

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

**Jeffrey Thomas, Jr.**

**Michelle C. Thomas**

**Phillip E. Thompson**

Plaintiffs,

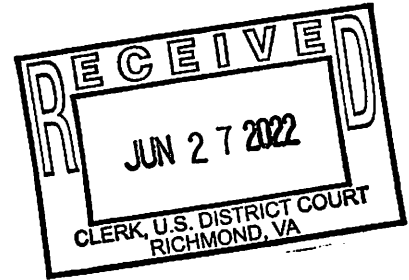
v.

**Susan Beals**

**Robert Brink**

**Virginia Department of Elections**

Defendants.



Civil No. 3:22-cv-427-DJN

**MOTION FOR SANCTIONS**

Pursuant to Local Civil Rule 7(a), Plaintiff Jeffrey Thomas, Jr. hereby files Motion for Sanctions arising from Defendants' violation of paragraph 1 of the Court's June 16, 2022 Order (ECF 16 ¶ 1). The Court instructed: "I need you to work in good faith. It's the only way the expedited briefing works." (June 13, 2022 Hearing Tr. 19:13-14). The Court ordered: "Plaintiffs and Defendants shall meet and confer and file a joint stipulation of the facts relevant to Defendants' Motion [to Dismiss] no later than June 24, 2022. All parties, including the newly added parties, shall participate in good faith in the meet and confer to maximize the facts to which the parties will stipulate."

Defendants, through their counsel, refused to stipulate to forty-seven verifiable, relevant facts taken verbatim from the Amended Complaint (Appendix 1). Among these, Defendants

refused to stipulate to: elementary math (e.g., ¶ 1. This 130,192/67,404 ratio between largest and smallest 2021 House of Delegates district populations represents a 93.2% disparity.); quotations of Virginia law (e.g., ¶ 22. “Districts shall be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district. A deviation of no more than five percent shall be permitted for state legislative districts.” Va. Code Ann. § 24.2-304.04(1).); quotations from this Court (e.g., ¶ 31. Defendants “facilitate the state’s elections, even if they do not draw the legislative district maps or set elections themselves.” *Goldman v. Brink*, ECF 49, p. 22, Granting in Part and Denying in Part Defendants’ Motion to Dismiss); quotations from Defendant the Virginia Department of Elections’ own social media account announcing a special election for the House of Delegates conducted in less than one month pursuant to a writ of elections (¶ 44. According to a December 8, 2020 announcement reposted on the Virginia Department of Elections’ official Twitter account, “Gov. Ralph Northam today issued a writ of election declaring a special election in the 2<sup>nd</sup> House of Delegates District for Jan. 5, 2021: [link]. The last day for candidates to file to appear on the ballot is December 14, 2020.”<sup>1</sup>); and the dates of state primary elections as published by the Department of Defense (¶ 47).

Clearly these facts are relevant to this case: as noted, they are copied from the Amended Complaint. Defendants did not dispute their veracity. In response to Plaintiff’s repeated good faith attempts at conferral, Defendants could not provide any evidence of their falsehood (Exhibit 1).<sup>2</sup> It seems that Defendants refused to stipulate to facts that they felt did not support their case. This is particularly apparent in regard to the facts surrounding special House of Delegates elections that were conducted in less than one month pursuant to a writ of elections, which goes to Defendants purported claims of mootness they intend to raise (June 13, 2022 Hearing Tr.

<sup>1</sup> <https://twitter.com/vaelect/status/1336419044673589249> . Accessed and screenshotted June 14, 2022.

<sup>2</sup> Note to Exhibit 1: A photograph of Plaintiff’s driver’s license containing identifying information has been redacted from this filing under F.R.Cv.P. Rule 5.2(a).

5:15-19). Refusing to stipulate to facts that are facts is textbook bad faith that defeats the purpose of the Court's conferral order.

The Court ordered the parties to "**maximize** the facts to which the parties will stipulate." Defendants did not do so.

### **Memorandum of Authorities**

The Court has already admonished the Office of Attorney General for engaging in "stall tactics" that were "appalling" to delay resolution of the related case, *Goldman v. Brink* (June 13, 2022 Hearing Tr. 9:14-15).<sup>3</sup> Failure to sanction Defendants will only burden Plaintiffs and encourage Defendants' "appalling...stall tactics."

The Court's order was clear and reasonably specific. In addition to sanctions available under the Federal Rules of Civil Procedure, the Court possesses its own inherent authority to issue a show cause order and to hold a party in contempt. *Atkins Nuclear Secured, LLC v. Aptim Federal Services, LLC*, 18-cv-1112, 2019 WL 1793137 (E.D. Va. Apr. 24, 2019). An order to show cause would further delay this case and thereby reward Defendants' violation. The expedited schedule of this case and the easily verifiable facts at issue lend themselves to the sanction of contempt. A sanction to coerce Defendants into compliance with this Court's orders is proper, while further disobedience may warrant a default judgment (*See also*, Federal Rules of Civil Procedure Rules 11(b)(4) and 11(c)(4), mandating that "the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonable based on belief or a lack of information" and permitting sanctions "limited to what suffices to deter repetition of the conduct by others similarly situated.")

