissey of Challenged District HD74, when he was first elected in 2007, he

⁶ In addition to transcripts included here as exhibits, Defendant-Intervenors are sending the Court video clips of floor speeches cited herein, which are cited herein as Floor Debate Videos at Exs. 23 through 29.

won a Democratic primary split between five candidates with just under 38% of the vote.

Delegate Spruill remarked on the House floor that “[i]f my friend, Joe Morrissey, is concerned about another [majority-minority] district...then he should have stepped down and give[n] [his seat] to a black person and we’ll have another seat.” Ex. 15, Floor Debate Tr. 36, Apr. 4, 2011; Ex. 23, Floor Debate Video, Apr. 4, 2011 (Del. Spruill).

Future Candidates. The electoral success of incumbent black Delegates in the Challenged Districts is misleading because incumbents generally hold their seats. Jones understood that the retrogression standard under Section 5 did not concern the minority community’s ability “to reelect the incumbent, but to elect the candidate of their choice.” Ex. 16, Comm. Hr’g Tr. 23, Apr. 4, 2011. For example, Delegates McClellan and Spruill could continue to win their districts with a relatively low BVAP, but future candidates of choice of the minority community would be unlikely to do so at the same levels, especially in contested primaries. Ex. 16, Comm. Hr’g Tr. 14, Apr. 4, 2011; Ex. 14, Floor Debate Tr. 41-42, Apr. 5, 2011; Ex. 25, Floor Debate Video, Apr. 5, 2011 (Del. Jones).

For these reasons, members of the Black Caucus advanced the view that a cushion of BVAP above a simplistic 50 percent +1 was required in the Challenged Districts. The Delegates used a shorthand reference to 55 percent to achieve this goal. As both Dance and Jones observed, 55 percent was viewed as “aspirational” and as “a good number” to prevent retrogression. There was no mechanical process. Jones was aware that the 55 percent BVAP referred to the DLS figure and would not guarantee DOJ Black BVAP of 55 percent. Under the Plan eventually adopted, half the Challenged Districts saw BVAP decreases and half saw increases. Jones and the Black Caucus members sought, not a mechanical process with a no-change-or-increase only

rule for these Districts, but only a sufficient BVAP cushion to maintain minority voting strength in the Challenged Districts for 10 years under the facts as the Delegates understood them.

The Black Caucus members believed Jones's plan served that purpose and expressed their support on the floor. Delegate Dance called the redistricting "a truly fair process" and stated that she was "proud to be a part of this team." Ex. 15, Floor Debate Tr. 44, Apr. 4, 2011; Ex. 24, Floor Debate Video, Apr. 4, 2011 (Del. Dance). Delegate Spruill remarked: "You ask me, 'Do I believe that it was fair, that Chris Jones did the best that he could?' Yes." Ex. 15, Floor Debate Tr. 38, Apr. 4, 2011; Ex. 23, Floor Debate Video, Apr. 4, 2011 (Del. Spruill). In particular, Dance and Spruill believed the plan was fair for minority voters. Ex. 14, Floor Debate Tr. 149, Apr. 5, 2011; Ex. 26, Floor Debate Video, Apr. 5, 2011 (Del. Spruill); Ex. 14, Floor Debate Tr. 157, Apr. 5, 2011; Ex. 27, Floor Debate Video, Apr. 5, 2011 (Del. Dance). Spruill warned detractors, "when you go to court, don't say they tried to dilute the black folks," because the opposition to the Plan was "not about race." Ex. 14, Floor Debate Tr. 141-143 & 145-47, Apr. 5, 2011; Ex. 26, Floor Debate Video, Apr. 5, 2011 (Del. Spruill).

C. No Alternative Plan Meeting the Criteria Is Proposed

Only two alternative plans were introduced: HB5002 was drawn by a University of Richmond student group, and HB5003 was drawn by Governor Bob McDonnell's advisory commission. Neither was consistent with the Committee's criteria, the Virginia Constitution, or the Voting Rights Act. The population deviation ranges in the two plans were 9.83 and 9.50, or plus-or-minus five percent, respectively, compared to the plus-or-minus one percent deviation requirement. Exs. 19 & 20, Maptitude Standardized Reports: Population by District for HB5002 and HB5003. The number of majority-minority districts would have been reduced from 12 to 9 in HB5003 (a range of 50.9 to 61.2 percent DOJ Black) and to 6 in HB5002 (a range of 50.01 to

55.4 percent DOJ Black.) *Id.* The alternative plans blatantly ignored the House’s interest in continuity of representation. HB5002 paired 48 incumbents—nearly *half the Delegates*—and HB5003 paired 32. Exs. 17 & 18, Maptitude Standardized Reports: Incumbent Pairings for HB5002 and HB5003. Each alternative plan also paired black incumbents or severely affected their districts. *Id.* The alternative plans were also introduced too late in the process for Delegates to review them. The alternative plans were guaranteed to fail and were never even formally proposed on the House floor.

D. The Plan Passes Overwhelmingly and Is Precleared by DOJ

As to HB5001, the primary complaint of the small number of opponents, led by Delegates Joseph Morrissey and Minority Leader Ward Armstrong, was that the plan protected Republican incumbents at the expense of Democrats. They railed about partisanship in the Plan. *See, e.g.*, Ex. 21, Floor Debate Tr. 3-6, Apr. 6, 2011; Ex. 28, Floor Debate Video, Apr. 6, 2011 (Del. Armstrong); Ex. 15, Floor Debate Tr. 19-20, Apr. 4, 2011. Armstrong had particular reason to complain: the plan drew him out of his south-central district, an area that experienced population loss. He represented in floor debates that the Voting Rights Act was among the criteria because it had to be, but claimed that this was pretextual, because the “number one criteria” was protecting Republican incumbents. Ex. 21, Floor Debate Tr. 3-4, Apr. 6, 2011; Ex. 28, Floor Debate Video, Apr. 6, 2011 (Del. Armstrong).

No one objected to placing the requirements of the constitution and the Voting Rights Act above compactness, single-member districts, and communities of interest. Quite the opposite, Armstrong and Morrissey believed that the Voting Rights Act required maximization of majority-minority districts and faulted the Plan for not adding thirteenth and fourteenth majority-minority districts. Ex. 14, Floor Debate Tr. 64, 69, 74, Apr. 5, 2011. They objected that the plus-

or-minus-one-percent population deviation rule was overly restrictive and stood in the way of that goal. *E.g., id.* at 96-97. That is, they thought race should trump *all* adopted criteria, including Virginia's constitutional requirement of population equality.

These arguments were not persuasive, and the House overwhelmingly voted in support of HB5001. That bill, however, also included a Senate redistricting plan that "failed to garner any votes in the Senate" from the Republican Party, and the Governor vetoed it. The House took this opportunity to make further modifications and proposed HB5005. HB5005 included a new plan for the Senate, was passed on April 28, 2011, and the governor signed it the next day.

The Virginia Attorney General's office made a preclearance submission to DOJ on May 10, 2011. The Attorney General's office worked in tandem with DLS to produce the submission. DOJ requires the submission of districting plans as a census block assignment file, which transfers the geographic makeup of the plan. Census blocks are the building blocks of any plan and provide DOJ with all the information it needs to review the racial and ethnic demographics from the census. The Virginia submission also included a "Statement of Minority Impact" with a chart containing statistics for the Challenged Districts, including BVAP. The BVAP numbers in the statement use the DLS calculation from its AutoBound system, not DOJ Black. The census block assignment file provided to DOJ—the only information required by its regulations in this regard—allowed DOJ to calculate that Challenged Districts 69, 71, and 89 were under 55 percent DOJ Black. On June 17, 2011, DOJ issued a letter stating that it had no objections to the Plan.

The Plan has now been in place for two election cycles, 2011 and 2013, and will be in place for the 2015 election cycle. Plaintiffs waited over three years, until December 2014, to file this case—after the Virginia governorship shifted from Republican to Democrat control.

E. The Plan Implements Traditional Redistricting Principles

The Plan implemented the traditional redistricting principles adopted by the Committee. This will be confirmed through the lay testimony of Delegate Jones and the expert testimony of Doctors Jonathan Katz, Thomas Hofeller, and Trey Hood. Jones is the most knowledgeable individual as to the Plan and is the most credible witness as to what occurred during the drawing process. He will testify about his consultation with other members of the House of Delegates, application of the redistricting criteria on a district-by-district basis, and the political considerations necessary to ensure bipartisan support and timely passage of the Plan. Drs. Katz, Hofeller, and Hood have evaluated the Plan and will testify that it implements traditional redistricting criteria, including compactness, core retention of districts, protection of incumbents, and preservation of communities of interest. This evidence combined will show as follows:

The Richmond Area. Challenged Districts HD69, HD70, HD71, and HD74 are in the Richmond area. HD69 and HD71 are principally in Richmond City. Hofeller Map 6. HD70 and HD74 are principally in Henrico County, which abuts Richmond City. *Id.* All but one of these districts was underpopulated, *i.e.*, below the ideal population for House districts. Hofeller ¶ 68; Hood 12-13. HD71 and HD69 were underpopulated by more than five percent, -7.3 and -10.9 percent, respectively. Hood 13. This required a shifting of population toward the Richmond City districts and away from the surrounding suburban districts. BVAP in HD71 had fallen below fifty percent, and it was no longer a majority-minority district under the Voting Rights Act, posing the risk of a Section 2 challenge. Ex. 12, Benchmark BVAP. *See Thornburg v. Gingles*, 478 U.S. 30, 50 (1986); *Bartlett v. Strickland*, 556 U.S. 1, 12 (2009). The Plan resolved these problems and, in doing so, preserved the districts' core constituencies and maintained, and even improved, the compactness of all four districts. *See* Hofeller ¶ 17; Hood 10–11.

The Plan improved upon the 2001 Plan by altering the districts to adhere more closely to municipal and county boundaries, thereby honoring the respective urban and suburban communities of interest. *E.g.*, Hood 4–5. HD70, which is principally a suburban district, shed Richmond City precincts and picked up suburban districts in Henrico County. HD71, which is an urban district, shed suburban precincts on its northwest edge and, save one precinct in Henrico County, now lies entirely within the bounds of Richmond City. HD71 is now more compact, and HD70 is comparably compact as to the 2001 Plan. Hofeller Tables 7 and 9; Hood 14.

The Plan also protects incumbent members residing in the Richmond area. None of the incumbents in the four Challenged Districts were paired. This was a feat as to HD69, HD70, and HD71 because the incumbents—Delegates Betsy Carr, Jennifer McClellan, and Delores McQuinn—live on the edges of their districts, near each other, and Delegate G. Manoli Loupassi (HD68) lives near the borders of HD69 and HD71. Their home precincts and some adjacent precincts were unavailable for shifting among districts to address population deficits or any other redistricting goals. HD71, for example, could not obtain additional population from the west (Loupassi’s residence), southwest (Carr’s) or southeast (McQuinn’s). It could not move north, which would extend the district out of Richmond City, or south of the James River because the district traditionally has fallen north of it. Accordingly, HD71 picked up the bulk of its additional population to the east and took in just one precinct in Henrico County.

HD74 has existed in roughly its current form since 1991. It was the cornerstone of the challenge in *Wilkins*, because several precincts in Hopewell City across the James River were drawn into the district and allegedly made it non-compact and non-contiguous. The challenge failed. *Wilkins*, 264 Va. at 465-66, 476-77. Still, Jones determined that removing the Hopewell precincts was advisable to improve the compactness of the district. *See* Hofeller ¶ 16. Delegate

Jones further improved HD74's compactness by adding several Henrico County precincts, which also brought the district back within the permissible range of population deviation in light of the lost Hopewell precincts. Otherwise, HD74 preserves its core. Hofeller ¶ 72; Hood 15.

Tidewater. Six Challenged Districts, HD77, HD80, HD89, HD90, HD92, and HD95, are in Tidewater. HD77, HD80, HD89, and HD90 are south of the James River and cover the cities of Portsmouth and Norfolk. HD92 and HD95 are north of the James River on "the Peninsula," which contains Hampton and Newport News.

Tidewater was significantly underpopulated. The Challenged Districts there were almost uniformly more than 10% below the ideal population. Hood 13. Accordingly, the Plan collapsed one district, HD87, and moved it to Northern Virginia. HD87 was represented by Delegate Paula Miller, a Democratic member, and the Plan paired her with another Democratic member, Delegate Lynwood Lewis, in District 100. Due to other underpopulated districts in the area, the collapse of HD87 pushed the search for population north and west along the James River.

On the south side of the James River, many of the changes were driven by the collapse of HD87 and the migration of HD79, which moved east to subsume a substantial portion of territory formerly within HD87, as well as some territory formerly in HD100. HD79 also picked up a small portion of HD92, which in the 2001 Plan, had crossed the James River from the Peninsula. Delegate Jones removed this crossing and gave the area south of the James River to HD79, which made both HD79 and HD92 more compact and contiguous than under the 2001 Plan. *See* Hofeller ¶¶ 72-73 & Tables 7, 9.

As HD79 moved east, it left behind the western portion of its former territory, which was collected by HD80, a majority-minority district that was underpopulated by 11.8 percent. Hood 13. Although HD80 could have been drawn to take territory from HD76—represented by

Delegate Jones—the precincts there were Republican strongholds, and neither Jones nor HD80’s representative, Democrat Matthew James, wanted that trade. Drawing HD80 into the former territory of HD79 gave those Democratic-leaning precincts to James, and not Jones. This arrangement made HD80 less compact than it would have been had it taken territory from Jones, but it was politically preferable. HD80 also was drawn to protect other incumbents, Johnny Joannou (HD79) and Kenneth Alexander (HD89), who resided near the borders they shared with HD80, making it impossible for HD80 to take territory to the north and northeast without pairing incumbents.

The two remaining Challenged Districts south of the James River—HD89 and HD77—both picked up territory and population to their east that was available following the collapse of HD87 and migration of HD79. HD77 added precincts at the request of Delegate Lionel Spruill, its longtime representative, in order to unify communities of interest in his neighborhood. Those precincts were obtained from HD90, such that HD90 no longer has any precincts in Chesapeake. The Plan preserves roughly 75 percent of the cores of HD77 and HD89. Hood at 15.

On the north side of the James River, the districts were severely underpopulated. Challenged Districts HD95 and HD92 were underpopulated by over 15 percent and 11 percent, respectively. Hofeller ¶ 73. Their location on the Peninsula limited sources of population, at least without a river-crossing. Another Peninsula district, HD64, had sardonically been dubbed the “Ferrymander” because two segments of the district were connected only by a ferry route, and Jones was intent on eliminating river-crossings if possible. He succeeded. *See* Hofeller ¶ 75.

To fix the “Ferrymander,” the Plan moved HD64 off the Peninsula and back across to the south side of the James River. HD93 moved northwest to capture that contiguous territory, allowing other districts to assume some of its former population. *See* Hofeller Maps 17, 18.

The precise alterations were politically driven. HD93 was represented by Democrat Robin Abbott, who had defeated Republican incumbent Philip Hamilton in 2009, and the Plan drew her out of HD93 to create HD93 as an open seat. Abbott could have been paired with Mamye BaCote in HD95, but that option would have paired two female incumbents and put at risk the preferred candidate of choice in the black community in a majority-minority district. Instead, the Plan paired Abbott in HD94 with Republican Glenn Oder. For that move to be politically advantageous, however, Oder's district needed to maintain all available Republican-leaning precincts to solidify Oder's advantage in a potential race against Abbott, and HD93 needed to be drawn as a competitive seat. Thus, HD95 was crafted carefully to avoid taking HD94's Republican precincts and instead take Democratic-leaning population left behind by HD93 and reach into precincts surrounded by HD93 to dilute Democratic voting strength in that area.⁷ Conveniently, both purposes could be achieved by drawing HD95 along Interstate 64, giving the communities to the east and west of the Interstate their own districts. Hofeller ¶ 74.

The shortchange in population in HD92 was resolved by adding contiguous precincts left behind by HD95, which improved the district's compactness scores, while preserving 77.2 percent of its core. Hood 14-15.

Southside. The area of Virginia referred to as "Southside" contains two majority-minority districts: HD 63 and HD 75. Hofeller Map 4. Both districts were significantly underpopulated as of 2010, at 7.9 and 11.9 percent below the ideal, respectively. Hood 13. The problem was exacerbated by the fact that HD75 shares its southern border with North Carolina. Thus, simply by virtue of state lines, any additional territory given to of HD75 had to come from the north, from HD 63, or from the west or east, from HD61 or HD64, both of which were

⁷ Abbott subsequently moved into the new HD93 to compete for the open seat. She lost to Republican Michael Watson.

Republican-leaning districts. HD64 was represented by a Democrat, Delegate William Barlow, but the Plan added to HD64 several Republican precincts in Prince George, Sussex, and Southampton counties, and he was defeated in 2011. Additionally, HD75 itself had for 20 years been represented by a white Republican, Delegate Paul Council, until Delegate Tyler won the seat by a miniscule margin in 2005. As Jones will testify, Tyler was concerned about picking up any Republican-leaning precincts.

Remarkably, these complex problems were resolved with relatively minor changes, affecting *less than one quarter* of the constituents in HD63 and HD75, which retained stellar 82.1 and 79.3 percent of their constituents, respectively. Hood 15. Tyler met with Jones on multiple occasions concerning the shape of her district and made numerous, specific requests concerning which precincts or portions of precincts she would like to include or exclude, including in Franklin City to draw a potential primary opponent out of her district. Jones honored these requests—none of which entailed racial considerations—to the extent possible, which affected the nature of the boundaries on the east and west sides of HD 75. An additional concern of Tyler’s was that HD75 contains five prisons, and that population counts towards the relevant equal-representation and Voting Rights Act standards—including BVAP—but does not produce actual votes. Ex. 22, Floor Debate Tr. 38-39, Apr. 27, 2011; Ex. 29, Floor Debate Video, Apr. 27, 2011 (Del. Tyler).

The northern border of HD75 abuts HD63. Because Tyler’s district could not remain a safe seat by moving west or east, much of the new population added to HD75 came from territory in HD63. Since HD63 also had been underpopulated, it too had to pick up new population elsewhere and became a natural destination for the Hopewell City precincts shed by HD74 (discussed above). To have gone any other direction to pick up population would have

meant picking up Republican voters that Delegate Dance did not want, pairing Delegate Dance with another incumbent, and/or mingling communities with little in common. In addition to these changes, and in exchange for population given to Delegate Tyler (HD 75), Delegate Dance requested that a sliver of Dinwiddie County be drawn out of her district because a potential primary challenger lived there. The county was split in part to address population deficiencies in HD75, and in part to accommodate that request.

* * *

On the whole, the Challenged Districts are comparable to non-majority-minority districts in the Plan, to those in the 2001 Plan, and to districts in other states.

On average, the Challenged Districts have comparable or improved compactness scores over the same districts in the 2001 Plan and the 1991 plan that was found to meet Virginia's compactness and contiguity standards in *Jamerson*. Hofeller ¶¶ 60-64. The mean Reock scores and standard deviations are equal in the Plan and the 1991 plan, Hofeller ¶ 60, and the Polsby-Popper scores are equal and the standard deviation improved, Hofeller ¶ 61.⁸ The Challenged Districts on average are only somewhat less compact than before. Hood 14. Notably, the Challenged Districts are not the least compact districts in the Plan, even using Plaintiffs' expert's approach. HD13, HD17, HD22, and HD48, which have very small minority populations, are comparable to the least compact Challenged Districts. Hofeller ¶ 65 & Table 14.

In fact, the primary driver of low compactness scores from mythical perfect compactness scores is not race—or else the Challenged Districts would be the outliers—but rather Virginia's “irregular[] shape[]” given its “7,213 miles of tidal bay frontage, 123 miles of ocean coastline, and 457 miles of on-tidal river frontage.” Hofeller ¶¶ 37-38. The compactness scores of the 2011

⁸ Reock and Polsby-Popper scores are two standard measures of compactness utilized in redistricting litigation.

Plan “compare closely with” those of “8 other states”—Alabama, Florida, Georgia, Louisiana, Maryland, Mississippi, North Carolina, and South Carolina—“which all contain numerous minority districts in their maps.” Hofeller ¶¶ 63-64. The Challenged Districts are not as irregular as those that have been rejected in past court challenges. *See* Hofeller ¶¶ 31-36. On average, the Challenged Districts retained 73.2 percent of voting-age population counts from the previous districts, compared to 67.2 percent core retention on average in the Plan, Hood 15, meaning that the Challenged Districts underwent *less change* on average than did other districts. Core retention in 9 of the 12 Challenged Districts was at or above that 67.2 percent mean. Hood 15.

On average, the number of split political subdivisions remained unaffected under the Plan from the 2001 Plan. Hood 4. The number of voting districts (VTDs) that remained whole in the Plan is an exceptional 95.1 percent, representing a statistically insignificant drop from the 2001 Plan. Hood 5-6. Many changes in the Plan were driven by politics: the Plan “purposefully concentrate[s] Republican voting strength in existing GOP-held districts while at the same time dispersing Democratic partisans. Democratic voting strength is so depleted in a number of districts as to put the probability of continued Democratic control of these seats in jeopardy.” Hood 8. Incumbency protection also “was an important component of” the Plan. Hood 16.

