

07/16/21 L



AMENDED COMPLAINT

Paul Goldman  
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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA

|   |   |                         |
|---|---|-------------------------|
| Paul Goldman                                  | ) | Case No: 3:21-CV-420    |
| Pro se  | ) |                         |
|   | ) |                         |
| Plaintiff,                                    | ) |                         |
| v.  | ) | COMPLAINT FOR DECLATORY |
| Ralph Northam, Governor of Virginia, in his   | ) | JUDGMENT                |
| official capacity                             | ) |                         |
| Virginia State Board of Elections             | ) |                         |
| Robert Brink, Chairman of the State Board     | ) |                         |
| of Elections, in his official capacity        | ) |                         |
| John O'Bannon, Vice Chair of the State        | ) |                         |
| Board of Elections, in his official capacity  | ) |                         |
| Jamilah D. LeCruise, Secretary of the State   | ) |                         |
| Board of Elections, in her official capacity  | ) |                         |
| Christopher Piper, Commissioner of the        | ) |                         |
| State Board of Elections, in his official     | ) |                         |
| capacity                                      | ) |                         |
| Jessica Bowman, Deputy Commissioner of        | ) |                         |
| the State Board of Elections, in her official | ) |                         |
| capacity                                      | ) |                         |
| Defendants.                                   | ) |                         |

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## INTRODUCTION

1. While the normative redistricting case is complex both legally and factually, this instant matter when boiled down to the relevant essentials, merely asks whether the remedy applied by this Court in *Cosner v Dalton*, 522 F. Supp. 350 (1981) remains good law in Virginia.
2. In *Cosner*, the Court faced a situation where the upcoming 1981 general election, in the Commonwealth of Virginia for the House of Delegates, would be held under an “unconstitutional” redistricting plan. *Id.* at 363.
3. The Court decided it would be “impractical” to expect the General Assembly to produce a constitutionally acceptable plan in time to “accommodate an election on November 3” (the date set by the Constitution of Virginia for the required general election). *Id.* at 364.
4. However, the Court found that “Virginia citizens are entitled to vote as soon as possible for their representatives under a constitutional apportionment plan.” *Id.*
5. Accordingly, the court said it would “limit the terms of members of the House of Delegates elected in 1981 to one year” even though the Constitution of Virginia says a term is for two years.
6. The Court further ordered “state election officials to conduct a new election in 1982 for the House of Delegates” under a constitutional redistricting plan, the Court saying it would produce such a plan if the General Assembly failed to do so.
7. In effect, this could require the state to hold a general election to elect members to the House of Delegates in 1981, 1982 and 1983.
8. Such consecutive elections were indeed held.
9. Upon information and belief, no state official ever suggested three consecutive elections put an unfair hardship on any relevant state interest, any citizen hoping to run for the House of Delegates or damage the core political rights of citizens under the 1<sup>st</sup> Amendment to the U.S. Constitution.
10. While the precise circumstances here in 2021 are not identical, the totality of the circumstances is legally equivalent.
11. As in 1981, 2021 is a redistricting year.
12. As in 1981, the state constitution, along with the federal constitution, expects this year’s general election for members of the House of Delegates to be held under a new redistricting plan, enacted in conformity with the requisite federal and state constitutional requirements.
13. As in 1981, the process created by Virginia Constitution and statutory law has failed to produce such a redistricting plan.
14. As in 1981, upon information and belief, no state official, either individually or connection with the appropriate state authority, has provided any reason to believe the

constitutionally required redistricting plan can be enacted in time to make a *Cosner* styled remedy unnecessary.

15. Unlike in 1981, state officials are not even trying to enact a constitutionally acceptable redistricting plan in time for such plan to be in place by the upcoming November 2021 general election.

16. Accordingly, this instant matter boils down to one overriding issue: to wit, should the terms of those elected to the House of Delegates this coming November be limited to one year?

#### **JURISDICTION AND VENUE**

17. This Court has jurisdiction over the subject matter and parties pursuant to 28 U.S.C. 1331, as this case involves questions of federal law.

18. This Court has supplemental jurisdiction over the related state law claims pursuant to 28 U.S.C. 1367(a) because those claims form part of the same case or controversy under the Equal Protection Clause of the United States Constitution.

19. Venue is proper in, and Defendants are subject to the personal jurisdiction of, this Court because Defendants are citizens of Virginia, operate in their official capacities in the Eastern District of Virginia, and all or most of the events giving rise to this action occurred in this District.