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<sup>3</sup> "I'm worried and disturbed by the fact that if you're going to raise the *Purcell* principle now, I'm not so sure you have clean hands doing that, because the reason we're so late in the game is the stall tactics that Attorney General Herring and his subordinates engaged in, which I find to be appalling what they did." June 13, 2022 Hearing Tr. 9:10-16.

Plaintiff respectfully suggests that the Court consider Defendants' failure to admit to facts harmful to their case as tantamount to a discovery violation under Federal Rules of Civil Procedure Rule 37(b)(2). (*See also* Local Civil Rule 37(H), permitting sanctions against parties that "fail or refuse to meet and confer in good faith in an effort to narrow the areas of disagreement concerning discovery.") There are no facts in dispute in this case. There is no fact-finding in which Defendants would "discover" that, e.g., 130,192/67,404 is a 93.2% difference, or that they held a special election for the House of Delegates earlier this year. Plaintiff therefore requests the following sanctions:

1. The facts in Appendix 1 are considered admitted by Defendants. *See* Fed. R. Civ. P. Rule 37(b)(2)(A)(i).
2. Defendants will not be able to raise the defense of mootness in their Motion to Dismiss. *See* Fed. R. Civ. P. Rule 37(b)(2)(A)(ii).
3. Defendants shall pay Plaintiff's cost in filing this Motion. *See* Fed. R. Civ. P. Rule 37(b)(2)(C). Plaintiff's cost for printing this Motion is \$ 3.78. The receipt for Plaintiff's costs is attached below.

Dated: June 27, 2022

Respectfully submitted,


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

#### Certificate of Service

I hereby certify that on June 27, 2022, I caused to be served on counsel for Defendants, Steven Popps, [spopps@oag.state.va.us](mailto:spopps@oag.state.va.us), and Andrew Ferguson, [aferguson@oag.state.va.us](mailto:aferguson@oag.state.va.us), this

Opposition.

Dated: June 27, 2022

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

**Local Civil Rule 83.1 Pro Se Certification**

I declare under penalty of perjury that:

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

Plaintiff Jeffrey Thomas, Jr.

Signed:  \_\_\_\_\_

Executed on: June 27, 2022 (date)

**Appendix 1: List of facts to which Defendants refused to stipulate or disprove**

1. This 130,192/67,404 ratio between largest and smallest 2021 House of Delegates district populations represents a 93.2% disparity.
2. 130,192 residents in HD 87-2011 have the same representation in the House of Delegates as the 67,404 residents in HD 75-2011.
3. HD 75-2011 is not a majority-minority district.
4. There are 94,095/67,404, or 39.6%, more residents in Plaintiff Thomas Jr.'s district than in the least populous district, HD 75-2011.
5. Voters and residents in Plaintiff Thomas Jr.'s district, a majority-minority district, are 94,095/67,404, or 39.6% diluted or weakened compared to voters in HD 75-2011.
6. 39.6% is approximately four times larger than 10%.
7. No current Delegate resides in the current HD 29-2022.
8. Plaintiff Thomas intends to continue residing at her current address in 2022, 2023 and 2024.
9. Plaintiff Thomas intends to vote in the 2022, 2023 and 2024 general elections.
10. Plaintiff Thomas is a pastor.
11. Plaintiff Thomas is the President of the Loudoun County NAACP.
12. There are 101,629/67,404, or 50.8%, more residents in Plaintiff Thomas's district than in the least populous district, HD 75-2011.
13. Voters and residents in Plaintiff Thomas's district are 101,629/67,404, or 50.8% diluted or weakened compared to voters in HD 75-2011.
14. 50.8% is more than five times larger than 10%.
15. Plaintiff Thompson intends to continue residing at his current address in 2022, 2023 and 2024.