As for race, the House did attempt “to prevent retrogression from taking place” in the Challenged Districts, “but not in a mechanical fashion”; rather, BVAP “was increased in districts having the lowest black percentages and lowered in those which had the highest concentrations.” Hood 16. Three Challenged Districts were below 55 percent BVAP, and no Challenged District exceeded 60 percent BVAP. *Compare* Ex. 12, Benchmark BVAP *with* Ex. 13, Plan BVAP. Notably, race is not a good predictor of the inclusion *vel non* of any particular VTD, indicating that there was minimal conflict between race-neutral and race-based goals. Katz 18-19.

Nevertheless, the House had good reason to be concerned with preserving minority voting strength: voting in the Challenged Districts is racially polarized. Katz 17. Even with 55 percent BVAP in a given Challenged District, there is only an 80 percent likelihood of a correct prediction of the election of a black candidate in the Challenged Districts. Katz 18.

ARGUMENT

I. **Plaintiffs Cannot Meet the High Burden Required for Strict Scrutiny To Apply Under *Shaw***

Plaintiffs ask this Court to wade into “the most vital of local functions,” which is “primarily the duty and responsibility of the State.” *Miller v. Johnson*, 515 U.S. 900, 915 (1995) (quotation marks omitted). The Court should be wary about “the hazards of” what the Supreme Court has called “the political thicket” and “a vast, intractable...slough” of state reapportionment disputes. *Gaffney v. Cummings*, 412 U.S. 735, 749 (1973). Because “States must have discretion to exercise the political judgment necessary to balance competing interests,” “the good faith of a state legislature must be presumed,” and it is incumbent on Plaintiffs to “make[] a showing” to rebut that presumption. *Miller*, 515 U.S. at 915. That burden is “a demanding one,” and the court must “exercise extraordinary caution” in reviewing the Plan. *Id.* at 916. Plaintiffs must show “at a minimum that the [House] subordinated traditional race-neutral district principles to racial considerations.” *Easley v. Cromartie*, 532 U.S. 234, 241 (2001) (quotation marks and edits omitted). Plaintiffs cannot do this. The Challenged Districts were drawn to meet numerous redistricting criteria as enumerated in the Committee Resolution. *All* criteria were applied.

Shapes Matter. Plaintiffs’ challenge relies on a line of cases beginning with *Shaw v. Reno*, 509 U.S. 630 (1993) (*Shaw I*), which created a cause of action for “race-conscious redistricting” that “is so extremely irregular on its face that it rationally can be viewed only as an effort to segregate the races for purposes of voting.” *Id.* at 642. The *Shaw* cases have invalidated

districts the Court has described, in turn, as “a Rorschach ink-blot test” and as “a bug splattered on a windshield,” *Shaw I*, 509 U.S. at 635 (quotation marks omitted), as a “monstrosity,” *Miller*, 515 U.S. at 909, as a “serpentine district [that] has been dubbed the least geographically compact district in the nation,” *Shaw v. Hunt*, 517 U.S. 899, 906 (1996), and as having “no integrity in terms of traditional, neutral redistricting criteria,” *Bush v. Vera*, 517 U.S. 952, 960 (1996) (quotation marks omitted).⁹ “[R]eapportionment is one area in which appearances do matter.” *Shaw I*, 509 U.S. at 647. Accordingly, a showing of “neglect of traditional districting criteria” is “necessary”—though “not sufficient”—to prove a claim under *Shaw*. *Bush*, 517 U.S. at 962.

The Challenged Districts are compact and contiguous under Virginia law,¹⁰ are comparable to—if not improvements upon—the 2001 districts upheld in *Wilkins v. West*, and are comparable to the shapes of other districts in the Plan. The Districts are not so irregular as to trigger strict scrutiny. This case is therefore indistinguishable from the Supreme Court’s decision in *Lawyer v. Department of Justice*, 521 U.S. 567, 580-82 (1997), which rejected a *Shaw* challenge to districts in Florida because the shape of those districts “does not stand out as different from numerous other Florida House and Senate Districts” and because the water crossings that were allegedly problematic “are common characteristics of Florida legislative districts, being products of the State’s geography.” *See* Hofeller ¶ 38. As in that case, the Challenged Districts do not stand out from other Virginia districts, which are drawn to account for the complex geography of the Commonwealth, and are not unique compared to other districts

⁹ A map of the original *Shaw* district invalidated by the Supreme Court, NC-12, is contained in Dr. Hofeller’s report as Map 1.

¹⁰ Redistricting criteria are defined by state law and custom. *See Bush*, 517 U.S. at 977 (holding that states “may avoid strict scrutiny altogether by respecting *their own* traditional districting principles” and disclaiming any intention of “limiting a State’s discretion to apply traditional districting principles”) (emphasis added and quotation marks omitted). Virginia provides more guidance as to compactness and contiguity than other states. Hofeller ¶ 43.

in the Plan in terms of compactness of contiguity.

The limited changes that did occur (see “Core Preservation,” below) generally improved the 2001 Plan in accord with traditional criteria. As described above, the Plan made improvements in protecting communities of interest, such as by consolidating suburban and urban districts in Richmond. The Plan generally avoided pairing incumbents, which was frequently difficult given the close proximity of incumbents to each other. The Plan resolved specific problems that were criticized in the 2001 Plan, such as the “Ferrymander” and the inclusion of Hopewell precincts in HD74. And the Plan otherwise adhered to traditional redistricting principles as understood in Virginia law and custom, such as by maintaining HD71 in Richmond north of the James River as it has existed traditionally. The House was able to make these changes without significantly impacting compactness scores or other marks of continuity. *Compare Comm. for a Fair and Balanced Map v. Ill. State Elecs. Comm.*, 835 F. Supp. 2d 563, 590-92 (N.D. Ill. 2011) (upholding bizarre “Earmuff District” in Chicago area where district preserved core territory from former plans and made modest improvements).

Core Preservation. The Challenged Districts largely preserve their cores, retaining on average over 73.2 percent of their former constituencies. Notably, *Wilkins v. West*, 264 Va. 447, 474-79 (2002), upheld the predecessor districts, in part because they retained much of their cores from 1991, so the Challenged Districts have now been in place in largely the same form for 12 election cycles. Core retention is a traditional redistricting criterion, *see, e.g., Karcher v. Daggett*, 462 U.S. 725, 740 (1983), and it is inconceivable that race predominated the line-drawing here over other concerns where less than a third of the territory and constituencies of the Challenged Districts underwent change for any reason.

Politics. The Plan sought to achieve specific political goals. The alterations to HD95 and HD92 occurred as part of a plan to draw Democrat Robin Abbott out of her district and into a strong Republican district. The changes on the eastern border to HD75 were drawn to load heavily Republican precincts into the district of Democrat William Barlow, (who subsequently lost to a Republican in the 2011 election by 10 percentage points), and to protect Delegates Tyler's and Dances' Democratic seats in a growing sea of Republican control in Southside. Politics also explain the path of HD80, which was carefully drawn to keep Democratic precincts in the territory of Democrat Matthew James and out of the district of Republican Delegate Jones, who authored the plan. *See Easley v. Cromartie*, 532 U.S. 234, 241 (2001) (rejecting *Shaw* challenge where protection of incumbent seats and other political considerations was not subordinate to race in reapportionment).

Race. Although race played a role in drawing the Plan, it was not predominant. That is self-evident from the above-described facts: if the average retention rate was over 73 percent of the constituents in the Challenged Districts and a host of political and traditional redistricting criteria account for the difference of the remaining 30 percent, then the role of race was minor indeed. *See Robertson v. Bartels*, 148 F. Supp. 2d 443, 456-57 & n.12 (D.N.J. 2001) (rejecting *Shaw* challenge where plan architect considered multiple criteria along with race).

Contrary to Plaintiffs' contentions that redistricting criteria were subordinate to a rigid and mechanical scheme to pack black voters into the majority-minority districts, *half the districts* saw a decrease in BVAP, and the changes in BVAP were not mechanically applied but rather were tailored to the BVAP levels in each district. *Wilkins*, 264 Va. at 476 (decrease in BVAP weighed against strict scrutiny). The *highest* BVAP in any challenged district here is 59.8 percent, and BVAP in three districts fell below the 55 percent number that Plaintiffs claim is a

“floor.” For that reason, Plaintiffs’ reliance on *Alabama Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257, 1271 (2015), is misplaced: the *Alabama* Court expressed suspicion about a redistricting plan that set out “to maintain existing racial percentages” in a district *with 70 percent black population* and identified several other fact-specific indicia of racial predominance—such as the addition of over 15,000 individuals to that district, of whom only 36 were white—that are not present in this case.¹¹ Even if the House had adopted a rigid threshold, *Alabama* does not condemn thresholds *per se*. Moreover, in *Alabama*, the state did not claim that political considerations drove the redistricting process, as is the case here.

An additional recurring racial subtext that drove the result in many *Shaw* cases is missing here: the Plan did not implement a so-called “max black” strategy designed to add majority-minority districts without regard to traditional criteria. *See, e.g., Shaw*, 509 U.S. at 635 (condemning district added to comply with DOJ’s view that another majority-minority districts was required); *Miller*, 515 U.S. at 907-08 (same). The only Delegates who came close to advocating a “max black” position for the 2011 House reapportionment cycle were Delegates Morrissey and Armstrong, and the House rejected their views that a 13th or even 14th majority-minority district was required under the Voting Rights Act. The House instead adopted the more reasonable view of the Black Caucus members—who were in the best position to understand the actual needs of the minority community—that the existing 12 majority-minority districts should be protected under the Plan by maintaining a cushion above 50 percent +1, consistent with other redistricting criteria. The cushion level was not mechanically applied.

No Alternative Plan. It is indisputable that racial identification correlates strongly with

¹¹ The discussion in *Alabama* concerning the racial predominance test is *dictum*. The Court held that population equality is not a criterion to be weighed in the balance and went on to suggest that the facts *may* have risen to the level of predominance, but remanded the case without adjudicating the merits. 135 S. Ct. at 1271.

political affiliation in the Challenged Districts and throughout the state—as even Plaintiffs’ expert will testify. *Ansola* here ¶ 141. *See also Wilkins*, 264 Va. at 479 (finding the same). As a result, the burden is on Plaintiffs to show the court how “the legislature could have achieved its legitimate political objectives in alternative ways that are comparably consistent with traditional districting principles.” *Cromartie*, 532 U.S. at 258.

Plaintiffs apparently will claim HB5002 and HB5003 as their alternatives, but these plans fail under the House’s criteria. The deviation of plus-or-minus 5 percent is facially incompatible with the Committee Resolution requiring no more than a deviation of plus-or-minus 1 percent and demonstrates a complete disregard for the equal-population requirement of the Virginia constitution. VA Const. Art II, Sec. 6. These plans also paired dozens of incumbents in violation of the incumbency-protection criterion critical under the Committee Resolution and essential to gaining member support for the plan. *See Cromartie*, 532 U.S. at 247-48 (ruling out alternative plan that paired a single pair of incumbents in conflict with the legislature’s political goals). These plans did not advance the House’s redistricting goals.

Wilkins v. West. For all these reasons, this case is the spitting image of *Wilkins v. West*. The House used the same criteria here as in 2001. 264 Va. at 468 n.7. The challengers here, as in *Wilkins*, complained that Delegates from the Challenged Districts were reelected by large margins. *Compare* 264 Va. at 474, 477 with Compl. ¶¶ 40, 44, 50, 56, 67, 73, 80, 87. The challengers here, as in *Wilkins*, complain that black voters were “packed” into majority minority districts. *Compare* 264 Va. at 477 with Compl. ¶¶ 38, 40. The challengers here as in *Wilkins* complain of “excessive splitting of jurisdictional lines, general disregard for keeping regions intact, abandoning the constitutional requirements of compactness and contiguity, and inordinate use of split precincts in majority minority districts.” 264 Va. at 477; *see also id.* at 478 (similar

assertions). Yet the *Wilkins* court held that the facts did not rise to the level of establishing racial predominance under *Miller* and *Cromartie* because the evidence showed that the districts largely followed the core of the former districts, 264 Va. at 475, 476, 477, BVAP in challenged districts either fell or grew only slightly, 264 Va. at 479, the legislature sought to accomplish political and race-neutral redistricting goals, *id.* at 475, race was only one factor among many redistricting criteria, *id.* at 476-77, and the challengers were required to make alternative proposals and the others considered by the legislature did not match the criteria, *id.* at 479-80. So too here, the district cores are largely preserved, the House fixed irregularities in the 2001 Plan, the House had multiple race-neutral goals that it accomplished through the Plan, there is a high correlation of racial and political voting patterns, and there are no adequate alternate plans.

Because Plaintiffs cannot meet their burden of showing that race predominated in any of the Challenged Districts, strict scrutiny does not apply.

II. There Is a Strong Basis in Evidence To Show That the Plan Is Narrowly Tailored To Comply with Sections 2 and 5 of the Voting Rights Act

Even if the Court were to apply strict scrutiny, the Plan would pass because the House had a strong basis in evidence to believe the Challenged Districts should be drawn as they were to comply with Sections 2 and 5 of the Voting Rights Act. Virginia has a compelling interest in compliance with both Sections 2 and 5 of the Voting Rights Act. Section 2 requires the creation of majority-minority districts as to minority groups that are sufficiently compact and cohesive where, as here, there is racial bloc voting. *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986). Section 5 prohibits retrogression of those minority groups' ability to elect their candidates of choice. *Beer v. United States*, 425 U.S. 130, 141 (1976).

The Supreme Court has recently provided guidance for this test:

[W]e do not insist that a legislature guess precisely what

percentage reduction a court or the Justice Department might eventually find to be retrogressive. The law cannot insist that a state legislature, when redistricting, determine precisely what percent minority population § 5 demands. The standards of § 5 are complex; they often require evaluation of controverted claims about voting behavior; the evidence may be unclear; and, with respect to any particular district, judges may disagree about the proper outcome. The law cannot lay a trap for an unwary legislature, condemning its redistricting plan as either (1) unconstitutional racial gerrymandering should the legislature place a few too many minority voters in a district or (2) retrogressive under § 5 should the legislature place a few too few. *See Vera*, 517 U.S., at 977, 116 S.Ct. 1941 (principal opinion). Thus, ... a court's analysis of the narrow tailoring requirement insists only that the legislature have a "strong basis in evidence" in support of the (race-based) choice that it has made.

Ala. Legislative Black Caucus v. Alabama, 135 S. Ct. 1257, 1273-74 (2015).

The Challenged Districts are drawn around areas recognized since the 1990s as containing sufficiently compact minority communities to require tailoring under Section 2 to allow those communities the opportunity to elect their candidates of choice. *Gingles*, 478 U.S. at 49. In tailoring those districts, the House also believed that a BVAP greater than 50 percent +1 was necessary to prevent retrogression. It relied on the views of the Black Caucus members themselves, who were in the best position to know the needs of their communities. The decision was well founded in light of lower voter turnout, continuing BVAP decline, and the inability of the black community to elect its candidate in some prior elections. In addition to the Black Caucus members' views, the House took account of specific challenges in specific districts, including HD75's five prisons and substantial minority population prohibited from voting, HD71's decline below the Section 2 standard under *Gingles*, and the prison population in HD75. And the House was justified in believing that voting was racially polarized in these districts because the state's expert report found polarized voting in the *Wilkins* litigation, and the Virginia Supreme Court accepted that evidence. *Wilkins*, 263 Va. at 475.

The expert testimony of Dr. Katz confirms that voting in the Challenged Districts remains polarized. In addition, his testimony indicates that a 55 percent BVAP did not guarantee black voters the opportunity to elect candidates of their choice, indicating the need both for majority-minority districts under Section 2 and to keep BVAP near or above that level. Dr. Katz's analysis is consistent with the views expressed on the House floor by the members of the Black Caucus. The Plan is therefore narrowly tailored.

Plaintiffs appear to believe that this evidence is insufficient because the House did not hire a professor of political science to conduct some form of regression analysis. That would be an anomalous requirement because liability under Section 2 and Section 5 can be established by "anecdotal evidence." *McDaniels v. Mehfood*, 702 F. Supp. 588, 593 (E.D. Va. 1988); *Sanchez v. Bond*, 875 F.2d 1488, 1493 (10th Cir. 1989); *Hale Cnty., Ala. v. United States*, 496 F. Supp. 1206, 1217 (D.D.C. 1980); *Texas v. United States*, 887 F. Supp. 2d 133, 150 (D.D.C. 2012). Defendant-Intervenors are aware of no case law requiring a legislature to conduct a statistical analysis *before* drawing a majority-minority district, and this Court has clarified that the opposite is true. *Page v. Va. State Bd. of Elections*, No. 3:13CV678, 2015 WL 3604029, at *18 n.29 (E.D. Va. June 5, 2015). Virginia's preclearance submissions in the past 30 years have not included a formal political scientist's statistical analysis of racial voting behaviors.¹² Plaintiffs' newly invented requirement to hire a political scientist for a race statistical analysis is an unprecedented, arbitrary and unwarranted burden on Virginia's redistricting process.

CONCLUSION

For these reasons, the Court should enter judgment in favor of the State Defendants and Defendant-Intervenors.

¹² Defendant-Intervenors will submit preclearance submission as trial exhibits to confirm this.

Dated: June 19, 2015

Respectfully Submitted,

/s/ Jennifer M. Walrath
E. Mark Braden (*pro hac vice*)
Jennifer M. Walrath (VSB No. 75548)
Katherine L. McKnight (VSB No. 81482)
Richard B. Raile (VSB 84340)
BAKER & HOSTETLER LLP
1050 Connecticut Ave NW, Suite 1100
Washington, DC 20036
Tel: (202) 861-1500
Fax: (202) 861-1783
mbraden@bakerlaw.com
jwalrath@bakerlaw.com
kmcknight@bakerlaw.com
rraile@bakerlaw.com

*Counsel to the Virginia House of Delegates
and Virginia House of Delegates Speaker
William J. Howell*

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of June, 2015, a copy of the foregoing was filed and served on all counsel of record pursuant to the Court's electronic filing procedures using the Court's CM/ECF system.

/s/ Jennifer M. Walrath

Jennifer M. Walrath (VSB No. 75548)
BAKER & HOSTETLER LLP
1050 Connecticut Ave NW, Suite 1100
Washington, DC 20036
Tel: (202) 861-1500
Fax: (202) 861-1783
jwalrath@bakerlaw.com

*Counsel to the Virginia House of
Delegates and Virginia House of
Delegates Speaker William J. Howell*

Exhibit 1



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

June 20, 1994

Martin M. McMahon, Esq.
Assistant City Attorney
P. O. Box 15225
Chesapeake, Virginia 23328-5225

Dear Mr. McMahon:

This refers to the adoption of the at-large method of election for the board of education in the City of Chesapeake, Virginia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your responses to our request for additional information on March 3 and April 19, 1994; other supplemental information was received on May 13 and 23, 1994.

We have considered carefully the information you have provided, as well as information from other interested persons. According to the 1990 Census, Chesapeake has total population of 151,976, of whom 27.2 percent are black. In addition, black residents comprise 25.6 percent of the city's voting age population. The city proposes to elect the city school board at large. It will be composed of nine members, serving four-year, staggered terms. Candidates will not run for designated posts and will be voted on in nonpartisan, plurality-win elections. The current school board, appointed by the city council, has three black members.

In November 1993, immediately following a successful referendum vote approving a change from an appointed to an elected school board, the city council held two public meetings to discuss whether to adopt an at-large or a district method of election. Under the state enabling statute (Chapter 594 (1992)), the council was invested with the authority to make this decision.

- 2 -

It is our understanding that under the previous appointment system, the council had followed the informal practice of appointing school board members using residency districts. Chapter 594 provides that where school board appointments were made by district, the school board also should be elected in that manner, however, since the city's appointment system at least in formal terms was at large, the city apparently considered itself free to adopt an at-large election system. In this regard, the council was presented with a number of illustrative districting plans by a local demographer, including a nine-district plan with two districts with black voting age population majorities and a third district that was 47 percent black in voting age population.

The two black members of the city council urged that additional time be taken to consider this important issue. Several members of the black community supported the at-large option, but generally also urged that additional study be undertaken. The council, however, proceeded to adopt the submitted at-large method at the second November meeting, with the two black councilmembers voting against that method.

Our analysis of city elections raises significant concern as to whether the at-large method of election will allow black voters an equal opportunity to elect their candidates of choice to the school board. Since the proposed school board election method would be almost identical to the method by which the city council is elected, we have carefully examined voting patterns in past city council elections. Our analysis reveals persistent and severe polarization along racial lines. Over the past decade, it appears that in each election one or more black candidates have been the leading candidates of choice among black voters while these candidates generally have not finished among the group of candidates white voters favored for election to the council. A number of black candidates have been elected nonetheless, generally by receiving very strong support from black voters and a modicum of support among whites. This opportunity of black voters to elect some of their preferred candidates is fairly tenuous, however, as was demonstrated in the 1994 election when the black candidate that appears to have received nearly unanimous black support received almost no votes among white voters and thus was defeated.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In addition, an objection must be interposed where

- 3 -

there is a "clear" violation of Section 2 of the Act, 42 U.S.C. 1973. 28 C.F.R. 51.55(b)(2). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the City's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the at-large method of electing the Chesapeake board of education.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the at-large election method will have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the at-large election method continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Chesapeake plans to take concerning this matter. If you have any questions, you should call Mark A. Posner (202-307-1388), Special Section 5 Counsel in the Voting Section.

