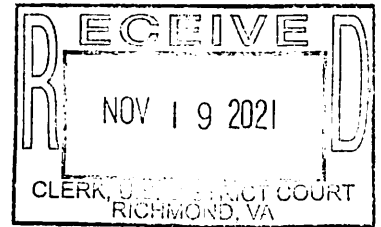


UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF VIRGINIA
 Richmond Division



Paul Goldman)	MOTION FOR TEMPORARY
INJUNCTION)	
Pro se)	
)	
Plaintiff,)	
v.)	Civil Action No. 3:21-cv-420
)	
Robert Brink, Chairman of the State Board)	
of Elections, in his official capacity)	
John O'Bannon, Vice Chair of the State)	
Board of Elections, in his official capacity)	
Jamilah D. LeCruise, Secretary of the State)	
Board of Elections, in her official capacity)	
Christopher Piper, Commissioner of the)	
State Board of Elections, in his official)	
capacity)	
)	
Defendants.)	

MOTION FOR A TEMPORARY INJUNCTION

Now comes Plaintiff Paul Goldman, *pro se*, requesting a Temporary Injunction be issued preventing the Defendant members of the State Board of Election from using the power granted them in their representative capacities to have the State Board of Elections issue Certificates of Election indicating those elected to the House of Delegates at the November 2, 2021, general election have the right to serve a two-year term.

ARGUMENT IN SUPPORT OF THE MOTION

1. The State Board of Elections issues a Certificate of Election to those who won seats in the House of Delegates on the general election held this past November 2, 2021. Va. Code Section 24.2 680.
2. Upon information and belief, such Certificates will be provided to said House members on or before the first day of the upcoming 2022 Session of the House of Delegates.

3. The gravamen of the instant case, as clearly laid out by Plaintiff in his original complaint and the current Amended Complaint, is whether those elected this past November 2, 2021 to the 100 seats in the House of Delegates are entitled to a two year term or whether instead, based on the rationale and remedy in *Cosner v Dalton*, 52 F. Supp. 350, (E.D. Va 1981), those elected to each of these 100 seats only get a one year term, such seats required to be again filled in 2022 in new constitutionally approved districts pursuant to the 2020 U.S. Census. Amended Complaint, *paragraph 118*.

4. In *Winter v National Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008), the U.S. Supreme Court laid out a 4-prong test that must be satisfied by a Plaintiff seeking a temporary injunction.

5. "A Plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter, supra*, at 374.

6. The U.S. Court of Appeals for the 4th Circuit has adopted the *Winter* 4 prong test. See, e.g., *Real Truth About Obama v Federal Election Commission*, 575 F. 3d 342, 345 (4th Cir. 2009).

7. As to the first (1) prong, the fact the state of Virginia held the recently completed general election for the House of Delegates under districts drawn according to the 2010 U.S. Census, as opposed to the 2020 U.S. Census is an adjudicative fact this Court can take judicial notice of pursuant to Rule 201 of the Federal Rules of Evidence.

8. As to the first (1) prong, *Cosner supra* said holding such an election under the old, now obsolete 2010 Census when there has been significant population changes in the 10 years since that Census does great harm to the one person one vote principal encapsulated in the 14th Amendment to the Constitution of the United States as found in *Reynolds v Sims*, 377 U. S. 533 (1964). *Cosner, supra*, at 363.

9. As to the first (1) prong, that such population changes have occurred in Virginia these past 10 years, with some areas of the Commonwealth having grown significantly in population, while other areas have lost population, thus causing great deviations in populations between the existing old House districts, is an adjudicative fact proven by the U.S. Census figures delivered to the state on August 12, 2021, such Census figures long now in the possession of the Defendants or available at ready access. Amended Complaint, *paragraph 87*.

10. As to the first (1) prong, the population of Plaintiff's House of Delegate District # 68 is over 19% greater than House of Delegate District # 3, the lowest population District at the time of the filing of the Amended Complaint (House of Delegates District # 75 is now smaller in population than House District # 3 after the reallocation of the prison population). Amended Complaint, *paragraph 59*.

11. As to the first (1) prong, the population of the most populated House of Delegates District, House of Delegates District # 87, is 130, 082. Amended Complaint, *paragraph 38*.

12. As to the first prong, the population of House District #68 was approximately 82% greater than House District # 3, at the time the least populated House District (House District # 75 now has an even lesser population as previously indicated).

Amended Complaint, *paragraph 39*.

13. The maximum population deviation between the least populated district and the most populated district in a state legislative plan crafted in a reappointment year for a constitutionally valid redistricting may approach 10%, provided the state body creating the plan made a good faith effort to craft districts with the least possible deviation. See, e.g., *Harris v Arizona Independent Redistricting Commission*, 136 S. Ct. 1301, 1307, 588 U.S. (2016).

14. As to the first (1) prong, there is no authority in the Constitution of Virginia for the state to have held the recently completed 2021 general election for the House of Delegates pursuant to the old districts in a reapportionment year, as the Constitution of Virginia clearly states said the general election for the House of Delegates conducted this past November 2 "shall" be held under new districts crafted pursuant to the 2020 U.S. Census. Art. II, sec. 6.

15. As to the first (1) prong, should the Court find the appropriate entity or entities of the state of Virginia responsible for reapportionment in 2021 not have the necessary U.S. Census data to craft said new districts, this finding might serve to justify the inability of state leaders to perform their duties under the State Constitution in that regard, but it would not authorize state leaders to hold said election under the outdated existing legislative districts without first seeking a Court order. See *Cosner, supra*.

