

THE PARTIES

1. Plaintiffs are citizens of the Commonwealth of Virginia, who live in legislative districts that have been drawn in violation of the Article II, § 6 of the Virginia Constitution.

2. Plaintiff Rima Ford Vesilind is a citizen of the United States and a registered voter in the Commonwealth of Virginia. She currently resides in House of Delegates District 13.

3. Plaintiff Arelia Langhorne is a citizen of the United States and a registered voter in the Commonwealth of Virginia. She currently resides in House of Delegates District 22.

4. Plaintiff Sharon Simkin is a citizen of the United States and a registered voter in the Commonwealth of Virginia. She currently resides in House of Delegates District 48.

5. Plaintiff Sandra D. Bowen is a citizen of the United States and a registered voter in the Commonwealth of Virginia. She currently resides in House of Delegates District 72.

6. Plaintiff Robert S. Ukrop is a citizen of the United States and a registered voter in the Commonwealth of Virginia. He currently resides in House of Delegates District 72.

7. Plaintiff Vivian Dale Swanson is a citizen of the United States and a registered voter in the Commonwealth of Virginia. She currently resides in House of Delegates District 88.

8. Plaintiff H.D. Fiedler is a citizen of the United States and a registered voter in the Commonwealth of Virginia. She currently resides in Senate District 19.

9. Plaintiff Eric E. Amateis is a citizen of the United States and a registered voter in the Commonwealth of Virginia. He currently resides in Senate District 21.

10. Plaintiff Jessica Bennett is a citizen of the United States and a registered voter in the Commonwealth of Virginia. She currently resides in Senate District 21.

11. Plaintiff Gregory Harrison is a citizen of the United States and a registered voter in the Commonwealth of Virginia. He currently resides in Senate District 28 and House of Delegates District 88.

12. Plaintiff Michael Zaner is a citizen of the United States and a registered voter in the Commonwealth of Virginia. He currently resides in Senate District 28 and House of Delegates District 88.

13. Plaintiff Linda Cushing is a citizen of the United States and a registered voter in the Commonwealth of Virginia. She currently resides in Senate District 29.

14. Plaintiff Sean Sullivan Kumar is a citizen of the United States and a registered voter in the Commonwealth of Virginia. He currently resides in Senate District 30.

15. Plaintiff Dianne Blais is a citizen of the United States and a registered voter in the Commonwealth of Virginia. She currently resides in Senate District 37.

16. Hereinafter, the House and Senate Districts enumerated in paragraphs 2-15 will be referred to as the “Challenged Districts.”

17. Defendants are: the Virginia State Board of Elections; its officers Chairman, James B. Alcorn; Vice-Chair, Clara Belle Wheeler; and Secretary of the State Board of Elections, Singleton B. McAllister; and the State Department of Elections; and its Commissioner Edgardo Cortés.

18. Defendants the Virginia State Board of Elections and Virginia State Department of Elections are responsible for the regulation of Virginia elections, including issuing rules, regulations and instructions regarding the conduct of elections throughout the Commonwealth. Va. Code § 24.2-103.

19. Defendants James B. Alcorn; Clara Belle Wheeler; Singleton B. McAllister; and Edgardo Cortés are sued in their respective official capacities as Chairman, Vice-Chair, and Secretary of the State Board of Elections and Commissioner of the State Department of Elections. In their official capacities, they are responsible for the regulation of Virginia elections, including issuing rules, regulations and instructions regarding the conduct of elections throughout the Commonwealth. Va. Code § 24.2-103.

20. This is a suit for declaratory judgement and other equitable relief, seeking a judgment that the State House of Delegates and Senate districting plans, and specifically House of Delegates districts 13, 22, 48, 72, and 88, and Senate districts 19, 21, 28, 29, 30, and 37 violate the Constitution of the Commonwealth of Virginia. Plaintiffs seek to enjoin the use of the House of Delegates and Senate district plans for future elections, and such other equitable relief as the Court deems appropriate.