Sincerely,

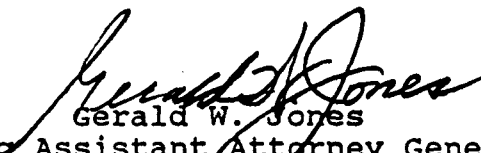

Gerald W. Jones
Acting Assistant Attorney General
Civil Rights Division

Exhibit 2



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

February 16, 1993

Verbena M. Askew, Esq.
City Attorney
2400 Washington Avenue
Newport News, Virginia 23607

Dear Ms. Askew:

This refers to the change in the method of selection of school board members from appointed to elected, the adoption of an at-large method of election, and the method of staggering terms for the Newport News School District in Virginia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your responses to our October 23, 1992, request for additional information on December 16 and 17, 1992, January 4 and February 2 and 5, 1993.

We have considered carefully the information you have provided, as well as Census data and information received from other interested parties. The Attorney General does not interpose any objection to the change to an elected school board. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. In addition, as authorized by Section 5, we reserve the right to reexamine this change if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

We are unable to reach the same conclusion with regard to the city council's decision to use an at-large method of electing the school board. The voting changes now before us are the product of Chapter 594 (1992) (codified at Va. Code Ann. §§ 22.1-57.1 to 22.1-57.5). Last year, when we granted Section 5 preclearance to the voting changes in this enabling legislation, we informed the state that each local change to an elected school

- 2 -

board, as well as the method of election, would require separate preclearance. See 28 C.F.R. 51.15. Under the terms of Chapter 594, the decision to change to an elected board is made directly by the electorate in a process initiated by the presentation of petitions and completed by approval at a referendum. Decisions regarding the method of electing the school board, however, are left to the local governing body, in this case the city council.

According to the 1990 Census, black persons comprise 33 percent of the city's population and 31 percent of its voting age population. Under the existing appointment system for the school board, the city council, since 1982, has consistently appointed two black persons to serve on the seven-member school board. Under the proposed election system, school board members would be elected using the same at-large system as the city council.

In 1989, we had occasion to review voting patterns in city council elections in the context of the city's Section 5 submission of a change in method of staggering city councilmembers' terms resulting from the proposed direct election of the mayor. In our July 24, 1989, letter interposing an objection to this change, we noted that there was "an apparent pattern of racially polarized voting in city elections" and that "black voters have had only limited success in electing candidates of their choice to office." Our review of recent election returns reveals that this pattern has intensified since 1989, as the minority community largely has been unsuccessful in electing candidates of choice to the city council under the existing at-large system. Indeed, although black voters overwhelmingly supported black candidates for city council, no black candidates were elected in 1988 and 1990, and only one black candidate was successful in 1992.

It was against this backdrop that the city, prior to the referendum vote on an elected school board, made its decision to submit for preclearance an at-large method of election. This decision was reached without the benefit of public hearings, consideration of alternative electoral systems, or input from the minority community. While the city council reassessed its initial decision on December 8, 1992, it did so only during an executive session, which was closed to the public and not recorded.

Despite the lack of opportunity for minority input, we understand that the council heard the views of its sole black member, urging the adoption of a single-member district method of electing the school board as a necessary step to achieving a racially fair system in which minority voters would have an equal opportunity to elect candidates of their choice. Nevertheless, at the close of the meeting the council decided to continue to seek preclearance for the at-large system, without any further consideration of alternative election methods.

- 3 -

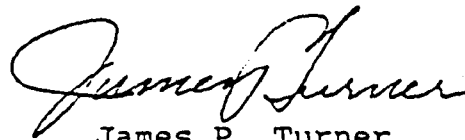
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the adoption of an at-large method of electing school board members.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the at-large method of electing the school board continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

Because the method of staggering terms is directly related to the proposed at-large method of election, the Attorney General will make no determination with regard to this change. See 28 C.F.R. 51.22.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Newport News plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Sincerely,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Exhibit 3



U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

May 19, 2003

Bruce D. Jones, Jr., Esq.
County Attorney
P.O. Box 690
Eastville, Virginia 23347-0690

Dear Mr. Jones:

This refers to the 2002 redistricting plan for the board of supervisors and the realignment of voting precincts for Northampton County, Virginia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our February 10, 2003, request for additional information through March 21, 2003.

With regard to the redistricting plan, we have considered carefully the information provided, as well as information in our files, census data, and comments from other interested persons. According to the 2000 Census, Northampton County has a population of 13,093, of whom 43.1 percent are black persons, and 3.5 percent are Hispanic. From 1990 to 2000, the county's total population remained virtually unchanged, while the black percentage of the total population decreased slightly, from 46.2 percent to 43.1 percent.

Our analysis of the county's electoral history indicates that prior to 1991, only two black candidates had ever been elected to the board and their success came only with reliance on single-shot voting. Further, under the benchmark plan, black voters had been able to elect candidates of choice in three districts. In two of the benchmark districts, black persons are a majority of the voting age population [VAP]. The proposed plan has no district in which black persons constitute a majority of the VAP. In the third viable district in the benchmark, black residents constitute 47.8 percent of the VAP with all minority residents totaling 52.8 percent of that population. Under the proposed plan, the combined minority voting population is 50.3

- 2 -

percent. In the three benchmark districts, the lowest overall minority VAP percent is 52.8, whereas the highest combined minority VAP in any district in the proposed plan is 52.1 percent.

The county bases its determination that black voters will continue to have the ability to elect candidates of their choice in three of the six districts under the proposed plan on the "evidence that voters in Northampton County do not vote on purely racial grounds." In support of this conclusion, the county relies on four black-white races from 1983, 1987, and 1988, purporting to show that "at least some African-American voters were willing to vote for white candidates" and that "at least some white voters were willing to vote for an African-American candidate."

Our electoral analysis of these and other elections precludes us from reaching a similar conclusion. First, two of the elections relied upon by the county, which were county-wide elections in 1987, in fact, did suggest racial bloc voting. The analysis evidenced overwhelming support by black voters for black candidates and very little white support of those candidates by white voters (3% in one race and 7.2% in another). The other two elections relied on by the county were the races in 1983 and 1987 in which Mr. Godwin (B) successfully ran for the board of supervisors. Although Mr. Godwin does appear to have received support from some white voters, the significance of the 1987 victory to the county's position is diminished significantly by the fact that there were only two candidates running for two seats. In any event, the county's assertion that there is some level of cross-over voting does not mean that, as a general matter, white voters do not vote as a bloc to defeat black-preferred candidates in Northampton County. As noted above, our analysis did not indicate a total absence of white support for black-preferred candidates, only that the level of such support was, in most instances, minimal, at best.

The election patterns within the county since 1991 do not alter our view. In the last ten years, no black-preferred candidate has won in a district in which whites were a majority of the VAP and in the district in which neither blacks nor whites constitute a majority of the total VAP, a black-preferred candidate has only won once in the past three elections.

The analysis of electoral behavior indicates that a reduction of only a few percentage points has the potential for a significant difference in the outcome. Accordingly, the county

- 3 -

has not established that a plan that unnecessarily reduces the black population percentage in these districts will afford them the same ability to elect candidates of choice that they now have.

The county has also suggested any retrogression was unavoidable because the county's black VAP percentage dropped 2.4 points since 1990, and is now 40.6 percent. We have examined the county's argument and have determined that it does not withstand scrutiny.

First, the county's proposed plan does not even maintain black voting strength in two of the six districts, much less the three existing districts. Even considering black and other minority voters together, the plan presently before us results in a retrogression of black voting strength. Second, as we informed you on September 28, 2001, during our review of the county's 2001 redistricting plan, we devised an illustrative plan that was not retrogressive as one means of determining whether the retrogression that we discovered in your plan was avoidable. *Guidance Concerning Redistricting and Retrogression under Section 5 of the Voting Rights Act of 1965*, 42 U.S.C. 1973c, 66 Fed. Reg 5411, 5413 (January 18, 2001).

We have discussed that plan with you on several occasions since that time. As you know, the purpose of the illustrative plan is only to indicate that a non-retrogressive plan is possible and the county has no obligation to consider the illustrative plan for any purpose other than that. However, the reasons provided by the county for not adopting a non-retrogressive plan similar to the illustrative plan are not persuasive. The county has indicated that certain features in the illustrative plan (for example, the distances some voters must drive to vote) make the plan, in its view unacceptable; however, it concedes that these same features exist in its proposed plan, the benchmark plan, or both. Moreover, following the April 10, 2002, meeting with Departmental employees, at which the county identified, for the first time, several unincorporated areas whose boundaries, although somewhat vague, could not be split by district lines, we revised the illustrative plan to address each of the concerns raised regarding community boundaries, and developed a plan with black VAP percentages similar to those in the benchmark. Thus, despite the various

- 4 -

restraints that the county is operating under, the retrogression that would result from implementation of the 2002 plan is avoidable.

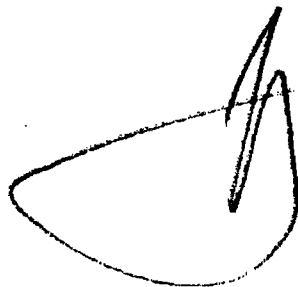
Under these circumstances, I am unable to conclude as I must under Section 5, that the county has met its burden of demonstrating that the redistricting plan does not have a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. Therefore, on behalf of the Attorney General, I must object to the 2002 redistricting plan for the board of supervisors of Northampton County.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted plan continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

The Attorney General will make no determination regarding the submitted realignment of voting precincts because it is dependent upon the objected to redistricting plan.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Northampton County plans to take concerning this matter. If you have any questions, you should call Mr. Robert P. Lowell (202-514-3539), an attorney in the Voting Section.

Sincerely,

A large, stylized handwritten signature in black ink, consisting of a large loop and a vertical stroke.

Ralph F. Boyd, Jr.
Assistant Attorney General

Exhibit 4



U.S. Department Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

APR 29 2002

Mr. William D. Sleeper
County Administrator
Mr. Fred M. Ingram
Chairperson, Board of Supervisors
P.O. Box 426
Pittsylvania, Virginia 24531

Dear Mr. Sleeper and Mr. Ingram:

This refers to the 2001 redistricting plan for the board of supervisors and school board for Pittsylvania County, Virginia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our September 14, 2001, request for additional information on February 26, 2002, and supplemental information through March 12, 2002. We have considered carefully the information you have provided, as well as census data, comments and information from other interested parties, and other information, including the county's previous submissions. Based on our analysis of the information available to us, I am compelled to object to the submitted redistricting plans on behalf of the Attorney General.

The 2000 Census indicates that Pittsylvania County has a population of 61,745, of whom 23.7 percent are black. The county's board of supervisors consists of a total of seven members elected from single member districts to serve four-year, concurrent terms. The county school board is coterminous with the county board of supervisor districts.

According to census data, under the redistricting plan currently in effect, the benchmark plan, there is one district, the Bannister District, in which black persons are a majority of the population. That district has a total black population of 51.3 percent and a black voting age population of 50.2 percent. Since 1991 black voters have had the ability to elect their candidate of choice in this district. The county is proposing a plan, which will reduce the black population in the district to below 50 percent black.

While the reduction in black population in the Banister District is relatively small, a variety of factors preclude the county from establishing, as it must under Section 5 of the Voting Rights Act, that the adoption of this plan is free from either discriminatory effect or purpose.

First, the impact of this reduction is retrogressive. Our analysis of county elections shows that the level of racial polarization is extreme, such that any reduction whatsoever would call into question the continued ability of black voters to elect their candidate of choice. Based on the high level of vote polarization in the county, dropping the percentage of the Banister District below 50 percent black is very likely to severely limit the ability black voters have had throughout the 1990s to elect their candidates of choice.

A proposed change has a discriminatory effect when it will "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 125, 141 (1976). If the proposed plan materially reduces the ability of minority voters to elect candidates of their choice to a level less than what they enjoyed under the benchmark plan, preclearance usually must be denied. State of Georgia v. Ashcroft, C.A. No. 2001-2111 (D.D.C. Apr. 5, 2002), slip op. at 117-18.

Also important to our conclusion that an objection is warranted is the availability of easily constructed alternative plans that not only are non-retrogressive and meet other traditionally recognized redistricting principles, but are ameliorative, in that they increase the voting strength of minority voters in the Banister District. While by no means dispositive, the Department has recognized this factor as important to an analysis of retrogression. Guidance Concerning Redistricting and Retrogression under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, 66 Fed. Reg 5411 (January 18, 2001).

With respect to the county's ability to demonstrate that the plan was adopted without a prohibited purpose, the starting point of our analysis is Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 266 (1977). Under Arlington Heights, the Supreme Court identified the analytical structure for determining whether racially discriminatory intent exists. This approach requires an inquiry into 1) the impact of the decision; 2) the historical background of the decision, particularly if it reveals a series of decisions undertaken with discriminatory intent; 3) the sequence of events leading up to the decision; and 4) whether the challenged decision departs,

either procedurally or substantively, from the normal practice; and contemporaneous statements and viewpoints held by the decision-makers. Id. at 266-68.

Several factors establish that the county falls short of demonstrating the lack of retrogressive purpose. Chief among these are (1) it appears that the Board procedurally blocked formal consideration of alternative, ameliorative plans supported by at least one council member and members of the black community; (2) the county was aware of easily drafted, non-retrogressive and ameliorative alternatives, most of which were in fact similar to the county's own preferred plan; and (3) the apparently pretextual nature of the reasons given by the county for its decision to adopt the plan rather than a non-retrogressive alternative.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Reno v. Bossier Parish School Board, 528 U.S. 320 (2000); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the changes continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

The Attorney General will make no determination regarding the submitted realignment of voting precincts, and four polling place changes because they are dependent upon the redistricting plan.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Pittsylvania County plans to take concerning this matter. If you have any questions, you should call Ms. Maureen Riordan (202) 353-2087, an

attorney in the Voting Section. Refer to File Nos. 2001-2026 and 2001-2501 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

A handwritten signature in black ink, appearing to be "R. Boyd, Jr.", with a large, sweeping flourish extending to the left.

Ralph F. Boyd, Jr.
Assistant Attorney General
Civil Rights Division

Exhibit 5



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

SEP 28 2001

Bruce D. Jones, Jr., Esq.
County Attorney
P.O. Box 690
Eastville, Virginia 23347-0690

Dear Mr. Jones:

This refers to the change in the method of electing the board of supervisors from six single-member districts to three double-member districts; the 2001 redistricting plan for the board of supervisors; the realignment of voting precincts; and the polling place change for Northampton County, Virginia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our July 18, 2001, request for additional information on July 30, 31, and August 2, 2001.

The Attorney General does not interpose any objection to the polling place change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With regard to the remaining specified changes, we have considered carefully the information provided, as well as information in our files, Census data, and comments from other interested persons. According to the 2000 Census, Northampton County has a population of 13,093, of whom 43.1 percent are black, and 3.5 percent are Hispanic. Since 1990, it appears that the county's overall population increased by 32 persons.

- 2 -

Our analysis of the county's electoral history indicates that under the current method of election, which utilizes six single-member districts, black voters have been able to elect candidates of their choice to office in three districts. According to the 2000 Census, Districts 1, 3, and 6 are majority-minority in total and voting age populations. We note that the county changed its method of election from three double-member districts to six single-member districts in 1991, in response to concerns that the three double-member districts diluted the black vote in the county. Since 1991, black supervisors have been elected in all three of the majority-minority districts, and currently represent two districts.

The proposed redistricting plan contains no districts in which minorities constitute a majority of the voting age population. One district has a total minority population of 51.9 percent and a minority voting age population of 48.8 percent. The other two districts have minority voting age populations of 39.3 percent and 43.5 percent. The county maintains that the change to the three-district system was adopted in order to facilitate the inclusion of incorporated towns within single election districts and to make access to polling places more convenient to voters. According to the submission, the county determined that it was not feasible to maintain six districts and to include towns with recent annexations wholly within single districts.

However, our analysis does not support the county's position that maintaining six districts was not feasible. As provided for in the Department's Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, 66 Fed. Reg. 5412, at 5413, (Jan. 18, 2001), we developed an illustrative six-district plan as part of our review of the county's submission. The plan is not significantly different from the existing benchmark plan. Under the illustrative plan, each town is wholly contained within a single district, the county's redistricting criteria are substantially met, and the one-person/one-vote requirement is satisfied.

-3-

Our analysis further reveals that the county failed to seriously consider any alternative plans that would not violate the non-retrogression requirement of Section 5. It appears that the county gave little or no serious consideration to the impact on the ability of minority voters to elect candidates of their choice, when it replaced a plan in which minorities constitute voting age majorities in three districts with a plan under which minorities of voting age do not constitute a voting age majority in any district. For reasons not fully explained, a six-district plan that had been prepared by the county was never completed.

The county maintains that the proposed plan is not retrogressive with regard to minority representation because there are currently two minority supervisors on the board, and that there were two on the board prior to the 1991 redistricting plan. This position misstates the standard that the county must meet under Section 5. Under the last precleared benchmark plan, against which the proposed plan must be measured, there are three districts, not two, in which minorities constitute a majority of the total and voting age populations, with a history of electing candidates preferred by minority voters in each of the three districts.

The county suggests that the minority community, with the use of single-shot voting, could still elect three candidates of choice under the proposed plan. Our analysis, however, does not indicate that minority voters will continue to have the same opportunity under the proposed plan that they currently have to elect even two candidates of choice. In our view, the available information concerning voting patterns within the county suggests the presence of racially polarized voting. An examination of the populations of the proposed districts indicates that it is unlikely that the minority community would be able to elect two, much less, three candidates of choice.

Given the demographics of the county and apparent voting patterns within it, the jurisdiction has not carried its burden to show that the proposed change in the method of election and the redistricting plan will not significantly reduce the ability of minority voters to elect candidates of their choice to the board of supervisors.

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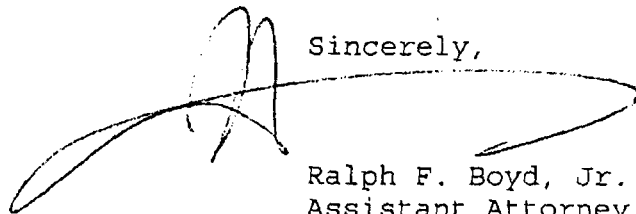
Under these circumstances, I am unable to conclude as I must under Section 5, that the county has met its burden of demonstrating that the submitted changes have neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. Therefore, on behalf of the Attorney General, I must object to the change in the method of electing the board of supervisors from six single-member districts to three double-member districts and the 2001 redistricting plan for the board of supervisors of Northampton County.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted plan continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

The Attorney General will make no determination regarding the submitted realignment of voting precincts because it is dependant upon the objected to change in the method of election and the redistricting plan.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Northampton County plans to take concerning this matter. If you have any questions, you should call Mr. Robert P. Lowell (202-514-3539), an attorney in the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to be "R. Boyd, Jr.", with a long horizontal flourish extending to the right.

Ralph F. Boyd, Jr.
Assistant Attorney General
Civil Rights Division

Exhibit 6



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

July 9, 2002

Darvin Satterwhite, Esq.
County Attorney
P.O. Box 325
Goochland, Virginia 23063

Dear Mr. Satterwhite:

This refers to the 2001 redistricting plan for the board of supervisors for Cumberland County, Virginia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your most recent response to our October 15, 2001, request for additional information on May 10, 2002.

We have carefully considered the information you have provided, as well as census data, and comments and information from other interested parties. Based on the information available to us, I am compelled to object to the submitted 2001 redistricting plan on behalf of the Attorney General.

According to the 2000 Census, black persons represent 37.5 percent of Cumberland County's total population and 35.9 percent of its voting age population. The county's board of supervisors consists of five members elected from single-member, residency districts to serve four-year terms. According to the 2000 Census, District 3 is the only district in which black persons constitute a majority of the total population. Under the existing, or benchmark, plan, they constitute 55.9 percent of the total population, which, under the proposed plan would be reduced to 55.3 percent. Additionally, 2000 Census data indicates that this district has a majority black voting age population of 55.7 percent which would be reduced to 55.2 percent under the county's proposed plan.

-2-

The county suggests that there was a thorough, complete, and exhaustive consideration of a variety of possible district boundaries. However, despite our repeated requests for alternative plans, the county has provided but a single alternative configuration of the district, which has virtually identical demographics as the one for which preclearance is sought. The benchmark and proposed plans that were included in the county's response are not considered alternative plans for purposes of our Section 5 review.

Under the benchmark plan, the district had a deviation of 9.7 percent, clearly necessitating the removal of some persons to bring it within the county's goal of a ± 5 percent deviation. In order to comply with the one-person, one-vote standard, the county removed 213 persons from the district.

This action does not withstand scrutiny as support of the county's claim that its actions were taken without an intent to retrogress, and indeed the county has not carried its burden of proving a lack of retrogressive intent. In its initial submission the county claims to have reviewed 15 to 20 alternative plans, in an effort to ensure that black voting strength was maintained. Yet despite repeated requests for these materials the county has never produced them. Moreover, the magnitude of the population movement in the revised District 3 was excessive because it resulted in the district being transformed from the most overpopulated district to the most underpopulated, with a deviation of -2.3 percent. In addition, not only did the county remove more population than was necessary, but the areas that the county did choose to remove were those areas with a significantly higher level of black population concentration than of the district as a whole. Finally, the areas that were moved out of the district were the areas from which the black-preferred candidate in District 3 drew substantial support in the 1995 and 1999 elections.