16. Plaintiff Thompson intends to vote in the 2022, 2023 and 2024 general elections.
17. Plaintiff Thompson is an attorney.
18. Plaintiff Thompson is the former President of the Loudoun County NAACP.
19. There are 104,692/67,404, or 55.3%, more residents in Plaintiff Thompson's district than in the least populous district, HD 75-2011.
20. Voters and residents in Plaintiff Thompson's district 104,692/67,404, or 55.3%, diluted or weakened compared to voters in HD 75-2011.
21. 55.3% is more than five-and-a-half times larger than 10%.
22. "Districts shall be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district. A deviation of no more than five percent shall be permitted for state legislative districts." Va. Code Ann. § 24.2-304.04(1).
23. "Districts shall be drawn in accordance with the requirements of the Constitution of the United States, including the Equal Protection Clause of the Fourteenth Amendment, and the Constitution of Virginia; federal and state laws, including the federal Voting Rights Act of 1965, as amended; and relevant judicial decisions relating to racial and ethnic fairness." Va. Code Ann. § 24.2-304.04(2).
24. "No district shall be drawn that results in a denial or abridgement of the right of any citizen to vote on account of race or color or membership in a language minority group. No district shall be drawn that results in a denial or abridgement of the rights of any racial or language minority group to participate in the political process and to elect representatives of their choice." Va. Code Ann. § 24.2-304.04(3).
25. Regardless of these new lines, Plaintiff and all Virginians continue to be represented under old district lines and politicians elected within them.

26. Plaintiff Thomas Jr. moved to intervene in the *Goldman* case on October 15, 2021 pursuant to the Court's October 12, 2021 Order directing that "by October 29, 2021, any prospective intervenors who wish to intervene in this case must file a Motion to Intervene" (*Goldman v. Brink*, ECF 41, par. 5).
27. Plaintiff Thomas Jr. correctly predicted in his Motion to Intervene (*Goldman v. Brink*, ECF 45-3), "Given the five percent maximum deviation under Virginia Code, after *any* redistricting, Plaintiff and voters and residents in his district will inevitably gain voting and political representation power merely equal to that now held by the majority of other Virginians.
28. Plaintiff Thomas Jr. correctly predicted in his Motion to Intervene (*Goldman v. Brink*, ECF 45-3), "Wherever the lines are drawn in redistricting, the districts cannot possibly include any districts as large as Plaintiff's current district without being subject to "prima facie" constitutional scrutiny and violation of Va. Code Ann. § 24.2-304.04(1)."
29. Plaintiff Thomas Jr. correctly predicted in his Motion to Intervene (*Goldman v. Brink*, ECF 45-3), "After any possible redistricting, Plaintiff and the voters and residents in his district will have their votes more fairly and equally counted and be more fairly and equally represented in the General Assembly."
30. Plaintiff Thomas Jr. correctly predicted in his Motion to Intervene (*Goldman v. Brink*, ECF 45-3), "One hundred equal House of Delegates districts would each contain 86,313 or 86,314 people." The "target population" for the Virginia Supreme Court's December 2021 redistricting was 86,314.

<https://www.virginiaredistricting.org/legdistricting/comments/plan/548/1>



31. “In light of Federal Rules of Civil Procedure Rule 1’s requirement for “the just, speedy, and inexpensive determination of every action and proceeding” and the Court’s March 21, 2022 Hearing and Order (ECF 69),” Plaintiff Thomas Jr. filed a “Notice of Intent to File Separate Lawsuit and Request for Joinder” on March 24, 2022. (*Goldman v. Brink*, ECF 71-1, p. 1).
32. Defendants “facilitate the state’s elections, even if they do not draw the legislative district maps or set elections themselves.” *Goldman v. Brink*, ECF 40, p. 22).
33. Defendants “oversee the execution of the General Assembly’s enactments.” *Ibid*.
34. Defendants “maintain the special enforcement relationship with the electoral process.” *Ibid*.
35. Defendants “each serve as individual state officers, and not as an arm of the state.” *Ibid*.
36. Defendants do not intend to hold House of Delegates general elections until November 2023 in the absence of Court intervention.
37. The most recent House of Delegates election was a special election to fill the seat in HD 89-2011 of retiring Delegate Jay Jones. “Special election to fill Jay Jones’ 89<sup>th</sup> District seat set for Jan. 11,” *Virginian-Pilot*, December 17, 2021.<sup>4</sup>
38. Delegate Jones announced his retirement on December 16, 2021. *Ibid*.
39. Speaker Filler-Corn issued a writ of election on December 17, 2021. *Ibid*.
40. The writ of election was issued pursuant to Virginia Code § 24.2-683.
41. The candidate filing deadline for the special election was 5:00PM on December 22, 2021. *Virginian-Pilot*, December 17, 2021.
42. The writ of election set the date of the special election as January 11, 2022. *Ibid*.

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<sup>4</sup> <https://www.pilotonline.com/government/elections/vp-nw-special-election-89-20211217-dhj2ssoxvjhapfzkdwvcv2vuki-story.html>.