VENUE AND JURISDICTION

21. This Court has jurisdiction to hear plaintiffs claim pursuant to Va. Code § 8.01-184 and § 8.01-620.

22. Venue is proper in the City of Richmond pursuant to Va. Code § 8.01-261.

INTRODUCTION

23. Article II, §6 of the Virginia Constitution dictates three and only three requirements that the legislature must follow when drawing legislative districts after each decennial census. Districts must be 1) contiguous; 2) compact; and 3) as nearly equal in population as is practical.

24. These three requirements--in addition to the federal “one person, one vote” and Voting Rights Act (VRA) requirements--must occupy a special status with unique authority over the legislature. While the legislature may consider other rational public policy considerations, the mandates of the United States and Virginia Constitutions can never be subordinated to those considerations. Yet that is precisely what occurred. Both Constitutions are the supreme law of the land over which they govern and must be treated as such throughout the redistricting process.

25. This suit arises under Article II, § 6 of the Virginia Constitution and alleges that 1) when the General Assembly drew the 2011 House and Senate district plans (herein called the “current plans” or the “adopted plans”), it did not make a good-faith effort to draw compact districts and instead subordinated the constitutional requirement of compactness to other political and policy concerns; and 2) numerous districts in the adopted plans are not in fact compact as required by the Virginia Constitution.

FACTUAL ALLEGATIONS

26. Article II, §6 of the Virginia Constitution controls the redistricting process in the Commonwealth of Virginia. It states: “Members of the House of Representatives of the United States and members of the Senate and of the House of Delegates of the General Assembly shall be elected from electoral districts established by the General Assembly. Every electoral district shall be composed of contiguous and compact territory and shall be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district. The General Assembly shall reapportion the Commonwealth into electoral districts in accordance with this section in the year 2011 and every ten years thereafter.”

27. The requirement that districts be drawn of compact territory first appeared in the Virginia Constitution with the ratification of the 1851 Constitution. It has remained a mandate written into the 1864 Constitution, the 1869 Constitution, the 1902 Constitution and remains today in the modern Virginia Constitution ratified in 1971.

28. In the authoritative treatise on Virginia's current constitution, renowned professor A.E. Dick Howard wrote that the compactness requirement "is meant to preclude at least the more obvious forms of gerrymandering." 1 A.E. Dick Howard, *Commentaries on the Constitution*, 415 (1974).

29. Twenty-six other states also have compactness requirements in their constitutions. Among these states "compactness is almost universally recognized as an appropriate anti-gerrymandering standard." *Schrage v. State Bd. Of Elections*, 430 N.E.2d 483, 486 (Ill. 1981) (internal quotation marks and citations omitted). But the compactness standard can only restrain gerrymandering if the courts establish and enforce constitutional restraints on the legislative discretion that is exercised to elevate partisan gerrymandering above constitutional limitations.

30. From September 2010 to April 2011 the House of Delegates Redistricting Subcommittee held seven hearings around the state to offer opportunities for the public to express their concerns and desires regarding the upcoming redistricting. Likewise, the Senate Redistricting Subcommittee held three such public hearings. The two subcommittees also held eight joint public hearings. In these hearings the committees were repeatedly urged by the public to respect and follow the requirements of the Virginia Constitution, including specifically compactness.

31. On March 22, 2011 the Virginia College and University Redistricting Competition (“the Competition”) announced its winners. The winning maps, as well as every other map submitted for the competition, were more compact than the adopted plans despite being drawn by students rather than professional politicians and paid redistricting consultants. Compactness, here, is measured according to the so-called Schwartzberg measure of compactness, one of the generally recognized mathematical standards for compactness as well as one of the three measures used by the Virginia Attorney General’s Office in its submission to the Department of Justice to pre-clear the plans as compliant with § 5 of the Voting Rights Act. On information and belief the result would be the same if either of two other generally accepted mathematical measures (the Reock measure or the Polsby-Popper measure) employed by the Attorney General’s Office in its submission were used.

32. On April 4, 2011 Delegate Joseph D. Morrissey introduced HB 5003, the Competition winning House of Delegates map (competition division) drawn by students at George Mason University. HB 5003 was referred to the House Committee on Privileges & Elections but despite the plan being demonstrably more compact than the adopted plan and despite meeting all other United States and Virginia constitutional requirements, it received no consideration, no hearing, and no vote in the committee.