It is especially important to view this change in light of alternative plans that could have been drawn. In part, because the county refused to provide us with all alternatives it considered, we sought to determine whether there were illustrative plans that meet the county's redistricting criteria, but which did not result in the retrogression evidenced by the proposed plan. See Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, 66 Fed. Reg. 5411, 5413 (Jan. 18, 2001). We created two illustrative plans, each drawn using a least-change approach involving the exchange of very few Census blocks and resulting in little to no impact on the boundaries of the benchmark plan.

-3-

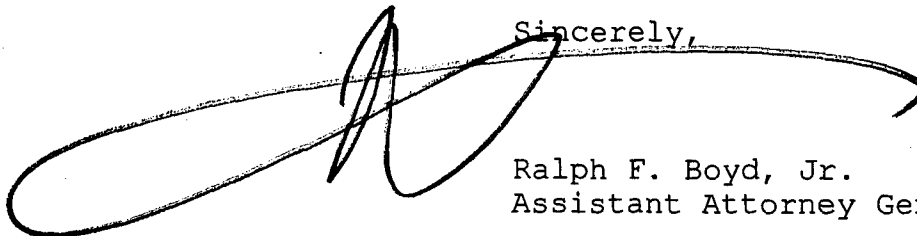
Both plans remain within the county's deviation goals, avoid pitting incumbents against each other, and bring the boundaries of the district into greater conformance with the boundaries of the benchmark plan. And in each plan, the black total and voting age populations is maintained and increased in District 3 and the retrogression is eliminated. In one plan, the black population percentage in District 3 is 56.8 percent and in the other it is 57.1. In fact, given the demographics in the area, it was virtually impossible to devise an illustrative plan which did not increase the district's black population percentage.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained with regard to discriminatory purpose in this instance. Therefore, on behalf of the Attorney General, I must object to the 2001 redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted plan continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Cumberland County plans to take concerning this matter. If you have any questions, you should call Ms. Maureen Riordan (202-353-2087), an attorney in the Voting Section.

Sincerely,

A large, stylized handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Ralph F. Boyd, Jr.
Assistant Attorney General

Exhibit 7



Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Perkins Wilson, Esq.
Assistant Attorney General
Supreme Court Building
1101 East Broad Street
Richmond, Virginia 23219

JUL 31 1981

Dear Mr. Wilson:

This is in reference to the reapportionment of the Virginia House of Delegates by Chapter 5, 1981 Acts of the General Assembly (Special Session), submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on July 2, 1981. In accordance with your request, this submission has been reviewed on an expedited basis.

Under Section 5, the Commonwealth of Virginia has the burden of proving that its proposed reapportionment does not represent a retrogression in the position of its black residents, and that the new plan was adopted without any racially discriminatory purpose. See Beer v. United States, 425 U.S. 130 (1976). We have carefully reviewed the material you submitted and for the most part find the proposed reapportionment plan to have neither the purpose nor effect of diluting or abridging the voting rights of black citizens.

However, there is one general area where the proposed plan appears to dilute and fragment black voting strength unnecessarily. According to the 1980 census the southern part of the Commonwealth contains five contiguous rural counties with black population majorities (Brunswick, Greenville, Sussex, Surry and Charles City). The nearby City of Petersburg also has a majority black population of 61.09%. Under the pre-existing apportionment plan four of the five black majority counties were grouped together with New Kent County to make up District 45, which by 1980 census figures was 53.09% black. In the proposed plan each of the five majority black counties is combined with one or more predominantly white counties in such a way that there is a black minority in each of the resulting districts (Nos. 26, 27, 35, 41 and 46). We note that one of the resulting districts (No. 27), which combines Nottaway, Dinwiddie and Greenville Counties and Emporia City, connected only by a two mile stretch of the Nottaway River, does not seem to comply with the Commonwealth's standard of compactness.

- 2 -

Testimony prepared for the pending lawsuits indicate that the legislature was aware that dispersing the majority black counties that were in former district 45 would necessarily dilute the voting strength of blacks in this area.

Similarly, the City of Petersburg is combined in the plan with the virtually all white city of Colonial Heights resulting in a district (No. 28) which is 43.66% black. This district was formed notwithstanding the fact that Colonial Heights had historically been associated with Chesterfield County and, in fact, had been combined under the 1971 plan with Chesterfield to form District No. 36 which, with a population of 157,881, could have been continued as a viable three-member district in the new plan. This latter approach was supported by representatives of the Colonial Heights city government. Material submitted to us indicates there are a number of options available that would not have the effect of diluting the voting strength of the black citizens of Petersburg.

Accordingly, after careful consideration of the materials you have submitted, as well as comments and information provided by other interested parties, I am unable to conclude, as I must under the Voting Rights Act, that the submitted plan for the reapportionment of the House of Delegates is free of any racially discriminatory purpose or effect in the described area. For that reason, I must, on behalf of the Attorney General, interpose an objection to Chapter 5 of the 1981 Acts of the General Assembly of Virginia (Special Session) as it affects the district lines in the Southside Petersburg area.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect

- 3 -

of the objection by the Attorney General is to make the reapportionment of the Virginia House of Delegates legally unenforceable with respect to the districts in question.

We are aware that there is a severe time problem if the Commonwealth is to hold timely elections for the General Assembly. Please be assured that we stand ready to do all we can to assure that any future review of such limited changes as may be necessary to comply with the requirements of Section 5 is accomplished in the most expeditious way possible. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-7439), Director of the Section 5 Unit of the Voting Section.

Sincerely,

A handwritten signature in dark ink, appearing to read "Wm. Bradford Reynolds", is written over a horizontal line.

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

Exhibit 8



Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 12, 1982

Honorable Gerald L. Baliles
Attorney General
Commonwealth of Virginia
Supreme Court Building
101 North Eighth Street
Richmond, Virginia 23219

Dear Mr. Attorney General:

This is in reference to Chapter 16 of the 1981 Acts of Assembly (Special Session), which reapportions the Virginia House of Delegates, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was completed on March 5, 1982. In accordance with your request expedited consideration has been given this submission pursuant to Section 51.32 of the Procedures for the Administration of Section 5 (46 Fed. Reg. 877).

We have given your submission careful attention. Our review has encompassed the materials forwarded by your office, relevant decisions of the federal courts, information and comments provided by a variety of interested individuals and groups across Virginia, and information obtained in connection with previous redistricting efforts. In this connection we must note that in 1981 we found it necessary to interpose objections to certain House and Senate district configurations which fragmented or submerged black population concentrations. In light of the alternatives that were available to the State, we were unable to conclude that these apparent departures from a consistent application of the racially neutral guidelines adopted by the Assembly were free of the racial purpose and effect proscribed by the Voting Rights Act.

- 2 -

While a thorough examination of all available information has persuaded us that Chapter 16 satisfies Section 5 requirements in most of the State, the plan's treatment of the following areas raises concerns similar to those which prompted our earlier objections. We note, for example, that Chapter 16 retains the City of Norfolk as a large multi-member district, despite the change to an otherwise uniform policy of utilizing single-member districts. It appears, that the stated rationale for separate treatment of Norfolk (the presence of a large population which does not vote locally) was not considered or applied uniformly throughout the state in this or any previous Virginia apportionment, and that indeed there appears to be no insurmountable impediment to the division of this population among two or more districts. Norfolk's anomalous treatment is of particular relevance in that a fairly apportioned plan of single member districts would provide for two districts with substantial black majorities. Absent a necessary and consistently applied basis for retaining a multi-member district, the proposed Norfolk multi-member district has the inevitable effect of limiting the potential of minorities electing candidates of their choice.

We are similarly concerned with the single-member districts drawn in Newport News, Hampton, Portsmouth, and the alternatively adopted districts in Norfolk. Chapter 16 "packs" most of the concentrated black population of Hampton and Newport News into one 75% black district, a level which appears to be well in excess of that necessary to give black voters a fair opportunity to elect a candidate of their choice, while the remainder of the black concentration is divided among three other districts, all of which have substantial white majorities. Our analysis shows that a fairly drawn plan in this area would contain two districts with substantial black majorities. The black community of Portsmouth is divided between two districts, both with white voting age majorities, even though any alternative plan which respected their strong local community of interest would contain one district with a large black majority.

- 3 -

Finally, while two of the alternative districts defined for the City of Norfolk by Chapter 16 contain sizeable black majorities, one of these, district 90, is so contorted as to be likely to confuse voters and candidates, and to exacerbate the financial and other disadvantages experienced by many black candidates. Each of these configurations would appear to have a potentially detrimental impact on the opportunities of black voters to elect candidates of their choice.

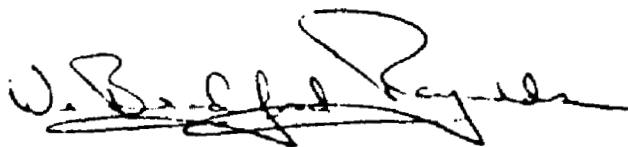
Our investigation has revealed no sound reasons for these departures from the general state policy of maintaining intact local communities of interest. It appears, moreover, that these communities were divided without significant consultation with local minority group members. Under the totality of circumstances, therefore, I am unable to conclude, as I must under Section 5, that the treatment by Chapter 16 of these areas has no discriminatory purpose or effect. Accordingly, I, must, on behalf of the Attorney General, interpose an objection to Chapter 16, 1981 Act of Assembly (Special Session).

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the proposed reapportionment legally unenforceable.

- 4 -

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Commonwealth of Virginia plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

A handwritten signature in dark ink, appearing to read "W. Bradford Reynolds", with a stylized flourish at the end.

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

Exhibit 9



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

JUL 10 1991

K. Marshall Cook, Esq.
Deputy Attorney General
101 North Eighth Street
Richmond, Virginia 23219

Dear Mr. Cook:

This refers to Chapters 11, H.B. No. 3001, and 16, H.B. No. 3012 (1991), which redistrict the Virginia House of Delegates, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial submission on May 17, 1991; supplemental information was received on June 27 and July 1, 8, 11, and 15, 1991.

We have carefully considered the information you have provided, as well as Census data and information and comments from other interested persons. At the outset, we would note that as it applies to the redistricting process, the Voting Rights Act requires the Attorney General to determine whether the submitting authority has sustained its burden of showing that each of the legislative choices made under a proposed plan is free of racially discriminatory purpose or retrogressive effect and, if so, whether the plan will result in a clear violation of Section 2 of the Act. In the case of a statewide redistricting such as the instant one, this examination requires us not only to review the overall impact of the plan on minority voters, but also to understand the reasons for and the impact of each of the legislative choices that were made in arriving at this particular plan.

In making these judgments, we apply the legal rules and precedents established by the federal courts and our published administrative guidelines. See, e.g., 28 C.F.R. 51.52 (a), 51.55, 51.56. For example, we cannot preclear those portions of a plan where the legislature has deferred to the interests of incumbents while refusing to accommodate the community of

- 2 -

interest shared by insular minorities. See, e.g., Garza v. County of Los Angeles, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991); Ketchum v. Byrne, 740 F.2d 1398, 1408-09 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985). We endeavor to evaluate these issues in the context of the demographic changes which compelled the particular jurisdiction's need to redistrict (id.). Finally, our entire review is guided by the principle that the Act insures fair election opportunities and does not require that any jurisdiction attempt to guarantee racial or ethnic proportional results.

Turning now to the instant submission, we have examined the 1991 House redistricting choices in light of the element of racially polarized voting that appears to characterize at least some elections in the state. For the most part, our analysis shows that the Virginia House redistricting plan meets Section 5 preclearance requirements. In one area, however, the proposed configuration of district boundary lines appears to have been drawn in such a way as to minimize black voting strength. Specifically, we refer to the considerable concentration of black population in Charles City County where approximately 4000 blacks are submerged in a majority white district. We are aware that the Legislature rejected available alternatives that would have recognized this concentration of voters by drawing them into a district with black voters in the Richmond area that likely would result in an additional district which provides black voters an equal opportunity to participate in the political process and to elect candidates of their choice to office. While we have noted the state's explanation that the submitted districting in this area was designed to protect certain incumbents, and even though incumbency protection is not in and of itself an inappropriate consideration, it may not be accomplished at the expense of minority voting potential. Garza v. County of Los Angeles, 918 F.2d at 771; Ketchum v. Byrne, 740 F.2d at 1408-09.

Therefore, in light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the state's burden has been sustained in this instance. Accordingly, on behalf of the Attorney General, I must object to the 1991 redistricting plan for the State House of Delegates, with regard to the manner in which it treats the Charles City County, James City County and Richmond/Henrico County area discussed above.

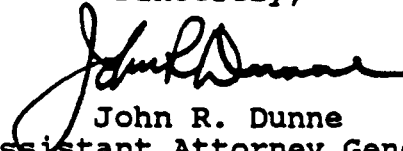
We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed 1991 House redistricting plan has neither the purpose nor will have the effect of denying or abridging the right to vote on account of

- 3 -

race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the 1991 redistricting plan for the House of Representatives continues to be legally unenforceable. Clark v. Roemer, 59 U.S.L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Virginia plans to take concerning this matter. In this regard the Department stands ready to review quickly any plan the legislature might adopt to remedy this objection. If you have any questions, you should call Sandra S. Coleman (202-307-3718), Deputy Chief for Section 5.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division

Exhibit 10

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IN RE: SENATE PRIVILEGES AND ELECTIONS

6

REDISTRICTING SUBCOMMITTEE PUBLIC HEARING

7

8

9

10

Tidewater Community College

11

120 Campus Drive

12

Portsmouth, Virginia

13

December 2, 2010

14

15

Before: Senator Janet Howell, Chairman

16

Senator Creigh Deeds

17

Senator Ralph Northam

18

Senator Harry Blevins

19

Senator Frederick Quayle

20

21

22

TAYLOE ASSOCIATES, INC.

23

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Telephone: (757) 461-1984

25

Norfolk, Virginia

TAYLOE ASSOCIATES, INC.

1 Let me give you an example of the last --
2 from the last redistricting in 2001. And it is kind
3 of personal for me because the example I will give you
4 is the 32nd Senate district, which is what I
5 represent. Ten years ago, the 32nd district had
6 precisely the right number of people. We were only
7 off by 300 people. But because Northern Virginia was
8 gaining in population, there were major shifts. So my
9 perfectly configured district lost 40 percent of my
10 constituents and gained a different 40 percent. That
11 is going to happen statewide. Changes in one district
12 will cause changes in others. Population shifts are
13 going to create changes. And I think we need to
14 expect most districts are going to be changed.

15 Here is the schedule of what we expect.
16 Last April 1st was census day, and the population was
17 enumerated. We are expecting, on December 31st, that
18 we will get our first official population count from
19 census. That will tell us how many people live in
20 Virginia. In February, or possibly March of next
21 year, we will get detailed population data and that is
22 the data that we need to draw new maps. So we have
23 not been drawing maps. We can't be drawing maps. We
24 don't have the data yet. We only have some estimates.

25 Virginia is on a very, very tight time

TAYLOE ASSOCIATES, INC.

1 frame to do this. Although every state has to
2 redistrict, we have to do it quicker than most. That
3 is because all members of the General Assembly will be
4 running in 2011, next year, in the new districts that
5 we are going to draw during the redistricting process.
6 Any redistricting plan enacted by the General Assembly
7 and the Governor must be submitted to the Department
8 of Justice for preclearance. This is because Virginia
9 is covered by Section 5 of the Voting Rights Act.

10 Ten years ago, the Department of Justice
11 took 59 days to approve the plan. They are allowed
12 60 days.

13 Generally, primaries are held in June but
14 they are going to be delayed this year because we
15 won't have the plan approved probably in June. When
16 the primaries will be is still not determined. The
17 Senate passed a bill last year with a specific date
18 but the House failed to act. So we don't know when
19 the primaries are going to be.

20 We face a lot of complex legal issues.
21 We have to comply with the U.S. and Virginia
22 Constitutions, state law and Federal Voting Rights
23 Act. We have to do one person, one vote under the
24 U.S. Constitution. In the House of Representatives,
25 the U.S. House of Representatives, we essentially have

TAYLOE ASSOCIATES, INC.

Exhibit 11

Approved 3/25/11

HOUSE COMMITTEE ON PRIVILEGES AND ELECTIONS

COMMITTEE RESOLUTION NO. 1 -- House of Delegates District Criteria

(Proposed by Delegate S. Chris Jones)

RESOLVED, That after consideration of legal requirements and public policy objectives, informed by public comment, the House Committee on Privileges and Elections adopts the following criteria for the redrawing of Virginia's House of Delegates districts:

I. Population Equality

The population of legislative districts shall be determined solely according to the enumeration established by the 2010 federal census. The population of each district shall be as nearly equal to the population of every other district as practicable. Population deviations in House of Delegates districts should be within plus-or-minus one percent.

II. Voting Rights Act

Districts shall be drawn in accordance with the laws of the United States and the Commonwealth of Virginia including compliance with protections against the unwarranted retrogression or dilution of racial or ethnic minority voting strength. Nothing in these guidelines shall be construed to require or permit any districting policy or action that is contrary to the United States Constitution or the Voting Rights Act of 1965.

III. Contiguity and Compactness

Districts shall be comprised of contiguous territory including adjoining insular territory. Contiguity by water is sufficient. Districts shall be contiguous and compact in accordance with the Constitution of Virginia as interpreted by the Virginia Supreme Court in the cases of *Jamerson v. Womack*, 244 Va. 506 (1992) and *Wilkins v. West*, 264 Va. 447 (2002).

IV. Single-Member Districts

All districts shall be single-member districts.

V. Communities of Interest

Districts shall be based on legislative consideration of the varied factors that can create or contribute to communities of interest. These factors may include, among others, economic factors, social factors, cultural factors, geographic features, governmental

jurisdictions and service delivery areas, political beliefs, voting trends, and incumbency considerations. Public comment has been invited, has been and continues to be received, and will be considered. It is inevitable that some interests will be advanced more than others by the choice of particular district configurations. The discernment, weighing, and balancing of the varied factors that contribute to communities of interest is an intensely political process best carried out by elected representatives of the people. Local government jurisdiction and precinct lines may reflect communities of interest to be balanced, but they are entitled to no greater weight as a matter of state policy than other identifiable communities of interest.

VI. Priority

All of the foregoing criteria shall be considered in the districting process, but population equality among districts and compliance with federal and state constitutional requirements and the Voting Rights Act of 1965 shall be given priority in the event of conflict among the criteria. Where the application of any of the foregoing criteria may cause a violation of applicable federal or state law, there may be such deviation from the criteria as is necessary, but no more than is necessary, to avoid such violation.