20. Plaintiff likewise resides in this District.

#### **PARTIES**

21. Plaintiff Paul Goldman ("hereinafter Plaintiff") resides in Richmond, Virginia.

22. Plaintiff is a qualified voter in the current 68<sup>th</sup> General Assembly District as established pursuant to the old redistricting first passed in 2011.

23. Plaintiff is considering a run for the House of Delegates.

24. Defendant Ralph Northam is the Governor of Virginia. He is a resident of Virginia and his office is in Richmond, Virginia.

25. The Virginia State Board of Elections is headquartered in Richmond, Virginia.

26. Defendant Robert Brink is the Chair of the State Board of Elections. He is a citizen of the Commonwealth of Virginia. His office is in Richmond, Virginia. He is being sued in his official capacity.

27. Defendant John O'Bannon is the Vice Chair of the State Board of Elections. He is a citizen of the Commonwealth of Virginia. His office is in Richmond, Virginia. He is being sued in his official capacity.

28. Defendant Jamilah LeCruise is the Secretary of the State Board of Elections. She is a citizen of the Commonwealth of Virginia. Her office is in Richmond, Virginia. She is being sued in her official capacity.

29. Defendant Christopher Piper is the Commissioner of the Virginia Department of Elections. He is a citizen of the Commonwealth of Virginia. His office is in Richmond, Virginia. He is being sued in his official capacity.

30. Defendant Jessica Bowman is the Deputy Commissioner of the Virginia Department of Elections. She is a citizen of the Commonwealth of Virginia. Her office is in Richmond, Virginia. She is being sued in her official capacity.

31. The Virginia State Board of Elections (“hereinafter State Board”) is tasked by state law to ensure “legality and purity in all elections” and to “ensure that major risks to election integrity are...addressed as necessary to promote election uniformity, legality and purity.” Va. Code 24.2 103(A).

32. The Virginia Department of Elections is the operational arm used by the State Board to ensure that the State Board is fulfilling its duty to ensure the integrity, purity, and uniformity of state elections.

### STATEMENT OF FACTS

33. Article II, Section 6 of the Virginia Constitution has long required the boundaries of State Senate and House of Delegates electoral districts be redrawn every ten years.

34. The last redistricting occurred in 2011.

35. In November 2020, Virginia voters approved a new process for devising a new redistricting plan.

36. Voters created the Virginia Redistricting Commission to begin the process as described in Article II, Section 6-A of the Virginia Constitution.

37. Article II, Section 6-A lays out a detailed procedure for developing the required 2021 redistricting plan.

38. There are specific timelines intended to ensure the November 2021 general election will choose all members of the House of Delegates according to a redrawn electoral map in compliance not only with the Virginia Constitution but also the “Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States”, and in addition the “Voting Rights Act of 1965, as amended” along with “judicial decisions interpreting” these enactments. Article II, Section 6 of the Constitution of Virginia.

39. Article II, Section 6 makes clear the new procedure did not alter the usual 10-year procedure, declaring the “Commonwealth shall be reapportioned into electoral districts in accordance with this section and Section 6 in the year 2021 and every ten years thereafter.”

40. Article II, 6-A(g) says that if the Commission “fails to submit a plan for districts by the deadline” set in the law, then the “districts shall be established by the Supreme Court of Virginia.”

41. Article II, 6-A says that if the “General Assembly fails” to take the action required as regards legislation to adopt a redistricting plan, then “the districts shall be established by the Supreme Court of Virginia.”
42. Article II, 6-A(d) says the “Commission shall submit to the General Assembly plans for districts for the Senate and the House of Delegates of the General Assembly no later than 45 days following the receipt of census data.”
43. This state Constitution provision does not specifically define “census data.”
44. The Virginia Redistricting Commission’s (hereinafter “Commission”) official website is [virginiaredistricting.org](http://virginiaredistricting.org).
45. According to the website in a post listing the date of February 12, 2021, the “Census Bureau makes announcement that redistricting data will be delivered to all the states by September 2021.”
46. The post referenced in paragraph #45 has attached an explanation from the Commission.
47. The explanation says the if “the Commission delivers Virginia’s redistricting data on September 30, 2021, the Commission will be required to submit maps of these state legislative districts no later than Sunday, November 14, 2021.”
48. The Commission says the Constitution of Virginia is clear and “for the House of Delegates the new districts are to be implemented for the general election on November 2, 2021.”
49. But the Commission further says that “as noted” in its explanation, the “deadline for the Commission to submit the maps to the General Assembly could be...a full 12 days after the general election.”
50. Given this possibility, the Commission says, “it is for the appropriate authority to determine how the Commission may fulfill its constitutional obligations.”
51. However, while not found on the Commission website, and upon information and belief, it appears the US Census Bureau has told the Commission the necessary census information will be supplied “by August 16<sup>th</sup>” of this year and, according to a news report found at <https://www.wvtf.org/post/redistricting-commission-begin-drawing-districts-august-16>.
52. This same news story quoted a member of the Commission saying “there’s no way” to hold the general election on November 2 using the required redrawn redistricting maps for the House of Delegates.
53. Upon information and belief, the Commission has not sought any guidance from any Court as regards its failure to comply with its Constitutional obligations.
54. Upon information and belief, no “appropriate authority” has provided the Commission with any guidance, at least in terms of such guidance being shared with the people of Virginia.
55. Upon information and belief, those in charge of insuring that the laws of Virginia are faithfully executed and those in charge of overseeing the legality of state elections have decided to conduct the upcoming 2021 General Election for the House of