43. The most recent special election for the House of Delegates was conducted in less than one month following a writ of election. *Ibid*.
44. According to a December 8, 2020 announcement reposted on the Virginia Department of Elections' official Twitter account, "Gov. Ralph Northam today issued a writ of election declaring a special election in the 2<sup>nd</sup> House of Delegates District for Jan. 5, 2021: [link]. The last day for candidates to file to appear on the ballot is December 14, 2020."<sup>5</sup>
45. The Virginia Department of Elections announced and then conducted the 2021 special election for the House of Delegates in less than one month.
46. The Virginia Department of Elections is able to announce and conduct a special election for the House of Delegates in less than one month after a writ of election is issued.
47. According to the United States Department of Defense's Federal Voting Assistance Program (FVAP), the last date in which statewide primary elections are scheduled this year is September 13, 2022. Three states are scheduled to hold their 2022 primary elections on September 13, 2022. One state is scheduled to hold its 2022 primary elections on September 6, 2022. Sixteen other states are scheduled to hold their 2022 primary elections in August 2022.<sup>6</sup>

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<sup>5</sup> <https://twitter.com/vaelect/status/1336419044673589249> . Accessed and screenshotted June 14, 2022.

<sup>6</sup> <https://www.fvap.gov/uploads/FVAP/VAO/PrimaryElectionsCalendar.pdf>.



1111 E Main St  
Richmond, VA 23219-3531  
(804) 783-9880

Terminal: 0136MIX02  
6/27/2022 15:53  
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Type: Purchase

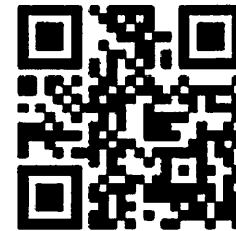
Qty	Description	Amount
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11	PNG B&W S/S 8.5x11 & 8.5x14	1.87
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District tax		0.02
City tax		0.04
County tax		0.00
State tax		0.15
Total		USD \$3.78

Acct #:\*\*\*\*\*  
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Contactless  
Auth No.: 03827D  
Mode: Issuer  
AID: A0000000031010  
NO CVM  
CVM Result:  
TVR: 0000000000  
IAD: 06021203A00000  
TSI:  
ARC: 00  
APPROVED

The Cardholder agrees to pay the Issuer of the charge card in accordance with the agreement between the Issuer and the Cardholder.



Tell us how we're doing and receive \$5 off your next \$30 print order\*. Complete our survey by scanning the QR code below, visit [fedex.com/welisten](https://fedex.com/welisten).



Offer expires 12/31/2022

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### Gmail - Stipulation of Facts



**Jeff Burke Thomas <jeffburtkethomas@gmail.com>**

### Stipulation of Facts

**Gallagher, Kevin M. <KGallagher@cag.state.va.us>**

To: "Jeff B. Thomas" <jeffburbkethomas@gmail.com>

Cc: "Ferguson, Andrew N." <AFerguson@oag.state.va.us>, "Popps, Steven G." <SPopps@oag.state.va.us>, "pastorthomas@gomtechnow.com" <pastorthomas@gomtechnow.com>, "phillipthc

**Jeff, Michelle, and Phillip,**

Defendants have participated in good faith in this meet and confer on the stipulation of facts. We have attempted to maximize the facts to which the parties could stipulate, building off of the (C and race, as well as population data for Plaintiffs' districts. Meanwhile, after telling us at the June 13 hearing that you were willing to stipulate to all of the non-Paul Goldman-specific facts in the 2022 primary and general elections (even after we provided you, at your request, the citations that supported those facts)—facts that the Court has *already* recognized in the *Goldman* opinion 2022 primary must begin no later than May 7, 2022.”; *ibid.* (“Pursuant to federal and state law, absentee voting for the November 2022 general election must begin no later than September 2; agreeing to stipulate to allegations, legal conclusions, and characterizations is not bad faith; nor does it minimize the facts to which the parties will stipulate. Finally, the Court ordered us to file inherently *not* a set of facts that the parties have jointly stipulated to, and accordingly we will not agree to insert a list of such facts into our joint filing.

I note that your email from yesterday in response to the latest draft of the stipulation did not identify any paragraphs in our draft to which you are unwilling to stipulate. To that end, we are attaching tomorrow per the Court's orders. You can each sign separately and send a scanned version of your signature page; we will compile into a final PDF. Please let us know by 8 pm this evening

**Best,**

**Kevin**

**From:** Jeff B. Thomas <jeffburkethomas@gmail.com>

**Sent: Thursday, June 23, 2022 6:50 AM**

**To:** Gallagher, Kevin M. <KGallagher@oag.state.va.us>

**Cc:** Ferguson, Andrew N. <AFerguson@oag.state.va.us>; Popps, Steven G. <SPopps@oag.state.va.us>; pas/onhomas@gomtechnow.com; philliptho@icloud.com

**Subject: Re: Stipulation of Facts**

Despite your characterizations, the Court **ordered** us to "meet and confer and file a joint stipulation of the facts relevant to Defendants' Motion [to Dismiss] no later than June 24, 2022. All part **which the parties will stipulate.**" (Scheduling Order ECF 16 par 1).