33. On April 5, 2011 Senator John C. Miller introduced SB 5002 the Competition winning Senate map (commission division) drawn by students at the College of William & Mary. The plan was referred to the Senate Committee on Privilege & Elections and received a hearing on April 5, 2011. Despite being demonstrably more compact than the adopted plan and despite meeting all other United States and Virginia constitutional requirements, SB 5002 never received a vote by the committee.

34. On April 1, 2011 Governor Bob McDonnell's Independent Bipartisan Advisory Commission on Redistricting completed its work and recommended to the General Assembly two plans for the House of Delegates and two plans for the Senate, each of which was more compact than the adopted counterpart plan and met all other United States and Virginia constitutional requirements.

35. None of the commission's proposed plans were introduced or considered by the House of Delegates or Senate.

36. Instead of considering these options that paid greater fidelity to the constitutional requirement of compactness and met all other constitutional requirements, the General Assembly presented Governor McDonnell with HB 5001, which he promptly vetoed on April 15, 2011.

37. In the letter to the House of Delegates accompanying this veto, Governor McDonnell specifically complained about the decline in compactness in the Senate map from the benchmark map created in 2001.

38. After making relatively minor changes to the House of Delegates map and failing to address the compactness issues raised by the Governor concerning the Senate map, the General Assembly presented the current plans to Governor McDonnell as HB 5005 on April 29, 2011 and the Governor signed the bill the same day.

39. On May 10, 2011 the Attorney General's office sent Virginia's submission to the United States Department of Justice requesting preclearance of the plans under § 5 of the Voting Rights Act. The Attorney General's submission measured only average compactness, not the compactness of any individual district. Just as average population is insufficient to comply with the one person, one vote principle, average compactness is insufficient to comply with the compactness requirement. The constitutional requirements apply to each district separately.

40. On information and belief, neither the delegates, senators, nor their aides responsible for drawing the legislative districts in the adopted plans gave more than *pro forma* consideration to the issue of compactness. They adopted no measure by which to test the compactness of the individual districts, nor any standard to bridle deviations as they displayed blatant partisanship in carving districts into Rorschach-like shapes. During the drafting process up to and including final passage of HB 5005, the degree of compactness was rarely, if ever, determined for individual districts and other nonconstitutional considerations eclipsed compactness in importance in creating the legislative districts. In fact, significant effort was expended to ensure that districts were drawn to favor partisan interests and to protect particular incumbent delegates and senators. Outside political consultants from the national parties were even consulted to further partisan ends, while compactness was ignored.

41. These political criteria were given far greater consideration than the Constitution's compactness mandate, despite the fact that neither partisan advantage nor incumbency protection is among the constitutionally compelled criteria. There was no attempt to consider compactness in any meaningful way with the result that the Challenged Districts are not within any acceptable objective measures of compactness.

42. To the extent that compactness was even referenced, the General Assembly merely paid lip service to the requirement by simply stating that the adopted plans complied with the Virginia Supreme Court's opinions in *Jamerson v Womack*, 244 Va. 506 (Va. 1992) and *Wilkins v. West*, 264 Va. 447 (Va. 2002). But these cases do not announce any standard for measuring compactness but instead announce a level of deference to the legislature's employment of non-constitutional "traditional" redistricting considerations to justify the Challenged Districts. However, when the legislature fails to adopt any standards to measure

compactness, displays an indifference to the elevated constitutional status of compactness and employs no good faith-effort to meet this constitutional requirement, the duty of constitutional fidelity trumps any judicial standard of deference to legislative judgment. Because any consideration of compactness was virtually ignored and the resulting districts were objectively unreasonable, the manner in which the General Assembly reconciled the compactness requirement with other factors was clearly erroneous, arbitrary and wholly unwarranted.

43. Beyond the failure to make a good-faith effort to draw districts compactly, the resulting districts themselves are an affront to the very idea of compactness, as is detailed below with regard to each of the Challenged Districts.