Delegates that is substantially out of date and would do great harm to the principle of one person, one vote. See Paragraph # 70 *infra*.

56. Moreover, whatever action the Commission may take as regards redistricting must still be submitted to the General Assembly for the state legislature's consideration.

57. Accordingly, upon information and belief, there is no basis for any belief that there is still time to hold the upcoming November 2021 election for all the members of the House of Delegates according to the constitutionally required plan under the federal constitution, the state constitution, or the *Cosner* rationale.

### THE LAW OF THE CASE

58. The Constitution of Virginia requires state legislative districts to be redrawn in a constitutionally acceptable manner in 2021 in time for the House of Delegate elections this November 3, 2021.

59. Since *Reynolds v. Sims*, 377 U.S. 533, 568, the Supreme Court has held that the Equal Protection Clause of the 14<sup>th</sup> Amendment to the United States Constitution applies to state legislative redistricting.

60. The Constitution of Virginia, as referenced herein, likewise says this Clause, as well as the Voting Rights Act of 1965, applies to state legislative redistricting plans. Paragraph 38, *supra*.

61. The federal courts may take judicial notice of the fact that the existing state legislative districts, created in 2011, violate the requisite provision in the U. S. Constitution and the Constitution of Virginia. See *Cosner*.

62. Although the official census bureau numbers are not yet available, Virginia has undergone significant population growth since the last census according to the experts at the University of Virginia. <http://demographics.coopercenter.org/node/7143>.

63. Upon information and belief, the City of Richmond is estimated to have grown by more than 10% since the last census. *Id*.

64. Upon information and belief, the County of Chesterfield is likewise estimated to have grown by more than 10% since the last census.

65. Certain other areas of areas have likewise experienced considerable growth. *Id*.

66. There are five electoral districts in the House of Delegates whose population includes residents of the City of Richmond.

67. Upon information and belief, 4 of these Delegate districts were created as majority/minority districts pursuant to the Voting Rights Act of 1965, as amended.

68. The 4 districts referenced in paragraph # 67 *supra* will therefore be so constructed in whatever redistricting plan is eventually enacted to reapportion the Virginia House of Delegates.

69. Upon information and belief, the 68<sup>th</sup> District, after the 2001 reapportionment, had an approximately 81% Caucasian population. <https://www.vpap.org/offices/house-of-delegates-68/redistricting/>



70. Upon information and belief, the 68<sup>th</sup> District, after the 2011 reapportionment, had an approximately 87% Caucasian population. *Id.*

71. After the 2001 reapportionment, the 68<sup>th</sup> consisted of residents from Chesterfield County and the City of Richmond only.

72. After the 2011 reapportionment, the 68<sup>th</sup> now consisted of resident from the County of Henrico, not merely Chesterfield and Richmond.

73. Upon information and belief, the County of Henrico population has grown roughly 9% since the last census. See paragraph # 62, *supra*.

74. Therefore, upon information and belief, it is reasonable for Plaintiff to believe that the 68<sup>th</sup> District will undergo meaningful change when the appropriate entities responsible for redistricting the House of Delegates finally decide to comply with their federal and constitutional obligations.

75. The 10% threshold discussion in *Harris v Arizona Independent Redistricting Commission*, \_\_\_ U.S. \_\_\_, 136 S. Ct. 1301 (2016) does not apply since the authorities in Virginia have decided not to try to produce any redistricting plan, but rather have simply decided to disobey the clear command of the Equal Protection Clause of the U.S. Constitution and Article II, Section 6, and 6-A of the Virginia Constitution.