You have admitted that many of the facts I asked you to stipulate to are true but for some reason refuse to stipulate to them. Several of these facts directly quote from an announcement public even simple math. It can hardly be credited that you seriously believe discovery is necessary for you to 'concede' that  $104,692/67,404 = 1.553$  or that a House of Delegates special election nothing more than a stalling tactic.

If you do not stipulate to facts that you yourself have admitted are true because stipulating to them would weaken your case, that is textbook bad faith that does not "maximize the facts to which you want to try to not tell me but tell the Court why facts are not facts, then you may.

I would ask again that you agree to insert the list of facts that you will not agree to stipulate to at the end of our joint stipulation of facts.

On Wed, Jun 22, 2022 at 8:48 PM Gallagher, Kevin M. <KGallagher@oag.state.va.us> wrote:

**Jeff, Michelle, and Phillip,**

We are attaching the latest draft of the stipulation, which includes some changes in redline. Namely, we have put back in the paragraphs about Michelle's voting in the 2021 general election yesterday regarding the district populations of Michelle and Phillip's 2011 House of Delegates districts.

As for the remaining *allegations* in your Amended Complaint that you have requested us to stipulate to, we continue to rest on the objections we have laid out in several emails. In discussing “largely repetitive” of the *Goldman* stipulations, which he called “fantastic.” He suggested that the parties “piggyback” on those stipulations, even to the point of suggesting that all that might stipulations: “to see if you can get [Defendants] to agree.” Defendants will not agree to stipulate to any allegations in your Amended Complaint beyond the ones already reflected in the attachments.

Please let us know if there are any paragraphs in this draft to which you are unwilling to stipulate. If there are not any, we can put together a signature-ready copy that will need to be executed by the parties.

**Best,**

**Kevin**

**From:** Jeff B. Thomas <jeffburkethomas@gmail.com>

Sent: Tuesday, June 21, 2022 2:49 PM

**To:** Gallagher, Kevin M. <KGallagher@oag.state.va.us>

Cc: Ferguson, Andrew N. <AFerguson@oag.state.va.us>; Popp, Steven G. <SPopps@oag.state.va.us>; pastorthomas@gomtechnow.com; philliptho@icloud.com  
 Subject: Re: Stipulation of Facts

Pastor Michelle is on family vacation and out of cell phone range. It looks like you are only citing her absentee/early voting history. You can insert a sentence into the proposed stipulation that you about her 2021 voting history.

With reference to paragraph 44 from your proposed stipulation listing my 2011 district population, please insert a similar paragraph for the other two Plaintiffs regarding their 2011 district po

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Here is a list of facts you have not yet stipulated to. They break down into five categories.

The first is math calculations that you have admitted are true. (e.g., "There are 94,095/67,404, or 39.6%, more residents in Plaintiff Thomas Jr.'s district than in the least populous district. This is not a factual objection. You have admitted these facts are true and we ask you to stipulate to them.

The second involves Plaintiffs' intent to vote in the future and professional background. I signed an affidavit and asked you to admit that I signed an affidavit stating I intended to vote in 2022. I am willing to stipulate I signed an affidavit. We also all know that I am a doctoral student at VCU, Pastor Michelle is a pastor, Mr. Thompson is an attorney and veteran, and the latter are the current members of the committee.

The third is direct quotations of Virginia Code (e.g., "Districts shall be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district." § 24.2-304.04(1).) Your objection is that these are "quotations from documents that speak for themselves." I do not understand any factual objections you may have. You are asking the Court to disregard the plain meaning of the Code.

The fourth is facts and direct quotations from this Court in the *Goldman* case (e.g., Defendants "facilitate the state's elections, even if they do not draw the legislative district lines in a judicially noticeable manner. I believe you are also offering the "quotations from documents that speak for themselves" objection. This is not a factual objection. We would ask you to stipulate to the facts.

The fifth is information regarding recent and upcoming elections. We noted in the Amended Complaint that 2021 and 2022 special elections were called in less than a month. The Court you intend to argue mootness. We understand that this weakens your case but that is not a factual objection.

With respect, all of the statements below are verifiable facts. Do you have any evidence at all that the statements below are false? If so, then please share that with us. If not, then please stipulate to the facts. If you grounds not to stipulate to them.