DLS/mrs
3/25/11

Exhibit 12

BENCHMARK PLAN: Black VAP Percentages as reported by DLS and as calculated by DOJ Guidelines

[A]	[B]	[C]	[D]	[E]	[F]	[G]	[H]	[I]
Benchmark Plan		DLS: Includes Hispanic Black			DOJ: Excludes Hispanic Black			Net%
	Voting Age District Population	DLS Black VAP	Single race: Black	Multi-race: Black+White	DOJ Black VAP	%Non-Hispanic Single race: Black	%Non-Hispanic Multi-race: Black+White	Net: DLS-DOJ
001	57,833	3.8%	3.78%	0.07%	3.8%	3.69%	0.07%	0.1%
002	54,630	2.4%	2.36%	0.08%	2.4%	2.35%	0.08%	0.0%
003	53,177	2.6%	2.53%	0.05%	2.6%	2.53%	0.05%	0.0%
004	58,842	2.4%	2.25%	0.10%	2.3%	2.24%	0.10%	0.0%
005	55,154	2.2%	2.10%	0.10%	2.2%	2.07%	0.10%	0.0%
006	58,276	4.3%	4.12%	0.16%	4.3%	4.11%	0.16%	0.0%
007	62,214	5.0%	4.69%	0.33%	4.9%	4.63%	0.31%	0.1%
008	58,528	5.2%	5.00%	0.17%	5.1%	4.95%	0.16%	0.1%
009	65,128	9.1%	9.06%	0.09%	9.1%	9.00%	0.08%	0.1%
010	54,788	12.9%	12.76%	0.16%	12.9%	12.73%	0.15%	0.0%
011	56,244	33.7%	33.24%	0.49%	33.4%	32.92%	0.46%	0.4%
012	64,081	4.5%	4.33%	0.21%	4.5%	4.26%	0.19%	0.1%
013	131,503	10.4%	10.09%	0.36%	10.1%	9.83%	0.30%	0.3%
014	51,053	37.7%	37.56%	0.16%	37.6%	37.46%	0.15%	0.1%
015	61,155	2.1%	2.03%	0.12%	2.1%	1.98%	0.11%	0.1%
016	55,023	23.8%	23.64%	0.16%	23.7%	23.55%	0.16%	0.1%
017	58,033	5.7%	5.49%	0.19%	5.6%	5.40%	0.19%	0.1%
018	62,954	6.2%	5.94%	0.23%	6.1%	5.87%	0.21%	0.1%
019	61,053	6.1%	5.98%	0.10%	6.0%	5.93%	0.10%	0.1%
020	60,846	6.5%	6.28%	0.21%	6.4%	6.22%	0.20%	0.1%
021	55,998	24.0%	23.50%	0.52%	23.4%	22.91%	0.48%	0.6%
022	61,006	11.8%	11.62%	0.15%	11.7%	11.58%	0.15%	0.0%
023	64,845	27.0%	26.64%	0.34%	26.8%	26.46%	0.33%	0.2%
024	58,206	9.0%	8.82%	0.18%	8.9%	8.74%	0.16%	0.1%
025	64,291	5.5%	5.33%	0.21%	5.4%	5.23%	0.19%	0.1%
026	67,195	4.2%	3.92%	0.32%	4.0%	3.69%	0.28%	0.3%
027	64,804	26.5%	26.17%	0.33%	26.1%	25.85%	0.29%	0.4%
028	70,257	17.9%	17.42%	0.47%	17.5%	17.06%	0.40%	0.4%
029	66,863	6.0%	5.71%	0.30%	5.9%	5.59%	0.27%	0.2%
030	67,963	14.4%	14.12%	0.27%	14.2%	13.95%	0.26%	0.2%
031	63,042	22.9%	22.42%	0.52%	22.2%	21.77%	0.45%	0.7%
032	78,679	7.6%	7.35%	0.29%	7.4%	7.13%	0.25%	0.3%
033	79,525	6.9%	6.62%	0.25%	6.7%	6.48%	0.23%	0.2%
034	55,355	3.2%	2.99%	0.18%	3.1%	2.92%	0.15%	0.1%
035	66,402	4.8%	4.59%	0.19%	4.6%	4.44%	0.14%	0.2%
036	57,195	8.0%	7.65%	0.31%	7.7%	7.41%	0.27%	0.3%
037	59,812	6.6%	6.25%	0.33%	6.3%	6.04%	0.26%	0.3%
038	59,896	10.2%	9.92%	0.25%	9.8%	9.61%	0.22%	0.3%
039	60,143	6.5%	6.32%	0.18%	6.3%	6.08%	0.17%	0.3%
040	59,244	6.6%	6.26%	0.31%	6.4%	6.08%	0.28%	0.2%

BENCHMARK PLAN: Black VAP Percentages as reported by DLS and as calculated by DOJ Guidelines

[A]	[B]	[C]			[D]	[E]	[F]			[G]	[H]	[I]
Benchmark Plan		DLS: Includes Hispanic Black			DOJ: Excludes Hispanic Black						Net%	
District	Voting Age Population	DLS Black VAP	Single race: Black	Multi-race: Black+White	DOJ Black VAP	%Non-Hispanic Single race: Black	%Non-Hispanic Multi-race: Black+White	Net:			DLS-DOJ	
041	52,989	6.3%	6.10%	0.21%	6.1%	5.96%	0.17%	0.2%				
042	59,031	14.1%	13.75%	0.32%	13.7%	13.40%	0.26%	0.4%				
043	59,703	15.5%	15.11%	0.40%	15.1%	14.80%	0.31%	0.4%				
044	59,332	21.4%	21.02%	0.39%	20.9%	20.57%	0.32%	0.5%				
045	65,973	11.1%	10.78%	0.30%	10.8%	10.54%	0.23%	0.3%				
046	64,174	28.5%	27.91%	0.59%	27.9%	27.38%	0.48%	0.6%				
047	65,989	7.0%	6.75%	0.27%	6.8%	6.54%	0.22%	0.3%				
048	71,185	6.0%	5.73%	0.28%	5.8%	5.58%	0.23%	0.2%				
049	54,485	17.3%	16.87%	0.44%	16.6%	16.29%	0.31%	0.7%				
050	59,678	14.1%	13.59%	0.53%	13.5%	13.10%	0.41%	0.6%				
051	56,572	21.3%	20.76%	0.56%	20.7%	20.24%	0.46%	0.6%				
052	69,541	28.5%	27.90%	0.60%	27.7%	27.14%	0.53%	0.8%				
053	62,455	4.3%	4.14%	0.20%	4.2%	3.99%	0.17%	0.2%				
054	70,835	16.5%	16.05%	0.43%	16.2%	15.80%	0.39%	0.3%				
055	60,698	10.4%	10.18%	0.18%	10.3%	10.11%	0.17%	0.1%				
056	70,975	14.3%	14.08%	0.21%	14.2%	13.99%	0.20%	0.1%				
057	62,660	15.4%	14.97%	0.42%	15.2%	14.81%	0.38%	0.2%				
058	67,486	8.8%	8.50%	0.26%	8.7%	8.43%	0.24%	0.1%				
059	61,131	24.8%	24.60%	0.22%	24.7%	24.51%	0.21%	0.1%				
060	57,699	33.7%	33.56%	0.16%	33.5%	33.35%	0.14%	0.2%				
061	56,775	33.4%	33.29%	0.15%	33.2%	33.09%	0.14%	0.2%				
062	58,854	25.6%	25.27%	0.34%	25.1%	24.79%	0.31%	0.5%				
063	58,013	58.1%	57.76%	0.37%	57.7%	57.29%	0.36%	0.5%				
064	67,121	20.8%	20.57%	0.27%	20.7%	20.41%	0.26%	0.2%				
065	66,205	9.7%	9.57%	0.16%	9.6%	9.47%	0.15%	0.1%				
066	65,915	16.5%	16.17%	0.29%	16.2%	15.94%	0.25%	0.3%				
067	63,998	6.6%	6.30%	0.32%	6.4%	6.10%	0.28%	0.2%				
068	58,611	11.6%	11.40%	0.24%	11.5%	11.22%	0.23%	0.2%				
069	55,216	56.3%	55.82%	0.46%	55.6%	55.17%	0.41%	0.7%				
070	59,060	61.8%	61.42%	0.35%	61.2%	60.92%	0.29%	0.6%				
071	62,649	46.3%	45.77%	0.50%	45.8%	45.36%	0.47%	0.4%				
072	62,711	11.4%	11.10%	0.26%	11.1%	10.88%	0.24%	0.2%				
073	59,008	16.5%	16.22%	0.26%	16.1%	15.89%	0.24%	0.3%				
074	60,325	62.7%	62.36%	0.34%	62.2%	61.90%	0.32%	0.5%				
075	56,367	55.3%	55.17%	0.13%	55.1%	55.00%	0.13%	0.2%				
076	69,266	26.2%	25.88%	0.27%	25.9%	25.66%	0.25%	0.2%				
077	56,134	57.6%	57.27%	0.28%	57.0%	56.79%	0.25%	0.5%				
078	60,892	17.4%	17.12%	0.27%	17.1%	16.85%	0.24%	0.3%				
079	54,594	39.4%	38.98%	0.39%	38.8%	38.48%	0.36%	0.5%				
080	55,645	54.4%	54.03%	0.37%	53.9%	53.58%	0.33%	0.5%				

BENCHMARK PLAN: Black VAP Percentages as reported by DLS and as calculated by DOJ Guidelines

[A]	[B]	[C]	[D]	[E]	[F]	[G]	[H]	[I]
Benchmark Plan		DLS: Includes Hispanic Black			DOJ: Excludes Hispanic Black			Net%
	Voting Age District Population	DLS Black VAP	Single race: Black	Multi-race: Black+White	DOJ Black VAP	%Non- Hispanic Single race: Black	%Non- Hispanic Multi-race: Black+White	Net: DLS-DOJ
081	55,612	15.6%	15.20%	0.37%	15.3%	14.91%	0.35%	0.3%
082	56,016	7.8%	7.49%	0.35%	7.6%	7.24%	0.32%	0.3%
083	57,417	18.9%	18.54%	0.38%	18.4%	18.05%	0.35%	0.5%
084	57,150	21.2%	20.75%	0.45%	20.6%	20.18%	0.41%	0.6%
085	56,846	20.3%	19.93%	0.36%	19.9%	19.55%	0.31%	0.4%
086	66,342	9.7%	9.43%	0.27%	9.4%	9.15%	0.21%	0.3%
087	54,818	24.2%	23.63%	0.56%	23.5%	22.97%	0.53%	0.7%
088	66,826	14.6%	14.20%	0.37%	14.2%	13.88%	0.33%	0.4%
089	56,922	52.5%	52.02%	0.44%	51.7%	51.31%	0.42%	0.7%
090	52,752	56.9%	56.42%	0.50%	56.0%	55.61%	0.44%	0.9%
091	49,375	15.9%	15.59%	0.27%	15.6%	15.34%	0.23%	0.3%
092	54,472	62.1%	61.52%	0.63%	61.1%	60.55%	0.55%	1.0%
093	55,175	33.5%	32.89%	0.64%	32.6%	32.06%	0.58%	0.9%
094	55,572	24.4%	23.83%	0.53%	23.8%	23.27%	0.48%	0.6%
095	51,008	61.6%	61.19%	0.46%	60.9%	60.50%	0.42%	0.7%
096	68,293	14.7%	14.38%	0.30%	14.5%	14.20%	0.27%	0.2%
097	67,243	18.3%	18.11%	0.19%	18.2%	18.00%	0.17%	0.1%
098	59,650	15.7%	15.55%	0.18%	15.6%	15.45%	0.17%	0.1%
099	63,601	24.0%	23.82%	0.19%	23.9%	23.69%	0.19%	0.1%
100	61,071	28.4%	28.01%	0.37%	27.7%	27.35%	0.32%	0.7%

Notes:

- 1 The values listed under the DLS columns [C-D-E] are from the Division of Legislative Services website.
- 2 The DLS values are based upon the two question census format: one for Hispanic Origin and one for Race.
- 3 The values listed under the DOJ columns [F-G-H] are provided by the Maptitude for Redistricting software.
- 4 The DOJ values are based upon a combination of the two questions to eliminate the double counting of persons.
- 5 Both sets of values may be calculated from the counts identified in the 2010 Census Counts exhibit.
- 6 The DLS and DOJ Black VAP values are the result of adding the two succeeding columns for Black and Black+White.
- 7 For convenience and consistency the DLS and DOJ Black VAP values are rounded to one decimal point.
- 8 The Net% column [I] subtracts the DOJ value [F] from the DLS value [C].

Exhibit 13

ENACTED PLAN: Black VAP Percentages as reported by DLS and as calculated by DOJ Guidelines

[A]	[B]	[C]	[D]	[E]	[F]	[G]	[H]	[I]
Enacted Plan		DLS: Includes Hispanic Black			DOJ: Excludes Hispanic Black			Net%
	Voting Age District Population	DLS Black VAP	Single race: Black	Multi-race: Black+White	DOJ Black VAP	%Non- Hispanic Single race: Black	%Non- Hispanic Multi-race: Black+White	Net: DLS-DOJ
001	64,221	3.9%	3.78%	0.08%	3.8%	3.70%	0.08%	0.1%
002	56,163	24.4%	23.83%	0.54%	23.7%	23.19%	0.47%	0.7%
003	64,745	3.0%	2.91%	0.08%	3.0%	2.91%	0.08%	0.0%
004	64,195	2.1%	2.05%	0.08%	2.1%	2.05%	0.08%	0.0%
005	64,337	2.7%	2.57%	0.11%	2.6%	2.54%	0.10%	0.0%
006	62,988	2.0%	1.85%	0.10%	1.9%	1.84%	0.10%	0.0%
007	64,401	4.0%	3.85%	0.20%	4.0%	3.79%	0.18%	0.1%
008	63,208	4.0%	3.84%	0.15%	3.9%	3.79%	0.14%	0.1%
009	64,142	10.0%	9.84%	0.12%	9.9%	9.78%	0.11%	0.1%
010	57,050	8.7%	8.36%	0.32%	8.5%	8.18%	0.29%	0.2%
011	62,356	31.1%	30.67%	0.46%	30.8%	30.37%	0.43%	0.3%
012	69,034	4.5%	4.18%	0.28%	4.4%	4.12%	0.27%	0.1%
013	58,290	13.2%	12.75%	0.46%	12.8%	12.42%	0.39%	0.4%
014	62,379	34.1%	33.95%	0.15%	34.0%	33.86%	0.14%	0.1%
015	62,907	1.9%	1.80%	0.12%	1.9%	1.74%	0.11%	0.1%
016	63,086	27.1%	26.92%	0.18%	27.0%	26.83%	0.18%	0.1%
017	63,576	6.1%	5.90%	0.22%	6.0%	5.82%	0.21%	0.1%
018	59,686	7.7%	7.49%	0.22%	7.6%	7.40%	0.21%	0.1%
019	62,844	5.9%	5.80%	0.13%	5.9%	5.74%	0.13%	0.1%
020	62,717	8.3%	8.02%	0.29%	8.2%	7.91%	0.28%	0.1%
021	58,656	23.9%	23.37%	0.50%	23.3%	22.83%	0.46%	0.6%
022	61,467	20.5%	20.30%	0.21%	20.4%	20.20%	0.20%	0.1%
023	63,982	14.9%	14.70%	0.24%	14.8%	14.61%	0.24%	0.1%
024	64,424	8.5%	8.37%	0.17%	8.5%	8.30%	0.16%	0.1%
025	61,585	3.6%	3.47%	0.15%	3.6%	3.42%	0.13%	0.1%
026	65,566	4.5%	4.14%	0.32%	4.2%	3.90%	0.28%	0.3%
027	58,981	18.4%	18.13%	0.31%	18.2%	17.89%	0.28%	0.3%
028	58,388	18.2%	17.81%	0.42%	17.8%	17.41%	0.37%	0.4%
029	61,320	6.0%	5.68%	0.28%	5.8%	5.56%	0.27%	0.1%
030	61,276	15.1%	14.85%	0.28%	14.9%	14.68%	0.27%	0.2%
031	56,743	20.3%	19.79%	0.50%	19.7%	19.25%	0.43%	0.6%
032	55,263	8.0%	7.65%	0.31%	7.7%	7.42%	0.27%	0.3%
033	57,140	5.0%	4.77%	0.22%	4.9%	4.68%	0.19%	0.1%
034	57,978	3.5%	3.37%	0.14%	3.4%	3.28%	0.12%	0.1%
035	62,743	5.1%	4.87%	0.25%	4.9%	4.70%	0.21%	0.2%
036	61,859	8.7%	8.37%	0.33%	8.4%	8.13%	0.29%	0.3%
037	63,480	8.1%	7.69%	0.37%	7.8%	7.44%	0.32%	0.3%
038	62,463	9.4%	9.22%	0.21%	9.1%	8.92%	0.18%	0.3%
039	61,870	9.1%	8.86%	0.22%	8.8%	8.64%	0.19%	0.2%
040	58,415	6.6%	6.29%	0.29%	6.4%	6.15%	0.25%	0.2%

ENACTED PLAN: Black VAP Percentages as reported by DLS and as calculated by DOJ Guidelines

[A]	[B]	[C]	[D]	[E]	[F]	[G]	[H]	[I]
Enacted Plan		DLS: Includes Hispanic Black			DOJ: Excludes Hispanic Black			Net%
	Voting Age District Population	DLS Black VAP	Single race: Black	Multi-race: Black+White	DOJ Black VAP	%Non- Hispanic Single race: Black	%Non- Hispanic Multi-race: Black+White	Net: DLS-DOJ
041	60,765	5.7%	5.51%	0.20%	5.5%	5.38%	0.16%	0.2%
042	58,066	9.8%	9.51%	0.27%	9.5%	9.27%	0.24%	0.3%
043	62,318	17.1%	16.72%	0.42%	16.7%	16.34%	0.33%	0.5%
044	59,112	22.0%	21.59%	0.39%	21.4%	21.10%	0.32%	0.6%
045	67,692	11.5%	11.15%	0.34%	11.1%	10.85%	0.24%	0.4%
046	66,262	27.7%	27.10%	0.58%	27.0%	26.57%	0.46%	0.6%
047	68,384	5.0%	4.71%	0.25%	4.8%	4.54%	0.21%	0.2%
048	64,068	4.6%	4.37%	0.25%	4.5%	4.24%	0.21%	0.2%
049	66,373	16.7%	16.30%	0.43%	16.2%	15.86%	0.33%	0.5%
050	55,689	14.4%	13.84%	0.52%	13.7%	13.32%	0.39%	0.6%
051	58,448	15.4%	14.95%	0.43%	15.0%	14.61%	0.37%	0.4%
052	56,592	30.3%	29.67%	0.65%	29.4%	28.81%	0.55%	1.0%
053	62,827	5.5%	5.24%	0.21%	5.2%	4.99%	0.17%	0.3%
054	57,249	17.7%	17.29%	0.42%	17.4%	17.02%	0.38%	0.3%
055	59,680	16.7%	16.46%	0.26%	16.6%	16.36%	0.23%	0.1%
056	58,745	13.0%	12.78%	0.23%	12.9%	12.72%	0.21%	0.1%
057	68,024	15.9%	15.47%	0.45%	15.7%	15.29%	0.41%	0.2%
058	61,395	6.9%	6.71%	0.20%	6.9%	6.67%	0.19%	0.1%
059	62,208	20.0%	19.84%	0.20%	20.0%	19.77%	0.19%	0.1%
060	62,712	32.5%	32.35%	0.17%	32.3%	32.17%	0.16%	0.2%
061	63,280	33.5%	33.36%	0.16%	33.3%	33.18%	0.16%	0.2%
062	61,022	24.6%	24.23%	0.33%	24.1%	23.81%	0.28%	0.5%
063	61,404	59.5%	59.09%	0.43%	59.0%	58.55%	0.42%	0.6%
064	61,722	24.2%	24.05%	0.18%	24.1%	23.91%	0.17%	0.2%
065	59,232	14.6%	14.47%	0.16%	14.5%	14.37%	0.15%	0.1%
066	58,534	16.1%	15.79%	0.27%	15.8%	15.58%	0.25%	0.2%
067	57,154	5.7%	5.45%	0.27%	5.5%	5.28%	0.24%	0.2%
068	63,752	7.3%	7.05%	0.21%	7.1%	6.91%	0.19%	0.1%
069	62,538	55.2%	54.78%	0.40%	54.6%	54.20%	0.38%	0.6%
070	58,654	56.4%	55.99%	0.38%	55.7%	55.42%	0.31%	0.6%
071	66,230	55.3%	54.87%	0.48%	54.9%	54.44%	0.46%	0.5%
072	62,008	13.4%	13.16%	0.24%	13.2%	12.96%	0.23%	0.2%
073	63,116	13.5%	13.26%	0.28%	13.2%	12.92%	0.26%	0.4%
074	60,478	57.2%	56.91%	0.32%	56.8%	56.47%	0.30%	0.5%
075	63,445	55.4%	55.30%	0.13%	55.2%	55.10%	0.12%	0.2%
076	59,747	25.1%	24.88%	0.26%	24.9%	24.66%	0.25%	0.2%
077	57,841	58.8%	58.44%	0.34%	58.2%	57.92%	0.29%	0.6%
078	60,410	17.1%	16.89%	0.25%	16.8%	16.60%	0.23%	0.3%
079	66,796	29.7%	29.13%	0.55%	28.8%	28.31%	0.48%	0.9%
080	60,871	56.3%	55.94%	0.36%	55.8%	55.48%	0.31%	0.5%

ENACTED PLAN: Black VAP Percentages as reported by DLS and as calculated by DOJ Guidelines

[A]	[B]	[C]		[D]	[E]	[F]		[G]	[H]	[I]
Enacted Plan		DLS: Includes Hispanic Black				DOJ: Excludes Hispanic Black				Net%
	Voting Age District Population	DLS Black VAP	Single race: Black	Multi-race: Black+White		DOJ Black VAP	%Non-Hispanic Single race: Black	%Non-Hispanic Multi-race: Black+White		Net: DLS-DOJ
081	59,833	18.6%	18.28%	0.32%		18.3%	18.00%	0.29%		0.3%
082	63,348	9.1%	8.76%	0.38%		8.8%	8.48%	0.34%		0.3%
083	62,818	15.1%	14.77%	0.35%		14.7%	14.39%	0.32%		0.4%
084	58,742	20.4%	19.98%	0.47%		19.9%	19.43%	0.43%		0.6%
085	62,188	18.9%	18.51%	0.42%		18.4%	18.06%	0.37%		0.5%
086	59,286	8.3%	8.10%	0.22%		8.0%	7.84%	0.17%		0.3%
087	55,787	8.7%	8.34%	0.32%		8.3%	8.09%	0.23%		0.3%
088	58,354	14.1%	13.69%	0.44%		13.8%	13.44%	0.39%		0.3%
089	61,070	55.5%	54.98%	0.48%		54.8%	54.30%	0.46%		0.7%
090	60,204	56.6%	56.10%	0.49%		55.6%	55.17%	0.44%		1.0%
091	59,281	19.6%	19.24%	0.37%		19.2%	18.90%	0.32%		0.4%
092	61,309	60.7%	60.14%	0.58%		59.8%	59.28%	0.51%		0.9%
093	62,539	22.6%	22.04%	0.54%		22.0%	21.56%	0.48%		0.5%
094	62,412	21.0%	20.60%	0.42%		20.5%	20.11%	0.41%		0.5%
095	59,017	60.0%	59.35%	0.62%		59.0%	58.44%	0.56%		1.0%
096	61,067	13.7%	13.47%	0.24%		13.5%	13.30%	0.22%		0.2%
097	60,024	10.8%	10.72%	0.11%		10.8%	10.65%	0.10%		0.1%
098	62,740	16.4%	16.26%	0.19%		16.3%	16.16%	0.18%		0.1%
099	63,534	24.0%	23.85%	0.20%		23.9%	23.71%	0.19%		0.1%
100	63,027	27.6%	27.29%	0.30%		27.2%	26.90%	0.29%		0.4%

Notes:

- 1 The values listed under the DLS columns [C-D-E] are from the Division of Legislative Services website.
- 2 The DLS values are based upon the two question census format: one for Hispanic Origin and one for Race.
- 3 The values listed under the DOJ columns [F-G-H] are provided by the Maptitude for Redistricting software.
- 4 The DOJ values are based upon a combination of the two questions to eliminate the double counting of persons.
- 5 Both sets of values may be calculated from the counts identified in the 2010 Census Counts exhibit.
- 6 The DLS and DOJ Black VAP values are the result of adding the two succeeding columns for Black and Black+White.
- 7 For convenience and consistency the DLS and DOJ Black VAP values are rounded to one decimal point.
- 8 The Net% column [I] subtracts the DOJ value [F] from the DLS value [C].