76. The failure, without seeking any guidance from either a state or federal court, seemingly violates the Equal Protection Clause's requirement that state officials "make an honest and good faith effort" to discharge their constitutional duties. (See *Harris*, at 1306, quoting *Reynolds*, *supra*.)

77. In 1972, the iconic Henry Howell Jr., a lawyer, Lt. Governor of Virginia, and renowned for his having helped end the rule of the infamous segregationist Byrd Machine through winning both elections and lawsuits, argued a reapportionment case *pro se* before the nine Justices of the Supreme Court of the United States. *Mahan v Howell*, 410 U.S. 315 (1973) (Ms. Mahan then served as the secretary of the Virginia State Board of Elections).

78. Mahan likewise found that state officials responsible for reapportionment had to make a good faith effort to adhere to their responsibilities under the Equal Protection Clause. *Id.* at 324.

79. The seminal legal case in Virginia on the fact pattern in the instant matter is *Cosner v. Dalton*, 522 F. Supp. 350 (1981).

80. This Court decided *Cosner* on August 25, 1981.

81. At the time, the state primary for those seeking to be either the Democratic or Republican nominee for a House of Delegate seat loomed on September 8, 1981.

82. The general election would be held on November 3, 1981.

83. In *Cosner*, the Court found the redistricting plan drawn by the General Assembly violated the Equal Protection Clause of the U.S. Constitution and the redistricting requirements in the Constitution of Virginia. *Cosner*, at 361.

84. As the Court observed, this meant, for all practical purposes, the election of members of the House of Delegates slated for November 3, 2021, meant the winners

would be representing districts declared to be in violation of the federal and state constitutions.

85. As the Court noted, the “1971 (redistricting plan thus in use) is substantially out of date...(a)llowing elections to proceed under the 1971 Act would...effect great harm to the principle of one person, one vote.” Id at 363.

86. The Court considered postponing the House of Delegates elections but found such a postponement would lead to a “significantly lower” vote in the future House of Delegates election than would occur on the November 3 elections for the Governor (there being no reason to delay this vote.) Id.

87. “We believe that a strong and representative turnout for the House election depends on holding it on November 3.” Id.

88. This left no practical choice except holding the General Election pursuant to districts drawn according to the 1971 census data. Id.

89. The Court said “[i]nterim relief using an unconstitutional apportionment plan is permissible, when, as here, necessary election machinery is already in progress for an election rapidly approaching (citations omitted)”. Id.

90. Finding the failure of the appropriate state officials unacceptable, the Court declared these officials should be able to develop a constitutionally acceptable redistricting plan in time for the November 1982 elections.

91. The actions of state officials violated the Equal Protection Clause because “Virginia citizens are entitled to vote as soon as possible for their representatives under a constitutional apportionment plan.” Id at 364.

92. Accordingly, the Court said the only equitable and good faith remedy to the violation of the equal protection rights held by every Virginian required the Court to “limit the terms of the members of the House of Delegates elected in 1981 to one year.” Id.

93. *Cosner* further ordered the state to hold a “new election in 1982 for the House of Delegates under the General Assembly’s new Act or our own plan.” Id.

94. This in turn set in motion another election for the House of Delegates in 1983 as required by the state constitution.

#### **NATURE OF THE ACTION REQUESTED IN THIS CASE**

95. Based on the foregoing analysis, this Court can take Judicial Notice, through Rule 201 of the Federal Rules of Evidence, that the upcoming November election of members of the House of Delegates will be done under an unconstitutional redistricting plan.

96. However, Plaintiff is limiting his inquiry to the crucial issue addressed and decided by *Cosner*: to wit, will those elected to the House of Delegates this November be elected to serve for only a one-year term, or will they be elected to the normal two-year term expiring in 2024?



97. Plaintiff believes this determination should be made, as in *Cosner*, prior to the November 2 General Election date, indeed preferably prior to the casting of the first vote.

**COUNT ONE: VIOLATION OF THE U.S. CONSTITUTION**

98. For purposes of efficiency, Plaintiff incorporates by reference paragraphs 1 through 97 *supra*.

99. The failure to adopt, indeed even attempt to adopt, the required redistricting violates the Equal Protection Clause of the 14<sup>th</sup> Amendment to the Constitution of the United States.

100. The state's plan to hold the upcoming general election for members of the House of Delegates using the existing state legislative districts violates the Equal Protection Clause of the 14<sup>th</sup> Amendment to the Constitution of the United States.