1. This 130,192/67,404 ratio between largest and smallest 2021 House of Delegates district populations represents a 93.2% disparity.
2. 130,192 residents in HD 87-2011 have the same representation in the House of Delegates as the 67,404 residents in HD 75-2011.
3. HD 75-2011 is not a majority-minority district.
4. There are 94,095/67,404, or 39.6%, more residents in Plaintiff Thomas Jr.'s district than in the least populous district, HD 75-2011.
5. Voters and residents in Plaintiff Thomas Jr.'s district, a majority-minority district, are 94,095/67,404, or 39.6% diluted or weakened compared to voters in HD 75-2011.
6. 39.6% is approximately four times larger than 10%.
7. No current Delegate resides in the current HD 29-2022.
8. Plaintiff Thomas intends to continue residing at her current address in 2022, 2023 and 2024.
9. Plaintiff Thomas intends to vote in the 2022, 2023 and 2024 general elections.
10. Plaintiff Thomas is a pastor.
11. Plaintiff Thomas is the President of the Loudoun County NAACP.
12. According to the Virginia Redistricting Commission, citing to the prison-adjusted population as reported by the 2020 Census, Plaintiff Thomas Jr.'s 2011 district is more populous than the least populous district. *Goldman v. Brink*, Stipulation of Facts ¶ 35.
13. There are 101,629/67,404, or 50.8%, more residents in Plaintiff Thomas's district than in the least populous district, HD 75-2011.

14. Voters and residents in Plaintiff Thomas's district are 101,629/67,404, or 50.8% diluted or weakened compared to voters in HD 75-2011.
15. 50.8% is more than five times larger than 10%.
16. Plaintiff Thompson intends to continue residing at his current address in 2022, 2023 and 2024.
17. Plaintiff Thompson intends to vote in the 2022, 2023 and 2024 general elections.
18. Plaintiff Thompson is an attorney and veteran.
19. Plaintiff Thompson is the former President of the Loudoun County NAACP.
20. There are 104,692/67,404, or 55.3%, more residents in Plaintiff Thompson's district than in the least populous district, HD 75-2011.
21. Voters and residents in Plaintiff Thompson's district 104,692/67,404, or 55.3%, diluted or weakened compared to voters in HD 75-2011.
22. 55.3% is more than five-and-a-half times larger than 10%.
23. "Districts shall be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district. A deviation of no more than 10% shall be permitted."
24. "Districts shall be drawn in accordance with the requirements of the Constitution of the United States, including the Equal Protection Clause of the Fourteenth Amendment, 1965, as amended; and relevant judicial decisions relating to racial and ethnic fairness." Va. Code Ann. § 24.2-304.04(2).
25. "No district shall be drawn that results in a denial or abridgement of the right of any citizen to vote on account of race or color or membership in a language minority group to participate in the political process and to elect representatives of their choice." Va. Code Ann. § 24.2-304.04(3).
26. Regardless of these new lines, Plaintiff and all Virginians continue to be represented under old district lines and politicians elected within them.
27. Plaintiff Thomas Jr. moved to intervene in the *Goldman* case on October 15, 2021 pursuant to the Court's October 12, 2021 Order directing that "by October 15, 2021, Plaintiff Thomas Jr. shall file a Motion to Intervene." (*Goldman v. Brink*, ECF 41, par. 5).
28. Plaintiff Thomas Jr. correctly predicted in his Motion to Intervene (*Goldman v. Brink*, ECF 45-3), "Given the five percent maximum deviation under Virginia law, the political representation power merely equal to that now held by the majority of other Virginians."
29. Plaintiff Thomas Jr. correctly predicted in his Motion to Intervene (*Goldman v. Brink*, ECF 45-3), "Wherever the lines are drawn in redistricting, the district will be subject to constitutional scrutiny and violation of Va. Code Ann. § 24.2-304.04(1)."
30. Plaintiff Thomas Jr. correctly predicted in his Motion to Intervene (*Goldman v. Brink*, ECF 45-3), "After any possible redistricting, Plaintiff and the voters represented in the General Assembly."
31. Plaintiff Thomas Jr. correctly predicted in his Motion to Intervene (*Goldman v. Brink*, ECF 45-3), "One hundred equal House of Delegates districts would be created in redistricting was 86,314. <https://www.virginiaredistricting.org/legdistricting/comments/plan/548/1>"
32. "In light of Federal Rules of Civil Procedure Rule 1's requirement for "the just, speedy, and inexpensive determination of every action and proceeding" and the Court's Separate Lawsuit and Request for Joinder" on March 24, 2022. (*Goldman v. Brink*, ECF 71-1, p. 1).
33. Defendants "facilitate the state's elections, even if they do not draw the legislative district maps or set elections themselves." *Ibid*.
34. Defendants "oversee the execution of the General Assembly's enactments." *Ibid*.
35. Defendants "maintain the special enforcement relationship with the electoral process." *Ibid*.
36. Defendants "each serve as individual state officers, and not as an arm of the state." *Ibid*.
37. Defendants do not intend to hold House of Delegates general elections until November 2023 in the absence of Court intervention.
38. The most recent House of Delegates election was a special election to fill the seat in HD 89-2011 of retiring Delegate Jay Jones. "Special election to fill Jay Jones' seat." *Ibid*.
39. Delegate Jones announced his retirement on December 16, 2021. *Ibid*.
40. Speaker Filler-Corn issued a writ of election on December 17, 2021. *Ibid*.

