

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION**

**ARELIA S. LANGHORNE
HOWARD M. BUTLER**

Plaintiffs,

v.

CIVIL ACTION NO.

**VIRGINIA STATE BOARD OF
ELECTIONS; and**

**CHARLIE JUDD, KIMBERLY
BOWERS, and DON PALMER,
in their official capacities as
Officers of the Virginia State
Board of Elections; and**

**ROBERT McDONNELL, in his
official capacity as Governor
of the Commonwealth of Virginia**

Defendants.

COMPLAINT

NATURE OF THE CASE

1. This is a suit challenging the Virginia House of Delegates redistricting plan for House of Delegates Districts 22 and 23 enacted by the Virginia General Assembly in 2011. As set forth below, these plans discriminate against minority voters and constitute racial gerrymandering in violation of the Fourteenth and Fifteenth Amendments to the U.S. Constitution, Article II, section 6 of the Virginia Constitution, and section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the claims asserted pursuant to 42 U.S.C. § 1983 and 1973, and 28 U.S.C. §§ 1331, 1343 and 1357. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).

3. A three-judge court is requested pursuant to 28 U.S.C. § 2284, since this complaint seeks injunctive relief and a judgment on the merits in a challenge to the apportionment of a statewide legislative body.

THE PARTIES

4. Plaintiff Arelia S. Langhorne is an African-American resident of the independent City of Lynchburg, Virginia, whose residence is located in voting Ward 2 of the City, which is now in Virginia House of Delegates District 22.

5. Plaintiff Howard M. Butler is an African-American resident of the independent City of Lynchburg, Virginia, whose residence is located in voting Ward 1 of the City, which is now in Virginia House of Delegates District 23.

6. Both plaintiffs are citizens of the United States and qualified voters in the Commonwealth of Virginia.

7. Both plaintiffs voted in the 2011 elections for members of the Virginia House of Delegates, and intend to vote in the 2013 election for the Virginia House of Delegates.

8. Defendant Virginia State Board of Elections is the state agency responsible for the overall administration of elections in the Commonwealth.

9. Defendants Charlie Judd, Kimberly Bowers, and Don Palmer are respectively the Chair, Vice-Chair, and Secretary of the Virginia State Board of Elections and are sued in their official capacities. The members of the Board of Elections are appointed by the governor of Virginia.

10. Defendant Robert McDonnell is the Governor of the Commonwealth of Virginia and is sued in his official capacity as the chief executive officer of the State.

FACTS COMMON TO ALL CAUSES OF ACTION

11. Article II, section 6 of the Virginia Constitution directs the Virginia General Assembly to establish electoral districts for members of the Virginia House of Delegates in the year 2011 and every ten years thereafter. The Virginia Constitution further requires that "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." Va. Const., Art. II, § 6.

12. In establishing electoral districts, the Governor and the Virginia General Assembly have a duty to comply with the U.S. Constitution and section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973, *et. seq.*

13. As part of the 2011 redistricting process, Defendant McDonnell promulgated Executive Order No. 31 (2011), establishing an Independent Bipartisan Advisory Commission of Redistricting ("IBARC") tasked with facilitating citizen input into the redistricting process by holding hearings,

developing proposed redistricting plans, and analyzing and recommending adoption of plans submitted by colleges and universities and other “stakeholders” in the voting public of Virginia. Executive Order 31 is attached as Exhibit A.

14. The IBARC was directed to formulate and evaluate proposed redistricting plans in accordance with controlling principles of the U.S. and Virginia constitutions, the Voting Rights Act of 1965, and relevant state and federal case law. The population of each proposed legislative district was to be as nearly equal to the population of every other district as was practicable, and was to be determined solely according to the enumeration established by the 2010 federal census. Based on the 2010 census, the ideal population of each House district was 80,010. In developing and evaluating voting districts, the IBARC was instructed to respect the boundary lines of existing political subdivisions, with the number of counties and cities divided among multiple districts being “as few as possible.” In addition, communities of interest were to be preserved to the extent possible.

15. The IBARC was directed to recommend redistricting plans that complied with the standards set out in Defendant McDonnell’s executive order by submitting them directly to the Governor, the President pro tempore of the Virginia Senate, the Speaker of the Virginia House of Delegates, and the Chairs of the House and Senate Privileges and Elections Committees.

16. The IBARC issued a timely report with their redistricting recommendations to the Governor and House and Senate officers designated in the executive order. The plans recommended by IBARC conformed to the standards set out in Defendant McDonnell's Executive Order 31.

17. The Governor and Virginia House and Senate ignored the report and recommendations of the IBARC and instead enacted the redistricting plan challenged in this lawsuit.

18. The House of Delegates set out its own redistricting standards on March 25, 2011, in House Committee on Privileges and Elections Resolution No. 1, a copy of which is attached as Exhibit B.