44. The courts of Virginia have recognized manageable tests for both of the Virginia Constitution's other mandatory redistricting criteria--contiguity and equal population. Federal courts have done likewise for the "one person, one vote" requirement and the Voting Rights Act.

45. Like equal population, exactness is not to be expected in the compactness of districts, *Brown v. Saunders*, 159 Va. 28 (Va. 1932). However, as in the realm of equal population, significant deviations in compactness require justification by reasonable and neutrally applied criteria. Moreover, outstanding deviations from compactness may be so large as to be categorically unreasonable and thus unconstitutional--such as the districts challenged here--unless absolutely necessary to comply with some other constitutionally compelled criteria, which is not the case here.

46. As a co-equal requirement in the Virginia Constitution to equal population and contiguity, legislative districts must be tested against the compactness requirement with equal clarity and rigor.

INDIVIDUALLY CHALLENGED DISTRICTS

A. HOUSE OF DELEGATES

47. House District 13 (see Exhibits 1 and 1A) begins at the western border of Prince William County and extends like an arm across the county including the Haymarket area. Continuing east, the district reaches around Manassas to include Manassas Park City and concludes just to the west of the Occoquan Reservoir. House District 13 is both visually noncompact and scores poorly on all three of the widely accepted mathematical measures of compactness that the Attorney General's office referenced in its submission for preclearance to the United States Department of Justice. The configuration of House District 13 was included in the current plans despite myriad possible configurations that would be substantially more compact while equally comporting with the other constitutionally required criteria.

48. House District 22 (see Exhibits 2 and 2A) begins to the west including a section of Franklin County and continues east to include the southern portion of Bedford County. A narrow arm then reaches into Campbell County to connect the district to the eastern section of the city of Lynchburg where the district includes part but not all of the city of Lynchburg. The district contains parts of three counties and one city, but includes no whole counties or cities. Despite Lynchburg's population of 75,568 approaching the ideal population of one complete House District (80,010), House District 22, along with House District 23, split the second largest city in the western part of the Commonwealth into two districts along noncompact lines. House District 22 is both visually noncompact and scores poorly on all three of the widely accepted mathematical measures of compactness that the Attorney General's office referenced in its submission for preclearance to the United States Department of Justice. The configuration of House District 22 was included in the current plans despite myriad possible configurations that

would be substantially more compact while equally comporting with the other constitutionally required criteria.

49. House District 48 (see Exhibits 3 and 3A) begins to the west in the McLean area of Fairfax County and drags east through Arlington County along the northern border of the state all the way to the City of Alexandria's border with a jagged southern border arbitrarily dividing up the densely populated neighborhoods of northern Arlington County. House District 48 is both visually noncompact and scores poorly on all three of the widely accepted mathematical measures of compactness that the Attorney General's office referenced in its submission for preclearance to the United States Department of Justice. The configuration of House District 48 was included in the current plans despite myriad possible configurations that would be substantially more compact while equally comporting with the other constitutionally required criteria.

50. While House District 72 (see Exhibits 4 and 4A) is entirely within the borders of Henrico County, it is a jagged, U-shaped district surrounding and interlocking with House District 73 like a piece of a poorly designed puzzle. House District 72 is both visually noncompact and scores poorly on all three of the widely accepted mathematical measures of compactness that the Attorney General's office referenced in its submission for preclearance to the United States Department of Justice. The configuration of House District 72 was included in the current plans despite myriad possible configurations that would be substantially more compact while equally comporting with the other constitutionally required criteria.

51. House District 88 (see Exhibits 5 and 5A) begins to the northwest including a claw-shaped arm in Fauquier County. The district continues south and east to include a bizarrely shaped portion of Stafford County, then includes the northern portion of Spotsylvania County

and the western part of Fredericksburg City. House District 88 includes parts of three counties and part of a major city, but includes no whole county or city. House District 88 is both visually noncompact and scores poorly on all three of the widely accepted mathematical measures of compactness that the Attorney General's office referenced in its submission for preclearance to the United States Department of Justice. The configuration of House District 88 was included in the current plans despite myriad possible configurations that would be substantially more compact while equally comporting with the other constitutionally required criteria.