101. Since *Reynolds*, *supra*, the U.S. Supreme Court has made clear Plaintiff's constitutional right to have his vote counted equally in matters of state action, the concept of equal representation for equal numbers of people a "fundamental goal" of our system of laws. See *Wesberry v Sanders*, 376 U.S. (1964).

102. Plaintiff has a right to expect that state officials will ensure he has this equally weighted vote as soon as practical. *Cosner*, paragraph #76, *infra*.

103. The harm to plaintiff caused by any preventable dilution to his vote for representation in the House of Delegates cannot be reasonably denied by Defendants.

104. According to *Cosner*, plaintiff's protected core political rights should allow him to run for the House of Delegates in 2022, not instead being forced to wait until 2023 due to the failure of the appropriate state authorities to adhere to the requirements of the federal constitution.

105. The apparent decision by the appropriate state authorities to avoid having to adhere to *Cosner* raises the inference of this motivation: to wit, an effort albeit to put the selfish political interests of incumbents above the equal protection rights of the people, since it is reasonable to infer the incumbents would prefer to have a two year term, and thus not risk losing their seats in a 2022 election pursuant to the constitutionally required reapportionment plan which might prove more politically challenging.

106. For these reasons, Plaintiff believes the *Cosner* precedent mandates those elected this November are only being elected to a one-year term.

107. Therefore, Plaintiff's rights guaranteed under the United States Constitution, are being violated, inflicting significant harm on his exercise of fundamental core political rights.

108. Plaintiff asks that the Court award such relief as it deems justified, including costs and attorney fees where appropriate.

**COUNT TWO: VIOLATION OF THE CONSTITUTION OF VIRGINIA**

109. For purposes of efficiency, Plaintiff incorporates by reference paragraphs 1 through 108, *supra*.

110. The failure to adopt, indeed even try to adopt, the required redistricting plan violates Article II, Section 6, and 6-A of the Constitution of Virginia.

111. The state's plan to hold the upcoming general election for members of the House of Delegates using the existing state legislative districts created due to the 2011 census violates Article II, Section 6, and 6-A of the Constitution of Virginia.

112. Since *Reynolds, supra*, the U.S. Supreme Court has made clear Plaintiff's constitutional right to have his vote counted equally in matters of state action, the concept of equal representation for equal numbers of people a "fundamental goal" of our system of laws. *Wesberry v Sanders*, 376 U.S. (1964).

113. Plaintiff has a right to expect that state officials will ensure he has this equally weighted vote as soon as practical. *Cosner*, paragraph #76, *infra*.

114. The harm to plaintiff caused by any preventable dilution to his vote for representation in the House of Delegates cannot be reasonably denied by Defendants.

115. According to *Cosner*, plaintiff's protected core political rights should allow him to run for the House of Delegates in 2022, not being forced to wait until 2023 due to the failure of the appropriate state authorities to adhere to the requirements of the state constitution.

116. The apparent decision by the appropriate state authorities to avoid having to adhere to *Cosner* raises the inference of this motivation: to wit, an effort albeit to put the selfish interests of incumbents above the equal protection rights of the people, since it is reasonable to infer the incumbents would prefer to have a two year term, and thus not risk losing their seats in a 2022 election pursuant to the constitutionally required reapportionment plan which might prove more politically challenging.

117. For these reasons, Plaintiff believes the *Cosner* precedent mandates those elected this November are only being elected to a one-year term.

118. Therefore, Plaintiff's rights guaranteed under the Constitution of Virginia are being violated, inflicting significant harm to his fundamental core political rights.

119. Plaintiff asks that the Court award such relief as it deems justified, including costs and attorney fees where appropriate.

**REMEDY**

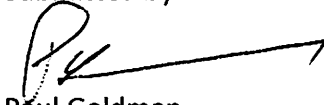
For the reasons stated above, based upon fact and law, comes now the Plaintiff, *pro se*, asking this Honorable court for the following relief:

- (A) Declaring the Commonwealth of Virginia, and those officials expected to protect the integrity of our election laws, to be in violation of the federal and state constitutions requiring the upcoming November 3, 2021, general

election to elect members to the House of Delegates under a constitutionally valid redistricting plan created pursuant to 2021 census data.

- (B) Declaring that those elected to the House of Delegates on November 3, 2021, shall only be elected to one-year terms, such terms to expire one year after they officially begin.
- (C) Ordering the Defendants to ensure that the Commonwealth of Virginia hold new elections for the House of Delegates at on the date of the November 2022 General Election.
- (D) Such other relief as the Court deems required, including reimbursement of costs, attorney fees and other measures where appropriate.

Submitted by:



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