19. The House of Delegates redistricting plan was enacted as Virginia Special Session House Bill 5005, codified at Va. Code §§ 24.2-304.03 (2012). H.B. 5005 established 100 individually-numbered House of Delegates districts, including Districts 22 and 23. The first House of Delegates elections conducted following the redistricting were in November, 2011.

20. House Districts 22 and 23 as created in 2011 do not conform to the criteria set out in Defendant McDonnell's Executive Order 31, or to the criteria stated in the House Privileges and Elections Committee Resolution 1. Compared to the IBARC plans, they are less compact, they split more cities and counties between legislative districts, they disrupt more established communities of interest, they impair minority representation and they increase partisan bias. They fail the fundamental requirement of districting to

establish "fair and effective representation for all citizens." *Vieth v. Jubelirer*, 541 U.S. 267, 307 (2004) (Kennedy, J., concurring in the judgment).

21. The purpose and effect of the line-drawing creating House Districts 22 and 23 in 2011 was to dilute the voting power of minority residents such as the plaintiffs and to impair the opportunity of those residents to participate in the political process and to elect candidates of their choice in the House of Delegates on account of their race. The plan thus deprives minority voters such as the plaintiffs a fair opportunity to affect the outcome of elections in House Districts 22 and 23.

22. Redistricting plans have been developed and reasonably can be developed for Virginia House Districts 22 and 23 which better meet the requirements of compactness, contiguity, respect for political boundaries, fairness, and competitiveness than the redistricting plan adopted by the Virginia legislature, and which satisfy the U.S. and Virginia Constitutions and the Voting Rights Act of 1965. One such plan, H.B. 5002, which would have avoided the impact of H.B. 5005 on minority voters in House Districts 22 and 23, was considered and rejected by the legislature during the 2011 redistricting process.

23. The Defendants have not articulated or demonstrated any compelling or legitimate state interest in drawing the redistricting lines in the manner set out in the 2011 plans for House Districts 22 and 23.

24. The redistricting lines drawn in 2011 by the Virginia Governor and General Assembly in House Districts 22 and 23 and, on information and belief, in other House of Delegates districts, were racial gerrymanders intended to limit the accountability of legislators to minority residents within the districts, thus discouraging political participation and impairing the residents' fundamental right to petition the government for redress of grievances free of racial discrimination.

25. Virginia's history of voting-related discrimination against African-Americans voters is long-standing, well documented, and judicially recognized.

26. Virginia has an extensive, judicially-recognized history of racially polarized voting, which continues to the present day and is reflected in the elections held in House Districts 22 and 23 in November 2011.

27. Upon information and belief, the Virginia legislature voted to enact H.B. 5005 with the knowledge of Virginia's history of voting and other discrimination against African-American citizens.

COUNT 1 – 14th AMENDMENT EQUAL PROTECTION OF U.S.
CONSTITUTION

28. Plaintiffs re-allege the allegations set forth in paragraphs 1 through 27 of the Complaint.

29. Prior to the 2011 redistricting, Virginia House District 23 consisted almost entirely of voting precincts located in the independent City of Lynchburg. The population of the independent City of Lynchburg was 75,578,

close to the ideal population of House districts in 2011. The district had a 65% white population and a 30.2% African-American population. The voting age population in the district was 68.2% white, 27% African-American, 2.4% Asian-American, and 2.7% Hispanic-American. The minority population of the district was concentrated in voting Ward 2 of the City, where 73.74% of the population was African-American.

30. Prior to the 2011 redistricting, minority voters in House District 23 were able to form coalitions with other minority voters and voters in one or more white-majority districts in Lynchburg which shared their interests, values and partisan political preferences in electing Democratic candidates for state and national elective offices. The minority voters in House District 23 were therefore able effectively to influence and often to control the outcome of political elections in the district.

31. The Commonwealth of Virginia characterized House District 23 as a minority-influence district in its 2011 submission to the U.S. Department of Justice voting rights division in the course of the Department's review of voting patterns pursuant to Section 5 of the Voting Rights Act of 1965.

32. According to 2010 census figures, House District 23 had a total African-American population of 30.1% and an African-American voting age population of 27%, thus remaining a minority-influence district.

33. Prior to the 2011 redistricting, Virginia House District 22 consisted primarily of Campbell County and Bedford County voting precincts. It did not

include any precincts in the independent City of Lynchburg. Demographically, it had an 85% white population and a 12% minority population, and consistently elected Republican candidates for elective offices at both the state and national levels by overwhelming majorities.

34. In the 2011 redistricting, the Virginia legislature moved all of Ward 2 of the independent City of Lynchburg from House District 23 to House District 22.