B. SENATE

52. Senate District 19 (see Exhibits 6 and 6A) begins to the west by including part of Wythe County and part of Carroll County. It continues east encompassing Floyd County, part of Montgomery County, part of Roanoke County, including the city of Salem and circling three quarters of the way around Roanoke City. The district then continues east including part of Franklin County and part of Bedford County. Throughout this jagged journey through southwestern Virginia, Senate District 19 also divides the towns of Wytheville, Hillsville, Christiansburg, and Rocky Mount. In total Senate District 19 includes parts of six different counties and only one whole county (Franklin County). Senate District 19 is both visually noncompact and scores poorly on all three of the widely accepted mathematical measures of compactness that the Attorney General's office referenced in its submission for preclearance to the United States Department of Justice. The configuration of Senate District 19 was included in the current plans despite myriad possible configurations that would be substantially more compact while equally comporting with the other constitutionally required criteria.

53. Senate District 21 (see Exhibits 7 and 7A) includes all of Giles County in southwest Virginia and part of Montgomery County, splitting the town of Christiansburg. The

district then extends an arm along the northern border of Roanoke County and reaches down to grab the city of Roanoke like the ball at the end of a chain. Senate District 21 is both visually noncompact and scores poorly on all three of the widely accepted mathematical measures of compactness that the Attorney General's office referenced in its submission for preclearance to the United States Department of Justice. The configuration of Senate District 21 was included in the current plans despite myriad possible configurations that would be substantially more compact while equally comporting with the other constitutionally required criteria.

54. Senate District 28 (see Exhibits 8 and 8A) begins to the north near the northern tip of Prince William County and moves south along the Prince William County line through a section of the district less than one-fifth of a mile wide. The district then continues south through part of Stafford County and extends arms both east and west just north of the City of Fredericksburg. To the west, the district includes part of Spotsylvania County. To the east, the district continues to include parts of King George and Westmoreland counties. In total, Senate District 28 includes parts of five different counties and zero complete counties. Senate District 28 is both visually noncompact and scores poorly on all three of the widely accepted mathematical measures of compactness that the Attorney General's office referenced in its submission for preclearance to the United States Department of Justice. The configuration of Senate District 28 was included in the current plans despite myriad possible configurations that would be substantially more compact while equally comporting with the other constitutionally required criteria.

55. Senate District 29 (see Exhibits 9 and 9A) is an Italy-like boot-shaped district beginning to the north with a shoestring extension that approaches the Prince William County line. The district then includes Manassas City and Manassas Park City and a narrow leg

extending east until the foot of the district approaches Occoquan Bay and the Potomac River in the Dale City area, where it is surrounded on three sides by Senate District 36. Senate District 29 is both visually noncompact and scores poorly on all three of the widely accepted mathematical measures of compactness that the Attorney General's office referenced in its submission for preclearance to the United States Department of Justice. The configuration of Senate District 29 was included in the current plans despite myriad possible configurations that would be substantially more compact while equally comporting with the other constitutionally required criteria.

56. Senate District 30 (see Exhibits 10 and 10A) begins to the north in Arlington County, where it divides the community of Pentagon City in two pieces. It then moves south encompassing part but not all of the city of Alexandria and progressing into Fairfax County. In Fairfax County the district connects parts of the Hayfield area to the rest of the district by an extension less than one-fifth of a mile wide and follows a narrow path along shores of the Potomac River, including within the district parts but not all of Mount Vernon and Fort Belvoir. Senate District 30 is both visually noncompact and scores poorly on all three of the widely accepted mathematical measures of compactness that the Attorney General's office referenced in its submission for preclearance to the United States Department of Justice. The configuration of Senate District 30 was included in the current plans despite myriad possible configurations that would be substantially more compact while equally comporting with the other constitutionally required criteria.