41. The writ of election was issued pursuant to Virginia Code § 24.2-683.
42. The candidate filing deadline for the special election was 5:00PM on December 22, 2021. *Ibid.*
43. The writ of election set the date of the special election as January 11, 2022. *Ibid.*
44. The most recent special election for the House of Delegates was conducted in less than one month following a writ of election. *Ibid.*
45. According to a December 8, 2020 announcement reposted on the Virginia Department of Elections' official Twitter account, "Gov. Ralph Northam today is The last day for candidates to file to appear on the ballot is December 14, 2020."<sup>[2]</sup>
46. The Virginia Department of Elections announced and then conducted the 2021 special election for the House of Delegates in less than one month.
47. The Virginia Department of Elections is able to announce and conduct a special election for the House of Delegates in less than one month after a writ of election.
48. According to the United States Department of Defense's Federal Voting Assistance Program (FVAP), the last date in which statewide primary elections are held is September 13, 2022. One state is scheduled to hold its 2022 primary elections on September 6, 2022. Sixteen other states are scheduled to hold their 2022 primary elections on September 13, 2022.

<sup>[1]</sup> <https://www.pilotonline.com/government/elections/vp-nw-special-election-89-20211217-dhj2ssoxvjhapfzkdwwcv2vuki-story.html>.

<sup>[2]</sup> <https://twitter.com/vaelect/status/1336419044673589249> . Accessed and screenshoted June 14, 2022.

<sup>[3]</sup> <https://www.fvap.gov/uploads/FVAP/VAO/PrimaryElectionsCalendar.pdf>.

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On Tue, Jun 21, 2022 at 1:03 PM Jeff B. Thomas <jeffburkethomas@gmail.com> wrote:

Thank you. We will get back to you today.

On Tue, Jun 21, 2022 at 1:01 PM Jeff B. Thomas <jeffburkethomas@gmail.com> wrote:

Mr. Popp represented to the Court that your office worked "seven days a week." We have been ordered to work on this matter "in good faith." I would appreciate a response to our stipulation.

Thank you.



On Sat, Jun 18, 2022 at 3:01 PM Jeff B. Thomas <jeffburkethomas@gmail.com> wrote:

Kevin,

In regards to your bullets/paragraphs:

1. We do not agree to stipulate to your characterizations of legal conclusions. We would agree to stipulate to a direct quotation of legal code but only if you agree to stipulate to our
2. We do not agree to stipulate that there were no House of Delegates elections held in 2022, or to misleading statements. There were House of Delegates elections held in 2022 in
3. That's fine.

In addition to what you have already agreed to stipulate to, from the Amended Complaint, we ask that you stipulate to the following verifiable facts: pars. 16-33, 35-49, 51-53, 60, 62

We sent you the documentation you stated was sufficient for you to stipulate to all Plaintiffs' registered voter status and November 2021 voting. See *Goldman*, ECF 89, p. 18.

On Fri, Jun 17, 2022 at 12:04 PM Gallagher, Kevin M. <KGallagher@oag.state.va.us> wrote:

Jeff,

Thank you for sending along your drivers' license and utility bill. Thank you also for agreeing to stipulate to the paragraphs from the Goldman stipulation. Please see below for r

- Paragraph 23 in the previous version (what is now Paragraph 24) is supported by Virginia Code § 24.2-529 and 52 U.S.C. § 20302. Paragraph 25 in the previous version
- Paragraph 26 in the previous version (what is now Paragraph 27) is not incorrect in light of information about a 2022 *special* House of Delegates election. That paragraph about a special election.
- We do not believe that referring to districts that were created in 2021 as "2022 House of Delegates Districts" would aid with clarity; in fact, it would make things more confusing. House of Delegates Districts; similarly, we refer to the districts created in 2021 after the Commonwealth received the 2020 Census figures as the 2021 House of Delegates Districts.

As for the deleted paragraphs 14-15, 20-30, 35, 37-45, and 48-60 from your original draft, we continue to rest on our objections to those paragraphs and will not agree to stipulate something independently of us is up to you.

Finally, while we were reviewing your comments on the latest draft of the stipulation, you filed an Amended Complaint in this action, adding two new plaintiffs, one new defendant. minimum, if you want us to stipulate to any facts about the two new plaintiffs, we will need documentation proving those stipulations to be true. I am attaching a revised version c

Best,

Kevin

From: Jeff B. Thomas <jeffburkethomas@gmail.com>  
Sent: Thursday, June 16, 2022 12:14 AM  
To: Gallagher, Kevin M. <KGallagher@oag.state.va.us>  
Cc: Poppo, Steven G. <SPoppo@oag.state.va.us>; Ferguson, Andrew N. <AFerguson@oag.state.va.us>  
Subject: Re: Stipulation of Facts

Mr. Gallagher:

With regards to your request for my drivers license and utility bill, please find the attached photo of my Virginia drivers license issued on August 11, 2021 and reflecting my current

Comments on your stipulations (Word document)

I am unable to stipulate to the following suggested paragraphs without citations to the relevant laws: 23 and 25

Please note that paragraph 26 is incorrect in light of paragraphs 54-60 from my stipulation of facts regarding the 2022 special House of Delegates election.