16. Since the passage of *Reynolds, supra*, the state of Virginia has never held the general election for the House of Delegates required in a reappointment year using the outmoded old districts, nor, upon information and belief, ever claimed such constitutional authority. See, *Cosner, supra*.

17. Accordingly as to the first (1) prong, the unconstitutionality of using the old districts in a reappointment year has been clear since 1981, and the unconstitutional dilution of Plaintiff's vote likewise clear since the seminal Virginia redistricting cases of *Davis v Mann*, 377 U.S. 678 (1964)(Davis was a member of the Virginia State Board of Elections), and *Mahan v. Howell*, 410 U.S. 315 (1973)(Mahan likewise a member of the Va. State Board of Elections).

18. Therefore, Plaintiff is likely to succeed on the merits and thus satisfies the first prong of *Winter's 4* prong test.

19. As for the second (2) prong, any issuance of an official document such as these Certificates, such document related to a key issue in the instant matter, when such document may be used as evidence against Plaintiff by Defendants, inflicts irreparable harm on the Plaintiff.

20. As for the second (2) prong, the term of those elected to the House of Delegates this past November does not start until early next January as defined by the Constitution of Virginia. See Article II.

21. As for the second (2) prong, since the terms at issue do not start until early next year, the position of defendants in this instant matter is not harmed by the requested temporary injunction, as there is ample time to hold a hearing on a permanent injunction before the terms at issue would start.

22. As for second (2) prong, given that Plaintiff is asserting his right to have a constitutionally configured House of Delegates as soon as possible, the issuance of said Certificates is contrary to that interest and thus, as a matter of law, makes it harder for him to win his case, thus causing him an irreparable harm in pursuit of his constitutional rights. Paragraph 31, *infra*.

23. Accordingly, as for the second (2) prong, Plaintiff will suffer certain irreparable harm should such Certificates be issued, and thus Plaintiff has satisfied the second prong of the four prong *Winter* test.

24. As for the third (3) prong, there is no harm to the Defendants in this matter if a Temporary Injunction is granted preventing the issuance of said Certificates of Election saying those elected to the House of Delegates this past November 2 have a two-year term.

25. As for the third (3) prong, since the terms of those elected to House this past November will not start until early next January, there can be no harm to Defendants if the Motion by Plaintiff is granted. Paragraph 14, *supra*.

26. As for the third (3) prong, given the *Cosner* decision, and given further that the *Cosner* decision was added to the state constitution by the voters last year, the issuance of such Certificates stating the term is two years is inconsistent with the rationale and remedy of *Cosner*, a federal court decision that remains in force and effect in the 4th Circuit of the United States.

27. As for the third (3) prong, only Plaintiff suffers any damage should the Certificates be issued while the instant matter is in its current litigation posture before this Court.

28. As for the third (3) prong, the issuance of Certificates claiming the terms are for two years given the fact the Counsel for the Defendants, the Attorney General of Virginia, seemingly had an obligation to instruct the State Board of Elections to follow the *Cosner* decision despite the wishes of the people expressed in the language added to the Constitution of Virginia last year. See Article II.

29. Accordingly, as to the third (3) prong, Defendant has demonstrated that the balance of the equities supports weighs heavily in his favor, thus satisfying the third prong of the *Winter* test.

30. As for the fourth (4) prong, *Cosner* has been cited favorably in subsequent cases. See, e.g., the opinion by then District Court Judge Roger Gregory in *Harris v McCrory*, 156 F. Supp. 3d 600, 627 (M.D. North Carolina 2016).

31. As for the fourth (4) prong, as stated in *Cosner*, "Virginia's citizens are entitled to vote as soon as possible for their representatives under a constitutional apportionment plan." *Cosner*, *supra* at 364.

32. As for the fourth (4) prong, therefore any act by Defendants to delay such constitutional right, or any act that that could result in public confusion as to their possessing such constitutional right, is not contemplated by the state law assigning the duties to the State Board of Election. Va. Code Section 24.-103.

33. As for the fourth (4) prong, by issuing said Certificates, defendants are acting contrary to the public interest, since based on *Reynolds* and its progeny, the people are entitled to have a constitutionally configured House of Delegates as soon as possible. *Cosner, supra*, at 364.

34. As for the fourth (4) prong, such state action, in contravention of *Reynolds* and its progeny, in defiance of *Cosner*, does great harm not merely to the public's interest as regards their voting rights, but also risks damaging the public's view of the judicial system if state officers can in effect decide to thumb their nose at federal court decisions such as *Cosner*.

35. Accordingly, as for the fourth (4) prong, the Plaintiff has shown the public interest is best served by temporarily enjoining the issuance of said Certificates.

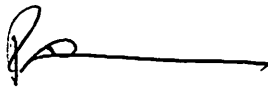
36. Therefore, having satisfied the four prongs of *Winter*, Plaintiff has met the burden necessary for the Court to grant his motion for a Temporary Injunction.

37. Defendants Brink, O'Bannon, and LeCruise, the top officers of the Virginia State Board of Elections, the Chair, the Vice Chair, and Secretary, respectively.

REMEDY

Now, having met the burden required, Plaintiff asks the Court to set a hearing on this Motion for a Temporary Injunction at the earliest date possible.

Submitted by,



Paul Goldman

Plaintiff

Pro se

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CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2021, I filed by mail this Motion For A Temporary Injunction with the Clerk of the Court. I true copy has also been sent, via first class mail, to:

BRITTANY RECORD

Calvin Brown

Carol Lewis

Brittany McGill

202 North 9th Street

Richmond, VA 23219

Submitted,



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