Exhibit 14

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2011 SPECIAL SESSION 1

9

VIRGINIA HOUSE OF DELEGATES

10

REDISTRICTING FLOOR DEBATES

11

Tuesday, April 5, 2011

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Job No.: 81658

21

Pages 1 - 174

22

Transcribed by: Daphne Hurley

COMMONWEALTH OF VIRGINIA HOUSE OF DELEGATES
CONDUCTED ON TUESDAY, APRIL 5, 2011

2

1 A P P E A R A N C E S

2 Before the Honorable

3 BETSY B. CARR

4

5 DELEGATES PRESENT:

6 David L. Englin - Alexandria (D-45)

7 Robert G. Marshall - Prince William (R-13)

8 Ward L. Armstrong - Henry (D-10)

9 Brenda L. Pogge - James City County (R-96)

10 Adam P. Ebbin - Alexandria (D-49)

11 David Albo - Fairfax (R-42)

12 Mark L. Cole - Spotsylvania (R-88)

13 Roxann L. Robinson - Chesterfield (R-27)

14 S. Chris Jones - Suffolk (R-76)

15 Joe Morrissey - Henrico (D-74)

16 Lionell Spruill, Sr. - Chesapeake (D-77)

17 Patrick A. Hope - Arlington (D-47)

18 Rosalyn R. Dance - Petersburg (D-63)

19 M. Kirkland Cox - Colonial Heights (R-66)

20 Jennifer McClellan - Richmond City (D-71)

21

22

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CONDUCTED ON TUESDAY, APRIL 5, 2011

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1 Virginia, they were the second place in the
2 competition, had nine majority/minority seats.
3 They had a better deviation, 2.94 percent, but
4 they still were as low as 59.2 percent on the
5 voting age population.

6 Now, everything that I have seen in my 25
7 years in elected office has indicated to me that
8 in the minority community there, there are not as
9 many registered per hundred as there are in the
10 white community and then the turn out is different
11 as well.

12 So if you don't -- as we heard in our
13 testimony, and as Delegate Dance and Spruill and
14 some other individuals and leaders in the
15 community have said, if you don't have an
16 effective voting strength then there's a good
17 chance that over the time of 10 years you will see
18 a dilution of their ability and there is the
19 community.

20 Not that I am -- it's not my seat. I think
21 the gentleman from Chesapeake, Mr. Spruill, would
22 agree with this. He can probably get elected with

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1 a lower percentage. But he represents the
2 community and the law states it's the community's
3 ability to elect the candidate of their choice.

4 So that's why the testimony led me when
5 drawing this map to not retrogress with the number
6 of seats, which we didn't, and to keep an
7 effective voting majority within each and every
8 district. We had to keep the core of those
9 districts, because I think that's very important,
10 and because of the population shifts you did see a
11 decrease in some of the percentages, but all were
12 above 55 percent.

13 So as I continued to work, work this map I
14 tried to do the best I could to meet the plus or
15 minor 1 percent. It's obvious to me that from
16 comments I received from colleagues who called me,
17 who stopped by my office, who wanted to discuss
18 their community and what the bill as introduced
19 last week would do to that community if it passed,
20 I said, "I'll be glad to sit down with each and
21 every one of you who want to meet with me" and I
22 did and I think through that process you have this

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1 Mr. Speaker: The gentleman yields.

2 DEL. ARMSTRONG: Is the gentleman also aware
3 that under Section 5 or possibly 2, but Section 5
4 of the Voting Rights Act that additional
5 majority-minority districts must be created where
6 practical?

7 DEL. JONES: I would agree with that
8 statement, Mr. Speaker. I would emphasis, though,
9 that to me practical, as we heard through the
10 testimony, was an effective voting age population.
11 And when I was mentioning earlier about the plans
12 that were before us, I think -- I don't believe
13 but a handful of the districts that were drawn
14 actually would meet the Bartlett versus Strickland
15 test, which, which a minimum amount legally
16 required to constitute Section 2 district would be
17 50 percent plus 1.

18 DEL. ARMSTRONG: Further question,
19 Mr. Speaker.

20 Mr. Speaker: Will the gentlemen yield?

21 DEL. JONES: I yield.

22 Mr. Speaker: The gentleman yields.

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1 DEL. JONES: I yield.

2 Mr. Speaker: The gentleman yields.

3 DEL. ARMSTRONG: Is the gentleman aware that
4 one of those two plans developed by the Commission
5 created a 13th majority-minority district?

6 DEL. JONES: I would say to this the
7 gentleman, Mr. Speaker, yes, I am.

8 DEL. ARMSTRONG: Further question,
9 Mr. Speaker.

10 Mr. Speaker: Does the gentlemen yield?

11 DEL. JONES: I yield.

12 Mr. Speaker: The gentleman yields.

13 DEL. ARMSTRONG: Can the gentleman explain to
14 me the reasonings in his putting together HB 5001
15 as to why he did not create a 13th
16 majority-minority district?

17 DEL. JONES: Mr. Speaker, I'd say to the
18 gentleman I think he's answered his own question
19 with his line of questioning earlier about an
20 effective -- I think he's conflicted or he's
21 confused in his approach here.

22 I think his line of questioning earlier was

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1 me what then additional information that he did
2 not glean from the official Privileges & Elections
3 Committee meetings which were recorded that led to
4 his development of the 12 minority-majority
5 district plans?

6 MR. JONES: Mr. Speaker, I think I answered
7 the gentleman's question before in my earlier
8 remarks and I will stand by those remarks.

9 DEL. ARMSTRONG: Further question,
10 Mr. Speaker.

11 MR. SPEAKER: Will the gentleman yield?

12 DEL. JONES: I yield.

13 MR. SPEAKER: The gentleman yields.

14 DEL. ARMSTRONG: Mr. Speaker, I would ask the
15 gentleman whether there was any consideration
16 given to the creation of a 14th minority-majority
17 district in Southside, Virginia that would have
18 included the city of Martinsville, the city of
19 Danville and territory in both Henry and
20 Pennsylvania counties.

21 MR. JONES: Mr. Speaker, I'd say to the
22 gentleman, I believe that was what was presented

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1 Now, that's my reading. I'm not an attorney,
2 but I did attend some of the conferences that the
3 gentleman from Henry did. I think we saw each
4 other down in Texas. So that was kind of my
5 reading of that, but that's a non-lawyer response
6 to a lawyer's question.

7 DEL. ARMSTRONG: Further question,
8 Mr. Speaker.

9 MR. SPEAKER: Will the gentleman yield?

10 DEL. JONES: I yield.

11 MR. SPEAKER: The gentleman yields.

12 DEL. ARMSTRONG: I would preface my next
13 question by saying my reading of Larios indicates
14 that there were -- the population deviations there
15 were done in a way and a pattern that would have
16 favored one particular political party over
17 another; that is, that where there were
18 populations that were deviated down, they were
19 done so for entirely political purposes.

20 My question is there have been a number of
21 other cases, including one that the United States
22 Supreme Court upheld, the 1970s House plan of

1 Virginia, where there was a 16.4 percent deviation
2 because there was a rational state policy for
3 doing so.

4 And the question that I pose to the gentleman
5 is; would he not agree with me that he could have
6 better effected minority representation in the
7 State, that is with better effective minority
8 populations within the 12 existing minority
9 districts, plus the ability to create a 13th, by
10 using a deviation percentage higher than plus or
11 minus 1 percent? Would the gentleman not agree?

12 MR. JONES: No, I would not agree. I would
13 say to the gentleman that what they did in Larios
14 was actually plus or minus 5 percent. The case he
15 referenced back in the 1970s, that's 40 years ago.
16 That was before I guess I even got out of high
17 school.

18 And I am aware of that case. I think that
19 dealt with the Eastern Shore, if I'm not, if I'm
20 not mistaken and those two counties. And I think
21 the overarching principle as I stated in my
22 opening remarks is the one-person, one-vote. That

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1 while still abiding by the terms of the Voting
2 Rights Act and trying to respect county and city
3 lines." Quote, unquote, "It's easy to justify to
4 the public when you have these very compact
5 districts," she said, one of the nine students on
6 a team with a winning map, "but Virginia is not
7 square. It's just not." And I think that pretty
8 much says it all.

9 DEL. MORRISSEY: Mr. Speaker, I thank the
10 gentleman for his answers.

11 MR. SPEAKER: The gentleman from Chesapeake,
12 Mr. Spruill.

13 DEL. SPRUILL: Mr. Speaker (inaudible words).

14 MR. SPEAKER: The gentleman has the floor.

15 DEL. SPRUILL: Mr. Speaker and Members of the
16 House, let me have your ears and please listen if
17 you can.

18 I'm surprised all of a sudden this has come
19 out to be a racist thing about blacks who are in
20 the House. This is not about no race. We have
21 100 members in this House and we're talking about
22 black minority districts. If we had wanted to do

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1 that, we have three fine lawyers in the Black
2 Caucus that can do that.

3 My lawyer next to me who represents me says,
4 "Be careful of what you say." Some are saying,
5 "Why are members making this a thing about blacks
6 being represented?" They're not saying, "Well,
7 that's fair enough. Let's see who came to us and
8 say, 'This is what I propose.'"

9 From the Governor's plan did they come to us?
10 No. Delegate Chris Jones, we went to him and we
11 had some concerns, mostly every member of the
12 Black Caucus. He answered our concerns; some we
13 were satisfied with and some we were not, but at
14 least we had input into Plan 5001. Where's the
15 other plan that's coming to the Black Caucus and
16 saying, "Hey, we're going to try to help you all"?
17 Who else?

18 I'm the (inaudible words) Black Caucus. Who
19 has come to me and said to the Black Caucus, "Hey,
20 we've got a plan to look out for black folks."
21 This is not a thing about race. And I know
22 somebody's standing there taking every word you

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1 say because this is going to go to the court.

2 Well, let's make it right.

3 To the members of this body, this is not
4 about black folks, so don't let them, nobody put
5 you on they're trying to save the black folks.
6 That's not so. So okay. What is this is all
7 about? Let's look at Plan 5002 that was submitted
8 yesterday, that was talked to us yesterday. That
9 plan had Delegate Kenneth Alexander, along with
10 Delegate Ed Howell of the same district. That
11 plan had Delegate Matthew James and Spruill, same
12 district. That plan had my house in the 79th
13 district.

14 No one has come to me or anybody and talked
15 to us about this. So it's not about race. It's
16 about representation of the folks. Delegate Chris
17 Jones is the only one that came to us and says,
18 "This is what" -- what he was saying. We went to
19 him and said, "We have a problem. Can you resolve
20 those problems?"

21 Now you've got the Governor's plan. The
22 Governor has not sent -- well I wouldn't expect

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1 the Governor to do it himself, but he asked no one
2 to come to talk to us about it.

3 Let's talk about the 13th district. It was
4 not taken up by the Black Caucus because we have
5 not discussed it to talk about it, but by my
6 friend here who spoke about it yesterday and this
7 morning. The Governor's plan is talking about a
8 13th and 14th district. We do not need to create
9 another black district.

10 Oh, I would love to see it happen. We
11 already had one. Do you remember Flora Mass (ph)?
12 Flora Mass was black. Guess who took Flora Mass's
13 (unintelligible word)? Okay? And he is not of
14 our persuasion.

15 Okay? Now you're talking about so that's the
16 13th seat. Now, I ask you to check and look what
17 is a minority percentage of Delegate Joe
18 Morrissey's district? Check it out. What is
19 Morrissey's percent of the black district? But
20 the people there in Richmond were so kind, they
21 made him their choice. And that's a black
22 district, but they made him their choice and I'm

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1 glad for him. That's the 13th district he was
2 talking about. That's a black district.

3 Oh, let's talk about the 14th district.
4 Betsy Carr. That's a black district. They're
5 your 13 and 14. But the people in Richmond made
6 her their choice and I'm glad for her because she
7 is doing a good job. That's a black district. So
8 if those who are saying that "We've got to look
9 out for the blacks, we got to create a 13 and 14
10 black district," we already have them. But the
11 people in those black districts made their choice
12 to support (inaudible words) and that's -- there's
13 nothing wrong with that. That's their choice.

14 So you need to create -- (inaudible words) we
15 do create another 13th district and you select
16 another white. Then what? Then what you gonna do
17 about that? Because the peoples have made their
18 choice. So it's not about race. Please, don't
19 hang this on the black folks. So when you go to
20 court, don't say they tried to dilute the black
21 folks.

22 Well, what are my concerns? My concerns is

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1 this. And let me put my eyes on. 1887 to 1888
2 African-Americans, members of the General
3 Assembly, eight members. Come here and look at
4 it. And they're downstairs somewhere in the
5 little corner where you can't see them. Eight
6 members of the Black Caucus were elected one year
7 from 1887 to 1888. Since 1888 and here it is in
8 2011 we've only increased five. Okay?

9 Ain't nothing to do with race. "Well, what's
10 it got to do with Spruill?" Then we're saying,
11 "Well, look at the public of Virginia." 20
12 percent, whatever it is. So tell me how can we
13 create districts. We talk about a snake going
14 around to make sure you've got black's
15 representation. We have blacks who lost, that
16 don't vote. If they don't vote -- if you create a
17 black district and they don't vote, then whose
18 fault is that? Okay?

19 So we have what we're looking for. The
20 (inaudible word) was saying "The NAACP, the
21 representation, were they represented where they
22 knew about it? Yes. Lue Ward, Lue Ward, NAACP in

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1 Suffolk, NAACP in Chesapeake and Virginia Beach.
2 I'm saying those because I know they're in a
3 ruckus. I want to make sure I got it right. They
4 are aware of it. I'm a member of the Men's
5 (inaudible words) For Progress. Yes, we are aware
6 of it.

7 So we are here today. I thought that if
8 members of -- let me use this body on this side of
9 the aisle. I felt concern that we were looked at
10 and saying, "Let's create -- this is for everybody
11 what's fair." But instead we're coming here and
12 saying that we're talking about diluting the black
13 folks and they be (inaudible words)
14 representation. Don't do it.

15 My concern is to make sure that those
16 blacks -- I don't like to use the word minority
17 towards us. Those blacks -- my concern; have
18 input with Delegate Chris Jones. My concern was
19 to make sure that we have the numbers, to make
20 sure that we keep what we got and can get more
21 when we want to. Not because you're black.
22 Because my concern is that we do not dilute.

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1 it's not an African-American seat, but the
2 citizens, both black and white, decide that he was
3 the choice. So it's not about that.

4 So I ask you all this; is there -- if you're
5 going to look at and look out for the black
6 community, we ask you all look at who has come to
7 us, look at who has worked with us to try to make
8 sure that we maintain what we've got. Who has
9 been that person? That person has been Delegate
10 Chris Jones. I ask you all to support 5001.

11 Thank you very kindly.

12 (Applause.)

13 MR. SPEAKER: The gentleman from Arlington,
14 Mr. Hope.

15 DEL. HOPE: Thank you, Mr. Speaker. Would
16 the gentleman from Suffolk resume the floor for a
17 question?

18 MR. SPEAKER: Will the gentleman yield?

19 DEL. JONES: The gentleman from Suffolk will
20 (inaudible word.)

21 MR. SPEAKER: Yeah.

22 DEL. JONES: I'm here to answer questions.

1 floor.

2 DEL. DANCE: Thank you. As a member of the
3 House Redistricting Committee I support House Bill
4 5001 in its substitute form as we have before us
5 and it's again for more than just the one reason
6 that it mirrors the -- or doesn't mirror, but it
7 does support the 12 minority districts that we
8 have now and it does provide that 55 percent
9 voting strength that I was concerned about as I
10 looked at the model and looked at the trending as
11 far as what has happened over the last 10 years.

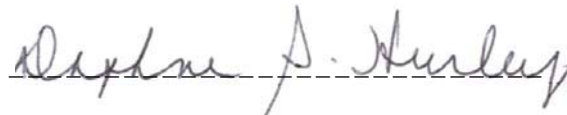
12 And one of the best examples I can give for
13 that and most concern was the area that was
14 mentioned prior and that is Delegate Tyler's area
15 in the 75th. Because Delegate Tyler is an
16 African-American that now finally sits in a
17 minority seat that's been there for years, but
18 there have been three tries by minorities in the
19 past to win that seat and they were not able to do
20 so.

21 And if that district is below that 55 percent
22 voting strength, then I don't think she would be

C E R T I F I C A T E

I, Daphne S. Hurley, Court Reporter,
certify that I transcribed from digital recording
of the proceedings held on the 5th day of April
2011.

I further certify that to the best of my
knowledge and belief, the foregoing transcript
constitutes a true and correct transcript of the
said proceedings. Given under my hand this 3rd
day of May 2015.

A handwritten signature in cursive script, reading "Daphne S. Hurley", is written over a horizontal dashed line.

Daphne S. Hurley

My commission expires: August 20, 2018

Notary Public in and for

the State of Maryland

Exhibit 15

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2011 SPECIAL SESSION I
VIRGINIA HOUSE OF DELEGATES
REDISTRICTING FLOOR DEBATES
Monday, April 4, 2011

Job#: 82096

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Transcribed by: Daphne Hurley

COMMONWEALTH OF VIRGINIA HOUSE OF DELEGATES
CONDUCTED ON MONDAY, APRIL 4, 2011

2

A P P E A R A N C E S

Rev. Anne N. Gimenez - Rock Church, Virginia Beach

DELEGATES PRESENT:

M. Kirkland Cox - Colonial Heights (R-66)

John A. Cosgrove - Chesapeake (R-78)

Joe Morrissey - Henrico (D-74)

S. Chris Jones - Suffolk (R-76)

Jeion A. Ward - Hampton (D-92)

Lionell Spruill, Sr. - Chesapeake (D-77)

Rosalyn R. Dance - Petersburg (D-63)

Tony O. Wilt - Rockingham (R-26)

Lynwood W. Lewis, Jr. - Accomack (D-100)

R.B. Bell - Albemarle (R-58)

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CONDUCTED ON MONDAY, APRIL 4, 2011

19

1 their hand and say, "I reviewed the Commission's
2 plan sent to the Governor or I reviewed even one
3 of the 30 to 35 students plans"? I doubt that
4 that was done.

5 Mr. Speaker, we have an obligation and
6 responsibility to do our job, to do the people's
7 business, to do it in a nonpartisan fashion when
8 we can. Mr. Speaker, your party had a noble and
9 great opportunity to do that. It dropped the
10 ball. It didn't do that and at the end of the day
11 we come up with the same thing that the Democrats
12 did for 100 years before; a very partisan, a very
13 not the people's business map, and we did a
14 disservice to the Commonwealth.

15 Thank you, Mr. Speaker.

16 THE SPEAKER: The gentleman from Richmond
17 City, Mr. Loupassi. The gentleman from
18 Mr. Suffolk, Mr. Jones.

19 DEL. JONES: Mr. Speaker, point of personal
20 privilege.

21 THE SPEAKER: The gentleman has the floor.

22 DEL. JONES: Mr. Speaker, I was interested to

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20

1 listen to the gentleman from Henrico and I've got
2 a couple answers for him.

3 I've looked at the plans from the students.
4 As a matter of fact, I believe as late as 10:00
5 last night I had staff down here trying to get the
6 correct version of one of the student's plans so I
7 could actually look at it.

8 The Governors's Commission promised plans
9 last week. They came in at 8:30 on Saturday
10 night. I left my daughter, who had a concert at
11 William & Mary. Come up here yesterday and worked
12 until 2:00 this morning trying to look at both of
13 those plans that were supposedly going to be here
14 last week. And I plan to look at those plans this
15 afternoon.

16 Professor Kidd, he used to be a constituent
17 of mine. A fine gentleman and I commend him for
18 his getting the students involved in the process
19 of government. So I have looked at both of the
20 plans from the college competition. There were
21 some flaws. There was a plus or minus deviation
22 of 20 percent in one district so they were trying

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CONDUCTED ON MONDAY, APRIL 4, 2011

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1 said -- he drew up a little map about where he is.
2 He also spoke of in a previous meeting about
3 another minority district. And Number 1, I said
4 to the members here, is that we don't need another
5 minority district, Mr. Speaker, because if we want
6 another minority district, as you all would call
7 it, but let's say another black district, we don't
8 need it.

9 Because my friend Joe Morrissey, where he
10 live, that is a black district, and if the blacks
11 want another district they should take that seat.
12 If my friend, Joe Morrissey, is concerned about
13 another district, which he is, he spoke up earlier
14 about another minority seat, then he should have
15 stepped down and give it to a black person and
16 we'll have another seat.