Paragraphs 37-39 in your stipulation - for clarity, please refer to these districts as 2022 House of Delegates Districts



6/27/22, 1:52 AM

Gmail - Stipulation of Facts

I agree to stipulate to all other paragraphs.

Comments on your comments on my stipulations (pdf document)

I would ask you to stipulate to deleted paragraphs 14-15, 20-30, 35, 37-45, and 48-60 from the pdf, as these are verifiable statements of fact. Paragraphs 48-60 are relevant because of immunity and mootness.

If we are unable to agree on stipulating these as facts, I would suggest we addend those facts you are not willing to stipulate to at the end of the joint stipulation.

Thank you.



I am unable to stipulate to the following suggested paragraphs without citations to the law: 23 and 25

Please note that paragraph 26 is incorrect in light of paragraphs 54-60 from my stipulation of facts regarding the 2022 special House of Delegates election.

Paragraphs 37-39 in your stipulation - for clarity, please refer to these districts as 2022 House of Delegates Districts

I agree to stipulate to all other paragraphs.

Comments on your comments on my stipulations (pdf document)

I would ask you to stipulate to deleted paragraphs 14-15, 20-30, 35, 37-45, and 48-60 from the pdf, as these are verifiable statements of fact. Paragraphs 48-60 are relevant b immunity and mootness.

If we are unable to agree on stipulating these as facts, I would suggest we addend those facts you are not willing to stipulate to at the end of the joint stipulation.

Thank you,

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We appreciate your desire to move this process along expeditiously in advance of the Court's Friday deadline and would appreciate receiving back your revisions (if any) as timing will be a problem, please let us know as soon as possible. Thank you.

Best,  
Kevin

**From:** Jeff B. Thomas <jeffburkethomas@gmail.com>  
**Sent:** Wednesday, June 15, 2022 2:16 AM  
**To:** Poppo, Steven G. <SPoppo@oag.state.va.us>  
**Cc:** Gallagher, Kevin M. <KGallagher@oag.state.va.us>; Ferguson, Andrew N. <AFerguson@oag.state.va.us>  
**Subject:** Re: Stipulation of Facts

I was sorry not to receive anything from you Monday or yesterday. Please remember the Court has instructed us to work together in good faith on this stipulation of facts.

I have attached a draft stipulation for your review. Thank you.

On Tue, Jun 14, 2022 at 3:49 PM Jeff B. Thomas <jeffburkethomas@gmail.com> wrote:

Please send me this before close of business. Thank you.

On Mon, Jun 13, 2022 at 10:03 PM Poppo, Steven G. <SPoppo@oag.state.va.us> wrote:

As stated, we are working on the draft, and will send as soon as it is ready. Thanks

**From:** Jeff B. Thomas <jeffburkethomas@gmail.com>  
**Sent:** Monday, June 13, 2022 6:42 PM  
**To:** Poppo, Steven G. <SPoppo@oag.state.va.us>  
**Cc:** Gallagher, Kevin M. <KGallagher@oag.state.va.us>; Ferguson, Andrew N. <AFerguson@oag.state.va.us>  
**Subject:** Re: Stipulation of Facts

Mr Poppo:

Given the court has ordered us to submit our stipulation by Friday and this morning reprimanded your office for "stall tactics," I would appreciate receiving a copy of the

Thank you,

On Mon, Jun 13, 2022 at 1:00 PM Jeff B. Thomas <jeffburkethomas@gmail.com> wrote:

Thank you. I have facts to insert so I will be on a lookout for your email with the Word document soon.

Jeff

On Mon, Jun 13, 2022 at 12:06 PM Poppo, Steven G. <SPoppo@oag.state.va.us> wrote:

Thanks, nice to meet you as well. We will transmit a Word version of the Goldman stipulations, removing facts specific to Mr. Goldman, and inserting facts specific to Steven

**From:** Jeff B. Thomas <jeffburkethomas@gmail.com>  
**Sent:** Monday, June 13, 2022 11:43 AM

To: Popps, Steven G. <SPopps@oag.state.va.us>  
Subject: Stipulation of Facts

Mr. Popps:


Good to meet you and Mr. Gallagher earlier today.

If you could please email me a Word version of the attached stipulation of facts (ECF 73) from the Goldman case at your earliest convenience. As discussed, to :

Thank you,

Jeff

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 Thomas v Beals - Stipulation of Facts w Signature Page.pdf  
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