57. Senate District 37 (see Exhibits 11 and 11A) is shaped like a serpent slithering in between the other districts throughout Fairfax County. The tail of the district begins around the Chantilly area along the Fairfax County/Loudoun County border, and curls south around the

Centreville area. The district then proceeds northeast before sliding south through the Fairfax Station area and continuing east to include the Burke Centre and Burke areas. The district then heads north through a neck a quarter of a mile wide to include parts of the Annadale area. Senate District 37 is both visually noncompact and scores poorly on all three of the widely accepted mathematical measures of compactness that the Attorney General's office referenced in its submission for preclearance to the United States Department of Justice. The configuration of Senate District 37 was included in the current plans despite myriad possible configurations that would be substantially more compact while equally comporting with the other constitutionally required criteria.

CAUSE OF ACTION

58. Plaintiffs allege and incorporate by reference all preceding paragraphs.

59. The adopted plans clearly violate the compactness clause of Art. II, § 6 of the Virginia Constitution.

60. The Virginia General Assembly failed to undertake a good-faith effort to draw districts compactly. The General Assembly unlawfully and unnecessarily subordinated compactness to policy considerations that lack constitutional authority. In striving to protect incumbents and gain partisan advantage, the constitutional requirement that every district be compact was rarely, if ever, considered and specifically was never considered for the Challenged Districts.

61. House districts 13, 22, 48, 72, and 88, and Senate districts 19, 21, 28, 29, 30, and 37 are facially noncompact because they fail to meet objective standards for compactness, and such noncompactness resulted from a process that was clearly erroneous, arbitrary and wholly unwarranted.

62. As measured by quantitative and qualitative tests, objective and reasonable persons could not reach any conclusion but that the Challenged Districts do not meet the Virginia Constitution's compactness requirement.

63. The Virginia General Assembly abused its discretion in a grave, palpable, and unreasonable way, which is so repugnant to the constitutional requirement of compactness that the Plaintiffs have lost the benefit of their constitutional right to live and vote in a compact district.

64. The validity of the legislature's reconciliation of various criteria that the legislature has the discretion to weigh is not fairly debatable, but is instead clearly erroneous, arbitrary, and unwarranted. The constitutional requirement of compactness was not reconciled with anything. It was just ignored.

65. Moreover, the extent of the noncompactness in House districts 13, 22, 48, 72, and 88, and Senate districts 19, 21, 28, 29, 30, and 37 is unnecessary to meet any other state or federal constitutional requirement and therefore cannot be justified by other constitutional requirements.

66. Accordingly, House of Delegates Districts 13, 22, 48, 72, and 88, and Senate Districts 19, 21, 28, 29, 30, and 37 violate the compactness clause of the Virginia Constitution.

67. Plaintiffs have a constitutional right to the benefits of all the protections of the Virginia Constitution which are designed to provide neutral principles to guide the drawing of legislative districts and afford citizens throughout the Commonwealth uniformity in the creation of the districts from which their elected representatives are chosen.

68. Plaintiffs have no adequate remedy at law and a failure to enjoin the use of the adopted voting districts will violate the Plaintiffs' constitutional rights to fair representation in the General Assembly, causing irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray:

(1) That this Court enter judgement declaring House of Delegates Districts 13, 22, 48, 72, and 88, and Senate Districts 19, 21, 28, 29, 30, and 37 in violation of the Constitution of the Commonwealth of Virginia and thus of no further effect insofar as they purport to establish legislative districts.

(2) That this Court enter judgement declaring the adopted plans in violation of the Constitution of the Commonwealth of Virginia and thus of no further effect insofar as they purport to establish legislative districts.

(3) That this Court issue a permanent injunction enjoining Defendants from giving effect to the boundaries of the Challenged Districts, including an injunction barring Defendants from conducting any future primary or general elections for the Virginia House of Delegates or Virginia Senate based on the Challenged Districts.

(4) That this Court enter such further orders as this Court deems necessary to ensure the creation and implementation of House of Delegates and Senate district plans which comport with the compactness clause of the Virginia Constitution.

(5) That this Court retain jurisdiction of this action until districting plans are in place that comply with the compactness clause of the Virginia Constitution.

(6) That this Court award Plaintiffs their attorneys' fees and costs in accordance with Va. Code § 8.01-190 and further relief as this Court deems just and proper.

Dated: September ____, 2015

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