17 Mr. Speaker, again, then the question came
18 about the line that was drawn about with Delegate
19 Chris Jones. I've had people to call me,
20 Mr. Speaker, both white and of course you all
21 blacks, you're all minority blacks, as they call
22 you all, both called me and said, "Do you know

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CONDUCTED ON MONDAY, APRIL 4, 2011

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1 and my concern is now, now you another party in
2 control who's tried to work it out with everybody.
3 You ask me, "Am I going to vote for this plan?"
4 Yes. You ask me, "Do I believe that it was fair,
5 that Chris Jones did the best that he could?"
6 Yes.

7 To the Democrats; after all, he is a
8 Republican, you know. He's got to do something
9 for them. He's got to lookout for himself first
10 and then give us a bone and I believe he has given
11 us two or three bones, Mr. Speaker.

12 So I just want you all to know that when
13 these people just get up and yap, yap about it,
14 remember what goes around, come around. Remember
15 when we were in control, the good Democrats. I
16 don't know what I am right now, Mr. Speaker, but I
17 want them to remember when they were in control
18 how it was done. And that at least -- I only use
19 Chris Jones, because it's who I know, at least he
20 is trying to be fair to everybody. I'm asking all
21 my colleagues to vote for this plan.

22 Thank you, Mr. Speaker.

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CONDUCTED ON MONDAY, APRIL 4, 2011

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1 adjustments between precincts. There might have
2 been some split areas, but those were the kind of
3 things that were happening, but we were talking
4 with legislators as we went. Things were not done
5 in a vacuum.

6 I know that even though a bill has been
7 introduced, that in working with our Chair that
8 there is going -- there are still options and, of
9 course, some amendments and I'm sure before a bill
10 is passed there will be some more amendments
11 there.

12 And I see this as truly a fair process. It's
13 not a perfect process, but I don't think it's one
14 that will have us jumping up and down and have
15 fits. We're not going to agree; but we can
16 respectfully agree or disagree as we go.

17 But I'm still proud to be a part of this
18 team. I still hope that at the end of day that
19 there will be more of us in agreement than not and
20 that we will be able to pass a plan and leave this
21 House. Because I think this is one of the most
22 important bills that we will pass and that is what

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CONDUCTED ON MONDAY, APRIL 4, 2011

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1 the 100 House seats will look like in the next 10
2 years.

3 And I was pleased to be a part of that
4 committee and I'm not going to be jumping up and
5 down and say it's African-American or
6 Euro-Americans, but I do say that we need 55
7 percent at least voting African-Americans, not
8 just a population to show 55 percent
9 African-Americans. Because a lot of us know that
10 statistics show that we don't always vote.

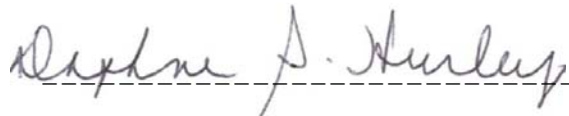
11 Even though I come -- I live in Petersburg,
12 predominantly African-American, if the percentage
13 might be -- it should be 100 percent. It will be
14 40 percent. If it was (unintelligible word) if I
15 live in the community and I was your American --
16 if it was 100 percent, you'd get about 60 percent.
17 And so you have to deal with those realities.
18 That's the realities we're dealing with as we
19 model, as we look at the statistics that we're
20 working with.

21 And hope you all will consider that. And I
22 stand open even on my side; if those legislators

C E R T I F I C A T E

I, Daphne S. Hurley, Court Reporter,
certify that I transcribed from digital recording
of the proceedings held on the 4th day of April
2011.

I further certify that to the best of my
knowledge and belief, the foregoing transcript
constitutes a true and correct transcript of the
said proceedings. Given under my hand this 4rd
day of May 2015.

A handwritten signature in cursive script, reading "Daphne S. Hurley", is written over a horizontal dashed line.

Daphne S. Hurley

My commission expires: August 20, 2018

Notary Public in and for
the State of Maryland

Exhibit 16

PRIVILEGES AND ELECTIONS

REDISTRICTING

SENATE HEARING

BEFORE: DELEGATE MARK COLE, CHAIRMAN

PLACE: COMMONWEALTH OF VIRGINIA
GENERAL ASSEMBLY BUILDING
RICHMOND, VIRGINIA 23218

DATE: APRIL 4, 2011

TIME: 2:00 PM

Crane-Snead & Associates
4914 Fitzhugh Avenue, Ste 203
Henrico, Virginia 23230
804-355-4335

1 Delegate McClellan was at 50 percent, currently she's at a
2 50 percent district, as far as African American district.
3 For Delegate McClellan, that's not an issue. Even though
4 she's an African American, she can win that district. But
5 if Delegate McClellan leaves that and goes on to become a
6 State Representative, state-wide representative, Congress
7 or whatever, could another African American minority
8 person, if you will, still be able to keep that as one of
9 the 12 minority districts? Not so.

10 So, in order to make it stronger, so that that
11 would be a position that an African American could hold,
12 then there needs to be some shifts. And the three
13 parties, the delegates, are in agreement and we've made
14 that transition.

15 DELEGATE JONES: And I would like to add that, in
16 the process of doing that, we actually took Delegate
17 Massie and Delegate O'Bannon completely out of Henrico.
18 We were able to do that, and that left Delegate McClellan
19 with just one precinct in Henrico. I think that then
20 gives the City of Richmond, they know that they don't have
21 a split representation in that regard. That move allowed
22 us to move those two individuals out of Richmond City, and
23 then make it more compact and contiguous, I believe, at the
24 end of the day.

25 DELEGATE DANCE: Yes.

1 DELEGATE JONES: Mr. Chairman, I would just
2 reiterate that this plan was drawn with the criteria in
3 mind that we passed. And as I mentioned at the beginning
4 of the presentation of this bill, I think the young man
5 did a very good job presenting his bill and his case. I
6 commend the students for their hard work and what they've
7 done.

8 What I think I've heard is that what our number
9 one and two priorities, which is One Person/One Vote, and
10 fully compliant with the Voting Rights Act, were not their
11 top two priorities. I think I have heard testimony
12 Saturday night. We heard testimony this morning. We
13 heard testimony on the floor. And you have to have an
14 effective minority population to be able to, for the
15 minority to elect the candidate of their choice. Not to
16 reelect the incumbent, but to elect the candidate of their
17 choice.

18 And I think that many would say that if there are
19 50 or 51 percent voting-age population, that really puts
20 in play that ability, because if you look at the
21 registered voters and how it trends, you may have 60
22 percent of Delegate Joannou, of my persuasion, to use
23 Delegate Spruill's term. Is that how you said it? You
24 may be looking at, in reality, it might be 40 percent.

25 So we have a bleed off of the numbers who are

1 actually eligible to vote and who can vote. Because 18
2 just states you're eligible because of your age to be able
3 to vote. That's why they call it "voting-age
4 population." That does not indicate nor dictate that
5 there are that many that would and actually can vote.

6 I would just point out this plan, 5001, took into
7 account parties of interest, took into account the One
8 Person/One Vote, and full compliance in the Voting Rights
9 Act, and took into account something that we should and
10 have as its original intent.

11 Mr. Chairman, I heard that we do not have a
12 substitute in front of us. I think we'll have something
13 by the time the public comment is done to be able to have
14 that in front of us.

15 CHAIRMAN COLE: All right. Thank you, Delegate
16 Jones. What I would like to do is open this up for any
17 public comments for either plan, House Bill 5001 or 5002.
18 So if anyone would like to speak to the committee and
19 address about either plan or redistricting, please step to
20 the podium and identify yourself.

21 MR. JACKSON: Good afternoon, Mr. Chair and
22 Members of the Committee. I'm looking around the room. I
23 think some people have heard me speak before. My name is
24 Andrew Jackson, and I ought to know a little something
25 about politics. But it's just a little bit.

Exhibit 17

Plan Type:

Administrator:

User:

Districts & Their Incumbents

Tuesday, March 17, 2015

3:45 PM

District	Name	Party	Previous District
001	Terry G. Kilgore	R	1
002	Clarence E. Phillips@	D	2
003	Anne B. Crockett-Stark	R	6
003	James W. Morefield	R	3
004	Joseph P. Johnson, Jr.	D	4
005	Charles W. Carrico, Sr.	R	5
006			
007	David A. Nutter	R	7
007	James M. Shuler	D	12
008	Gregory D. Habeeb	R	8
009	Charles D. Poindexter	R	9
010	Ward L. Armstrong	D	10
011	Onzlee Ware#	D	11
012	Richard P. Bell	R	20
013	Jackson H. Miller	R	50
013	Robert G. Marshall	R	13
014	Donald W. Merricks	R	16
014	Daniel W. Marshall, III	R	14
015	Clifford L. Athey, Jr.	R	18
016			
017	William H. Cleaveland	R	17
018			
019	Benjamin L. (Ben) Cline	R	24
019	Lacey E. Putney	I	19
019	Kathy J. Byron	R	22
020			

District	Name	Party	Previous District
021	Ronald A. Villanueva@	R	21
021	Robert Tata	R	85
022	Watkins M. Abbitt, Jr.	I	59
023	T. Scott Garrett	R	23
024			
025	R. Steven Landes	R	25
026	C. Todd Gilbert@	R	15
026	Tony O. Wilt	R	26
027	Roxann L. Robinson	R	27
028	William J. Howell	R	28
028	Mark L. Cole	R	88
029	Beverly J. Sherwood	R	29
030			
031	L. Scott Lingamfelter	R	31
031	Luke E. Torian#	D	52
032	Thomas A. Greason	R	32
033	Joe T. May	R	33
034			
035	Mark L. Keam	D	35
036	Kenneth R. Plum	D	36
037			
038	L. Kaye Kory	D	38
039	Vivian E. Watts	D	39
040			
041	David L. Bulova	D	37
041	Eileen Filler-Corn	D	41
042			
043	Mark D. Sickles@	D	43
044	Scott A. Surovell	D	44
045	David L. Englin	D	45
046	Charniele L. Herring#	D	46
047	Patrick A. Hope	D	47

District	Name	Party	Previous District
048	Barbara J. Comstock	R	34
048	Robert H. Brink@	D	48
049	Adam P. Ebbin	D	49
050	Timothy D. Hugo	R	40
050	David B. Albo	R	42
051	Richard L. Anderson	R	51
052			
053	James M. Scott	D	53
054			
055	John A. Cox	R	55
056	R. Lee Ware, Jr.	R	65
057	David J. Toscano	D	57
058	Edward T. Scott	R	30
058	Robert B. Bell	R	58
059			
060	James E. Edmunds II	R	60
061	Roslyn M. Tyler#@	D	75
061	Thomas C. Wright, Jr.	R	61
062	Joseph D. Morrissey	D	74
062	Riley E. Ingram	R	62
063	Rosalyn R. Dance#	D	63
063	M. Kirkland (Kirk) Cox	R	66
064	Brenda L. Pogge	R	96
065			
066			
067	James M. LeMunyon	R	67
068	James P. Massie, III	R	72
068	John M. O'Bannon III	R	73
069			
070	Delores L. McQuinn#	D	70
071	Betsy B. Carr	D	69
071	Jennifer L. McClellan#	D	71

District	Name	Party	Previous District
072	William R. Janis	R	56
073	G. M. "Manoli" Loupassi	R	68
074			
075	William K. Barlow	D	64
076			
077	Matthew James#	D	80
078	John A. Cosgrove	R	78
079	S. Christopher Jones	R	76
079	Johnny S. Joannou	D	79
080	Lionell Spruill, Sr.#	D	77
081	Salvatore R. Iaquinto	R	84
081	Barry D. Knight	R	81
082	Harry R. (Bob) Purkey	R	82
083	Christopher P. Stolle	R	83
084			
085			
086	Thomas D. Rust	R	86
087	Paula J. Miller	D	87
088			
089			
090	Algie T. Howell, Jr.#	D	90
090	Kenneth C. Alexander#	D	89
091	Gordon Helsel@	R	91
091	Robin A. Abbott	D	93
091	Jeion A. Ward#	D	92
092			
093			
094	G. Glenn Oder	R	94
095	Mamye E. BaCote#	D	95
096			
097	Robert D. Orrock, Sr.	R	54
097	Christopher K. Peace@	R	97

District	Name	Party	Previous District
098	Harvey B. Morgan	R	98
099	Albert C. Pollard, Jr.	D	99
100	Lynwood W. Lewis, Jr.	D	100

Number of Incumbents in District with more than one Incumbent:	48	<input type="text"/>	<input type="text"/>
Number of Districts with No Incumbent:	25	<input type="text"/>	
Number of Districts with Incumbents of more than one party:	9	<input type="text"/>	
Number of Districts with Paired Democrats:	3	<input type="text"/>	
Number of Districts with Paired Republicans:	11	<input type="text"/>	

Exhibit 18

Plan Type:

Administrator:

User:

Districts & Their Incumbents

Tuesday, March 17, 2015

3:48 PM

District	Name	Party	Previous District
001	Terry G. Kilgore	R	1
002	Clarence E. Phillips@	D	2
003	James W. Morefield	R	3
004	Joseph P. Johnson, Jr.	D	4
005	Charles W. Carrico, Sr.	R	5
005	Anne B. Crockett-Stark	R	6
006			
007	David A. Nutter	R	7
007	James M. Shuler	D	12
008	Gregory D. Habeeb	R	8
009	Charles D. Poindexter	R	9
010	Ward L. Armstrong	D	10
011	Onzlee Ware#	D	11
012			
013			
014	Donald W. Merricks	R	16
014	Daniel W. Marshall, III	R	14
015	C. Todd Gilbert@	R	15
015	Clifford L. Athey, Jr.	R	18
016			
017	William H. Cleaveland	R	17
018			
019	Lacey E. Putney	I	19
019	Kathy J. Byron	R	22
020	Richard P. Bell	R	20
020	R. Steven Landes	R	25

District	Name	Party	Previous District
021	William J. Howell	R	28
022			
023	T. Scott Garrett	R	23
024	Benjamin L. (Ben) Cline	R	24
025	Edward T. Scott	R	30
026	Tony O. Wilt	R	26
027	Roxann L. Robinson	R	27
028			
029	Beverly J. Sherwood	R	29
030			
031	L. Scott Lingamfelter	R	31
031	Luke E. Torian#	D	52
032	Thomas A. Greason	R	32
033	Joe T. May	R	33
034	Barbara J. Comstock	R	34
035	Mark L. Keam	D	35
036	Kenneth R. Plum	D	36
037	David L. Bulova	D	37
038	L. Kaye Kory	D	38
039	Vivian E. Watts	D	39
040	Timothy D. Hugo	R	40
041	Eileen Filler-Corn	D	41
042	David B. Albo	R	42
043	Mark D. Sickles@	D	43
044	Scott A. Surovell	D	44
045	David L. Englin	D	45
046	Charniele L. Herring#	D	46
047	Patrick A. Hope	D	47
048	Robert H. Brink@	D	48
049	Adam P. Ebbin	D	49
050	Jackson H. Miller	R	50
051	Robert G. Marshall	R	13

District	Name	Party	Previous District
051	Richard L. Anderson	R	51
052			
053	James M. Scott	D	53
054			
055	John A. Cox	R	55
056	William R. Janis	R	56
057			
058	David J. Toscano	D	57
058	Robert B. Bell	R	58
059			
060	Watkins M. Abbitt, Jr.	I	59
060	James E. Edmunds II	R	60
061	Thomas C. Wright, Jr.	R	61
062	Riley E. Ingram	R	62
063	Rosalyn R. Dance#	D	63
064	William K. Barlow	D	64
065	R. Lee Ware, Jr.	R	65
066	M. Kirkland (Kirk) Cox	R	66
067	James M. LeMunyon	R	67
068	G. M. "Manoli" Loupassi	R	68
069	Betsy B. Carr	D	69
070	Delores L. McQuinn#	D	70
071	Jennifer L. McClellan#	D	71
072			
073	James P. Massie, III	R	72
073	John M. O'Bannon III	R	73
074	Joseph D. Morrissey	D	74
075	Roslyn M. Tyler#@	D	75
076	S. Christopher Jones	R	76
076	Matthew James#	D	80
077	Lionell Spruill, Sr.#	D	77
078	John A. Cosgrove	R	78

District	Name	Party	Previous District
079	Johnny S. Joannou	D	79
080	Kenneth C. Alexander#	D	89
081	Salvatore R. Iaquinto	R	84
081	Barry D. Knight	R	81
082	Robert Tata	R	85
083	Christopher P. Stolle	R	83
084			
085	Ronald A. Villanueva@	R	21
086	Thomas D. Rust	R	86
087	Paula J. Miller	D	87
088	Mark L. Cole	R	88
089			
090	Algie T. Howell, Jr.#	D	90
091			
092	Jeion A. Ward#	D	92
093	Gordon Helsel@	R	91
094	G. Glenn Oder	R	94
095	Mamye E. BaCote#	D	95
096	Robin A. Abbott	D	93
097	Christopher K. Peace@	R	97
097	Brenda L. Pogge	R	96
098	Harvey B. Morgan	R	98
099	Albert C. Pollard, Jr.	D	99
099	Robert D. Orrock, Sr.	R	54
100	Lynwood W. Lewis, Jr.	D	100
100	Harry R. (Bob) Purkey	R	82

Number of Incumbents in District with more than one Incumbent:	32	<input type="checkbox"/> <input type="checkbox"/>
Number of Districts with No Incumbent:	16	<input type="checkbox"/>
Number of Districts with Incumbents of more than one party:	8	<input type="checkbox"/>
Number of Districts with Paired Democrats:	0	
Number of Districts with Paired Republicans:	8	<input type="checkbox"/>

Exhibit 19

Plan: vaLD_DLS-PLAN-4_PROP-HB5002-Brink-UofR_od09a
 Plan Type:
 Administrator:
 User:

Population Summary Report

Thursday April 9, 2015

2:25 PM

DISTRICT	POPULATION	DEVIATION	% DEVN.	[% NHBPOP]	TOTVAP	[% NHBVAP]
001	81,019	1,009	1.26	3.74%	64,605	4.36%
002	82,053	2,043	2.55	1.55%	65,603	1.69%
003	81,137	1,127	1.41	2.92%	64,632	3.03%
004	81,101	1,091	1.36	2.16%	64,886	2.07%
005	79,111	-899	-1.12	2.02%	62,881	1.97%
006	81,623	1,613	2.02	4.16%	66,033	4.14%
007	80,602	592	0.74	4.21%	68,585	4.04%
008	80,345	335	0.42	4.99%	63,108	4.72%
009	79,422	-588	-0.73	7.20%	62,918	7.33%
010	81,034	1,024	1.28	23.30%	64,430	22.75%
011	80,956	946	1.18	31.29%	63,684	29.02%
012	81,393	1,383	1.73	7.36%	65,248	7.39%
013	76,926	-3,084	-3.85	10.96%	55,452	11.00%
014	80,546	536	0.67	34.61%	62,771	32.92%
015	80,771	761	0.95	3.73%	62,127	3.75%
016	78,882	-1,128	-1.41	11.19%	61,490	11.16%
017	81,898	1,888	2.36	5.89%	63,739	5.26%
018	79,430	-580	-0.72	6.24%	59,487	6.61%
019	81,180	1,170	1.46	4.48%	64,821	4.58%
020	78,943	-1,067	-1.33	4.29%	64,477	4.06%
021	83,279	3,269	4.09	21.34%	62,487	20.74%
022	79,274	-736	-0.92	28.75%	62,889	27.99%
023	80,010	0	0.00	28.22%	64,290	25.69%
024	78,906	-1,104	-1.38	14.18%	61,922	14.41%
025	80,030	20	0.02	4.87%	61,764	4.81%
026	79,121	-889	-1.11	1.59%	61,111	1.54%
027	80,160	150	0.19	26.11%	59,880	24.78%
028	81,471	1,461	1.83	16.55%	61,236	15.35%
029	80,348	338	0.42	5.99%	60,614	5.70%
030	80,650	640	0.80	11.53%	59,191	11.56%
031	77,794	-2,216	-2.77	30.07%	55,235	29.37%
032	78,459	-1,551	-1.94	7.81%	55,327	8.00%
033	79,718	-292	-0.36	6.95%	55,412	7.02%
034	80,795	785	0.98	4.11%	57,684	4.29%

Plan: 'vaLD_DLS-PLAN-4_PROP-HB5002-Brink-UofFAdministrator: 'User:
 Type: User:

DISTRICT	POPULATION	DEVIATION	% DEVN.	[% NHBPOP]	TOTVAP	[% NHBVAP]
035	80,422	412	0.51	3.16%	60,022	3.35%
036	76,153	-3,857	-4.82	7.84%	58,512	7.39%
037	80,046	36	0.04	6.56%	64,041	6.59%
038	82,832	2,822	3.53	9.58%	64,607	9.17%
039	78,182	-1,828	-2.28	6.56%	60,143	6.08%
040	77,754	-2,256	-2.82	7.06%	57,223	6.97%
041	79,261	-749	-0.94	6.10%	59,739	5.82%
042	77,186	-2,824	-3.53	16.33%	55,185	15.74%
043	79,027	-983	-1.23	14.31%	61,623	13.76%
044	82,505	2,495	3.12	20.30%	61,095	19.93%
045	80,313	303	0.38	12.37%	67,622	11.71%
046	77,836	-2,174	-2.72	28.22%	63,777	27.17%
047	79,371	-639	-0.80	5.38%	67,394	5.21%
048	76,919	-3,091	-3.86	3.65%	61,270	3.89%
049	80,140	130	0.16	15.25%	67,005	14.81%
050	77,884	-2,126	-2.66	9.69%	57,124	9.67%
051	78,639	-1,371	-1.71	21.49%	56,436	21.16%
052	78,056	-1,954	-2.44	25.12%	56,603	24.80%
053	80,000	-10	-0.01	4.44%	63,033	4.37%
054	78,503	-1,507	-1.88	16.62%	55,586	16.38%
055	78,812	-1,198	-1.50	9.82%	59,208	10.05%
056	79,627	-383	-0.48	22.23%	62,523	23.15%
057	79,859	-151	-0.19	15.88%	67,117	14.21%
058	81,991	1,981	2.48	9.49%	62,657	9.77%
059	78,769	-1,241	-1.55	15.36%	60,603	15.73%
060	80,894	884	1.10	33.94%	64,601	33.20%
061	80,414	404	0.50	50.25%	64,064	49.46%
062	82,068	2,058	2.57	33.92%	63,173	32.36%
063	80,025	15	0.02	50.63%	62,864	50.15%
064	79,646	-364	-0.45	11.42%	64,376	10.95%
065	80,580	570	0.71	11.07%	58,171	10.86%
066	81,155	1,145	1.43	19.51%	60,237	18.66%
067	76,019	-3,991	-4.99	6.00%	55,373	6.10%
068	81,708	1,698	2.12	10.53%	62,859	10.11%
069	82,640	2,630	3.29	54.64%	63,117	52.70%
070	80,243	233	0.29	57.82%	59,887	54.61%
071	80,522	512	0.64	53.08%	68,519	48.57%
072	80,105	95	0.12	8.40%	58,192	8.80%
073	80,270	260	0.32	14.33%	64,576	13.68%
074	79,774	-236	-0.29	51.65%	60,905	49.22%
075	78,675	-1,335	-1.67	31.58%	61,698	31.93%
076	78,765	-1,245	-1.56	51.83%	58,594	51.01%

Total Population:	8,001,024
Ideal District Population:	80,010
<u>Summary Statistics</u>	
Population Range:	76,019 to 83,881
Ratio Range:	0.10
Absolute Range:	-3,991 to 3,871
Absolute Overall Range:	7,862.00
Relative Range:	-4.99% to 4.84%
Relative Overall Range:	9.83%
Absolute Mean Deviation:	1,259.16
Relative Mean Deviation:	1.57%
Standard Deviation:	1,614.38

Exhibit 20

Plan: vaLD_DLS-PLAN-5_PROP-HB5003-Morrissey_od09a
 Plan Type:
 Administrator:
 User:

Population Summary Report

Thursday April 9, 2015

2:31 PM

DISTRICT	POPULATION	DEVIATION	% DEVN.	[% NHBPOP]	TOTVAP	[% NHBVAP]
001	79,319	-691	-0.86	3.48%	63,175	4.02%
002	83,753	3,743	4.68	1.84%	67,033	2.06%
003	82,795	2,785	3.48	2.73%	67,034	2.89%
004	80,912	902	1.13	2.16%	64,751	2.08%
005	78,872	-1,138	-1.42	2.67%	62,590	2.59%
006	78,270	-1,740	-2.17	4.06%	63,767	4.03%
007	80,782	772	0.96	3.95%	67,288	3.81%
008	81,055	1,045	1.31	5.30%	63,985	4.99%
009	78,880	-1,130	-1.41	7.93%	62,327	8.11%
010	81,465	1,455	1.82	21.30%	64,958	20.69%
011	76,957	-3,053	-3.82	33.86%	59,599	31.63%
012	76,234	-3,776	-4.72	4.67%	60,531	4.97%
013	81,966	1,956	2.44	6.93%	53,653	7.38%
014	80,302	292	0.36	35.60%	62,624	33.87%
015	79,568	-442	-0.55	3.03%	61,259	2.99%
016	78,656	-1,354	-1.69	17.94%	61,950	17.96%
017	76,278	-3,732	-4.66	4.82%	59,988	4.44%
018	81,946	1,936	2.42	8.59%	60,075	8.68%
019	79,238	-772	-0.96	6.87%	61,833	6.96%
020	80,224	214	0.27	5.73%	64,218	5.55%
021	83,021	3,011	3.76	18.16%	59,425	17.68%
022	78,286	-1,724	-2.15	7.88%	56,721	7.93%
023	81,802	1,792	2.24	28.36%	65,703	25.78%
024	79,004	-1,006	-1.26	10.66%	63,424	10.66%
025	76,552	-3,458	-4.32	4.71%	59,225	4.75%
026	81,561	1,551	1.94	3.59%	64,843	3.46%
027	81,027	1,017	1.27	28.52%	60,862	27.01%
028	82,383	2,373	2.97	18.06%	60,894	17.06%
029	79,606	-404	-0.50	5.88%	60,975	5.65%
030	82,994	2,984	3.73	13.93%	62,478	14.13%
031	82,002	1,992	2.49	22.47%	58,378	22.48%
032	81,668	1,658	2.07	7.54%	55,962	7.71%
033	76,518	-3,492	-4.36	4.64%	55,145	4.80%
034	81,806	1,796	2.24	2.96%	60,313	3.12%

Plan: 'vaLD_DLS-PLAN-5_PROP-HB5003-Morrissey' Administrator: '
 Type: User:

DISTRICT	POPULATION	DEVIATION	% DEVN.	[% NHBPOP]	TOTVAP	[% NHBVAP]
035	78,790	-1,220	-1.52	3.91%	59,624	4.07%
036	76,153	-3,857	-4.82	7.84%	58,512	7.39%
037	76,571	-3,439	-4.30	6.00%	60,911	6.11%
038	78,917	-1,093	-1.37	9.72%	61,306	9.29%
039	77,823	-2,187	-2.73	6.32%	59,678	5.88%
040	76,622	-3,388	-4.23	6.28%	56,014	6.28%
041	78,225	-1,785	-2.23	5.95%	58,806	5.80%
042	81,840	1,830	2.29	14.09%	59,031	13.40%
043	78,088	-1,922	-2.40	15.36%	59,703	14.80%
044	79,883	-127	-0.16	20.98%	59,332	20.57%
045	78,709	-1,301	-1.63	11.16%	65,973	10.54%
046	77,235	-2,775	-3.47	28.49%	64,174	27.38%
047	78,184	-1,826	-2.28	6.78%	65,989	6.54%
048	83,331	3,321	4.15	5.36%	71,185	5.58%
049	78,871	-1,139	-1.42	15.37%	62,594	15.08%
050	82,586	2,576	3.22	13.02%	59,678	13.10%
051	83,623	3,613	4.52	19.32%	61,167	18.88%
052	81,592	1,582	1.98	31.20%	57,330	30.71%
053	77,965	-2,045	-2.56	4.04%	60,437	4.03%
054	82,824	2,814	3.52	18.57%	60,957	18.81%
055	79,012	-998	-1.25	9.80%	59,302	9.92%
056	81,210	1,200	1.50	13.56%	60,337	14.68%
057	76,557	-3,453	-4.32	7.54%	60,390	7.29%
058	77,164	-2,846	-3.56	15.54%	62,815	14.24%
059	82,463	2,453	3.07	21.41%	65,192	21.70%
060	79,918	-92	-0.11	32.18%	62,653	31.07%
061	82,728	2,718	3.40	33.05%	65,779	32.97%
062	80,391	381	0.48	32.02%	61,467	31.28%
063	79,996	-14	-0.02	53.98%	62,856	53.78%
064	80,520	510	0.64	18.50%	64,687	17.79%
065	83,186	3,176	3.97	9.18%	61,215	9.68%
066	82,585	2,575	3.22	16.42%	60,413	15.44%
067	77,656	-2,354	-2.94	6.47%	57,930	6.38%
068	81,345	1,335	1.67	11.94%	65,251	11.25%
069	77,534	-2,476	-3.09	54.33%	59,970	52.06%
070	79,380	-630	-0.79	63.38%	59,060	60.92%
071	76,707	-3,303	-4.13	50.88%	64,596	46.70%
072	83,135	3,125	3.91	10.95%	64,102	10.74%
073	81,362	1,352	1.69	16.29%	63,372	15.67%
074	81,120	1,110	1.39	55.12%	61,607	52.13%
075	77,121	-2,889	-3.61	51.21%	61,652	50.79%
076	79,435	-575	-0.72	32.51%	59,368	31.18%

Plan: 'vaLD_DLS-PLAN-5_PROP-HB5003-Morrissey' Administrator: '
 Type: User:

DISTRICT	POPULATION	DEVIATION	% DEVN.	[% NHBPOP]	TOTVAP	[% NHBVAP]
077	79,765	-245	-0.31	45.00%	58,996	43.47%
078	78,523	-1,487	-1.86	15.72%	58,182	16.70%
079	78,149	-1,861	-2.33	37.89%	59,452	35.90%
080	80,239	229	0.29	61.73%	61,433	58.49%
081	83,069	3,059	3.82	12.36%	62,896	12.09%
082	80,363	353	0.44	22.00%	61,378	20.81%
083	83,149	3,139	3.92	13.99%	64,823	13.19%
084	82,041	2,031	2.54	23.84%	60,058	23.71%
085	83,127	3,117	3.90	22.44%	62,446	21.74%
086	80,356	346	0.43	9.37%	60,067	9.49%
087	82,923	2,913	3.64	23.17%	68,596	22.02%
088	81,877	1,867	2.33	12.34%	58,674	12.24%
089	81,392	1,382	1.73	51.15%	62,592	49.40%
090	79,518	-492	-0.61	54.13%	59,183	51.92%
091	76,459	-3,551	-4.44	11.91%	52,465	11.92%
092	78,747	-1,263	-1.58	54.51%	60,992	53.25%
093	78,365	-1,645	-2.06	12.48%	58,264	12.45%
094	82,137	2,127	2.66	29.53%	62,719	27.36%
095	79,044	-966	-1.21	60.33%	59,312	58.56%
096	79,796	-214	-0.27	29.58%	61,095	28.04%
097	83,233	3,223	4.03	13.33%	63,677	13.45%
098	79,629	-381	-0.48	16.63%	63,186	16.53%
099	78,078	-1,932	-2.41	24.43%	61,730	23.71%
100	76,986	-3,024	-3.78	20.54%	61,730	19.62%

Total Population: 8,001,024

Ideal District Population: 80,010

Summary Statistics

Population Range: 76,153 to 83,753

Ratio Range: 0.10

Absolute Range: -3,857 to 3,743

Absolute Overall Range: 7,600.00

Relative Range: -4.82% to 4.68%

Relative Overall Range: 9.50%

Absolute Mean Deviation: 1,854.38

Relative Mean Deviation: 2.32%

Standard Deviation: 2,150.17

Exhibit 21



Transcript of **VIRGINIA HOUSE OF DELEGATES REDISTRICTING FLOOR DEBATE**

Date: April 6, 2011

Case: BETHUNE-HILL, ET AL v. VIRGINIA STATE BOARD OF
ELECTIONS, ET AL

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GOLDEN BETHUNE-HILL, et al.,)
 Plaintiffs,)
 vs.)
VIRGINIA STATE BOARD OF)
ELECTIONS, et al.)
 Defendants.)

VIRGINIA HOUSE OF DELEGATES
REDISTRICTING FLOOR DEBATE

APRIL 6, 2011

JOB NO.: 83215
PAGES: 1 - 18
TRANSCRIBED BY: CHERYL J. HAMMER, RPR, CCR 2512

1 the bill.

2 MR. SPEAKER: Gentleman has the floor.

3 DEL. WARD L. ARMSTRONG: The hour is
4 late. Everyone in here is tired. I will be brief,
5 but this bill will affect 8 million people in this
6 commonwealth for the next decade. Yesterday was about
7 legal arguments. Today we talk about policy and
8 what's right.

9 Last night I had the privilege of
10 speaking at the Sorensen Institute dinner along with
11 our Speaker and the majority leader of the Senate and
12 the minority leader, and I told a joke about my good
13 friend from Henrico and his war shark ink blot, and we
14 kidded about redistricting.

15 But one of the things that I said to
16 the group in seriousness last night is that we are in
17 sore need of a nonpartisan commission to draw lines.

18 Now, in drawing a redistricting plan
19 in this commonwealth, when subject to the Voting
20 Rights Act, the first thing that one has to do is make
21 it legal, and that meets compliance with Section 2 and
22 Section 5 of the Voting Rights Act, and so that was in

1 the criteria.

2 But we've all seen the criteria list
3 that came out of the privileges and elections
4 committee about keeping communities together and
5 communities of interest in contiguity and population
6 deviations. Let's not kid ourselves. The number one
7 criteria in the drafting of a redistricting plan, 5001
8 or the one down the hall in the Senate, is protecting
9 the incumbents of the majority party and, when
10 convenient, protecting incumbents of the minority
11 party.

12 That's, that's what this is about. I
13 was here in 2001 when it was done. Some of you were
14 here in 1991 when it was done, some in '81, '71 when
15 it was done, and whether it's gerrymandering by
16 Republicans or gerrymandering by Democrats, it's still
17 gerrymandering, and I am not going to defend the same
18 act when it goes on down the hall.

19 It is the most selfish exercise in
20 politics, in government, one that will turn friend on
21 friend. You know, when they train lifeguards -- and
22 you've seen on Baywatch they have the red floats --

1 they tell a lifeguard, when you get near a drowning
2 person, don't touch them; they'll grab you and pull
3 you under. Give them the float. It is that much at
4 stake.

5 And I suppose that it's, it's easy to
6 do and get away with because the public either doesn't
7 get it or doesn't care. It's not like raising their
8 taxes or taking away their pellet guns. I mean, it's
9 -- in fact, I would say if you walked up to 10 people
10 on the street and said, they're doing redistricting.
11 What's that? Nine of them couldn't tell you what it
12 was.

13 But it is the most basic of what we do
14 because it is -- it affects everything we do, because
15 it affects how we select ourselves. You know, you
16 know, some may say, well, the only reason you're
17 standing up is because it gets you. This isn't about
18 Ward Armstrong. You know, you can replace the
19 president of the United States, you can replace me. I
20 won't be remembered 10 minutes after I'm gone, and at
21 the end of the day, that doesn't matter either.

22 What does matter, though, is that

1 people are able to choose for themselves their own
2 representatives, not the other way around. That we
3 carve these districts up so the outcome is
4 preordained, and we do it to protect ourselves.

5 Well, I suppose it'll be what it'll
6 be. I know the outcome of this vote. There probably
7 won't be single digits against it in a few minutes.

8 You know who could stop this? The guy
9 that sleeps across the street. And in fact I'll tell
10 you, that's what it's going to take. If Bob McDonald
11 said, I will veto any bill that gets to my desk that's
12 not the result of a nonpartisan commission, it would
13 end. Either you send a nonpartisan commission bill or
14 you can go to federal court, take your choice, and
15 that would end it.

16 But no, we all know that that isn't
17 going to happen. I heard earlier today that he keeps
18 campaign promises. Well, he doesn't keep all of them.
19 He isn't going to keep this one.

20 You know, when I leave this place, on
21 a lot of days I've really felt good. The day that we
22 passed the bill that created that new college back in

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TRANSCRIPTION CERTIFICATE

I, CHERYL J. HAMMER, the undersigned
Certified Court Reporter in and for the state of
Washington, do hereby certify:

That the foregoing transcript was
transcribed under my direction; that the transcript is
true and accurate to the best of my knowledge and
ability to hear the audio; that I am not a relative or
employee of any attorney or counsel employed by the
parties hereto; nor am I financially interested in the
event of the cause.

WITNESS MY HAND this 18th day of May 2015.



CHERYL J. HAMMER

Certified Court Reporter

CCR No. 2512

Exhibit 22

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2011 SPECIAL SESSION I

9

VIRGINIA HOUSE OF DELEGATES

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REDISTRICTING FLOOR DEBATES

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Wednesday, April 27, 2011

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Job No.: 81922

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Pages: 1 - 60

22

Transcribed by: Jackie Scheer

COMMONWEALTH OF VIRGINIA HOUSE OF DELEGATES
CONDUCTED ON WEDNESDAY, APRIL 27, 2011

2

1 A P P E A R A N C E S

2 Before The Honorable

3 JOHN A. COSGROVE

4

5 Deputy Clerk of the House of Delegates

6 JEFF FINCH

7

8 DELEGATES PRESENT:

9 Harvey B. Morgan - Gloucester (R-98)

10 L. Scott Lingamfelter - Prince William (R-31)

11 Robert G. Marshall - Prince William (R-13)

12 Roxann L. Robinson - Chesterfield (R-27)

13 Adam P. Ebbin - Alexandria (D-49)

14 Charniele L. Herring - Alexandria (D-46)

15 Anne B. Crockett-Stark - Wythe (R-6)

16 Ron A. Villanueva - Virginia Beach (R-21)

17 Robert Tata - Virginia Beach (R-85)

18 Charles D. Poindexter - Franklin (R-9)

19 Robin Abbott - Newport News (D-93)

20 Joe Morrissey - Henrico (D-74)

21 Jeion A. Ward - Hampton (D-92)

22 Jennifer L. McClellan - Richmond City (D-71)

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Plaintiffs002904

COMMONWEALTH OF VIRGINIA HOUSE OF DELEGATES

CONDUCTED ON WEDNESDAY, APRIL 27, 2011

3

1 A P P E A R A N C E S C O N T I N U E D

2 DELEGATES PRESENT:

3 Onzlee Ware - Roanoke City (D-11)

4 S. Chris Jones - Suffolk (R-76)

5 Mark D. Sickles - Fairfax (D-43)

6 M. Kirkland Cox - Colonial Heights (R-66)

7 Ben L. Cline - Rockbridge (R-24)

8 Roslyn C. Tyler - Sussex (D-75)

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Plaintiffs002905

1 it violate the Voting Rights Act, I don't know.
2 We all -- both sides have lawyers that'll
3 figure that out and they'll argue that to a
4 court, if necessary. But I just wanna be
5 perfectly clear, and I'm sure the other members
6 of the black caucus and the other members of
7 the Northern Virginia Delegation will say the
8 same thing. No one asked me what I personally
9 wanted, nor did I personally ask for anything.
10 So you vote your conscience on this bill.
11 Thank you.

12 THE SPEAKER: The gentlewoman from Sussex,
13 Miss Tyler.

14 MS. TYLER: Thank you, Mr. Speaker. Rise
15 to speak to the bill.

16 THE SPEAKER: Gentlewoman has the floor.

17 MS. TYLER: Mr. Speaker, I rise to speak
18 to House bill 5005, but first I wanna thank
19 Delegate Jones and Delegate dance and -- and
20 Delegate Spool and Delegate Joanna for all
21 their work in trying to come up with district
22 lines for the 75th district. But, however, I'm

COMMONWEALTH OF VIRGINIA HOUSE OF DELEGATES
CONDUCTED ON WEDNESDAY, APRIL 27, 2011

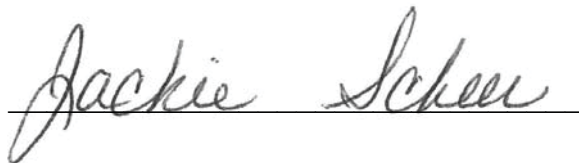
39

1 still overly concerned because in my district,
2 we have five prisons with over 8,000
3 individuals that cannot vote. So when it comes
4 down to looking at the voting age population
5 and the calculation of -- of blacks and whites
6 in the district, the numbers doesn't play out
7 when it comes to majority districts. I've
8 looked at the numbers and with a 55 'cent
9 population of black population, but without
10 8,000 individuals in prison, I'm one that do
11 not like the way that is drawn. And maybe it's
12 a possibility that it will not be drawn the way
13 I like, but I think right there just looking at
14 the prison population is such an inequality
15 when you're talking about 8,100 in there are
16 also included in that population. When you
17 look at people coming to the voting
18 registration or the fellas in the area, there's
19 some inequality there. Therefore, I just wanna
20 thank them for their support, but I cannot
21 support the bill as its written today.

22 THE SPEAKER: The gentleman from Roanoke

CERTIFICATE OF TRANSCRIBER

I, Jackie A. Scheer, do hereby certify
that the foregoing transcript is a true and correct
record of the recorded proceedings; that said
proceedings were transcribed to the best of my
ability from the audio recording as provided; and
that I am neither counsel for, related to, nor
employed by any of the parties to this case and have
no interest, financial or otherwise in its outcome.

A handwritten signature in cursive script, reading "Jackie Scheer", is written over a horizontal line.

JACKIE A. SCHEER

Exhibit 23

Placeholder for video clip of Del. Spruill's
speech from April 4, 2011 Floor Debate

Exhibit 24

Placeholder for video clip of Del. Dance's
speech from April 4, 2011 Floor Debate

Exhibit 25

Placeholder for video clip of Del. Jones's
speech from April 5, 2011 Floor Debate

Exhibit 26

Placeholder for video clip of Del. Spruill's
speech from April 5, 2011 Floor Debate

Exhibit 27

Placeholder for video clip of Del. Dance's
speech from April 5, 2011 Floor Debate

Exhibit 28

Placeholder for video clip of Del.
Armstrong's speech from April 6, 2011
Floor Debate

Exhibit 29

Placeholder for video clip of Del. Tyler's
speech from April 27, 2011 Floor Debate