35. While moving Ward 2 of the independent City of Lynchburg to District 22 increased the percentage of minority residents in District 22 from 12% to 22%, and increased the voting age minority population in District 22 to 20.5%, compared to a white voting age population of 76.6%, the move not only substantially reduced the opportunity of the minority voters in Ward 2 to influence the outcome of elections for the House of Delegates, it also placed those minority voters in a district with which they shared no community of interest, such as the same local government entities and public schools, thus suppressing their incentive to vote.

36. Removing Ward 2 of the independent City of Lynchburg reduced the minority composition of District 23 from 30.1% to 16.5%, and lowered the minority voting-age population of House District 23 from 27% to 14.9%, giving minority voters in that district a less meaningful opportunity than white citizens to participate in the political process and to elect candidates of their choice to the Virginia House of Delegates.

37. Voters in Ward 2 of the independent City of Lynchburg, including Plaintiff Langhorne, were moved from House District 23 to House District 22 on account of their race, in order to protect political incumbents in House Districts 22 and 23 by diluting the influence of African-American voters on elections in both districts.

38. Following the 2011 redistricting, the elected officials from Districts 22 and 23 have not been responsive to the particularized needs of African-Americans.

39. The 2011 redistricting of Virginia House Districts 22 and 23 was a racially-motivated gerrymander intentionally calculated to eliminate District 23 as a minority-influence district and to give and in fact giving minority voters in Districts 22 and 23 less opportunity than white citizens to elect candidates of their choice for the Virginia House of Delegates, by denying minority voters the equal protection of the law guaranteed to them by the Fourteenth Amendment to the United States Constitution.

COUNT II – 14th and 15th AMENDMENTS TO THE U.S.
CONSTITUTION AND SECTION 2 OF THE VOTING RIGHTS ACT OF
1965

40. Plaintiffs re-allege the allegations set forth in paragraphs 1 through 39 of the Complaint.

41. On information and belief, the Virginia legislative was aware of the facts alleged in this Complaint when enacting redistricting legislation in 2011.

42. The 2011 redistricting of Virginia House Districts 22 and 23 was a racially-motivated gerrymander intentionally calculated to eliminate District 23 as a minority-influence district and to give and in fact giving minority voters in Districts 22 and 23 less opportunity than white citizens to elect candidates of their choice for the Virginia House of Delegates, by denying minority voters rights guaranteed to them by the Fourteenth and Fifteenth Amendments to the United States Constitution and Section 2 of the Voting Rights Act of 1965.

43. By removing the residents of Ward 2 of the independent City of Lynchburg from District 23 in the 2011 redistricting, and by stacking the minority voters still residing in the portions of the independent City of Lynchburg remaining in Virginia House District 23 with block-voting white Republican voters from Amherst and Bedford counties, the 2011 redistricting had the purpose and effect of discriminating against minority voters such as Plaintiff Butler, by diluting their voting power because of their race in violation of their rights under the Fourteenth and Fifteenth Amendments to the U.S. Constitution and Section 2 of the Voting Rights Act of 1965.

44. In the absence of relief under Section 3(c) of the Voting Rights Act of 1965, 42 U.S.C. §1973a(c), Virginia will continue to violate the Voting Rights Act and the voting guarantees of the Fourteenth and Fifteenth Amendments to the U.S. Constitution in the future.

RELIEF REQUESTED

45. Plaintiffs respectfully request that
- A. A three-judge court be convened pursuant to 28 U.S.C. § 2284; and
 - B. The Court declare pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 2201 that the 2011 legislative redistricting plan enacted by the Virginia Governor and General Assembly is unconstitutional pursuant to the equal protection clause of the Fourteenth Amendment and the Fifteenth Amendment to the U.S. Constitution, Art. 2 § 6 of the Virginia Constitution, and Section 2 of the Voting Rights Act of 1965; and
 - C. The Court enjoin the defendant Governor and defendant members of the Virginia Board of Elections, pursuant to 42 U.S.C. § 1983 and Section 3(c) of the Voting Rights Act of 1965, 42 U.S.C. §1973a(c), from implementing and conducting further elections pursuant to the invalid redistricting plan enacted by the General Assembly in 2011; and
 - D. The Court direct that the defendant Governor and leaders of the Virginia House of Delegates and Senate develop, enact, and present to this Court for review a new redistricting plan in accordance with constitutionally and statutorily valid principles; and

- E. The Court make all further orders as are just, necessary, and proper to ensure complete fulfillment of this Court's declaratory and injunctive orders in this case; and
- F. The Court issue an order requiring the defendants to pay plaintiffs' costs, expenses, and reasonable attorney's fees incurred in the prosecution of this action, as authorized by the Civil Rights Attorneys' Fees Awards Act of 1976, 42 U.S.C. § 1988; and
- G. The Court grant such other and further relief as it deems proper and just.

DATED: October 15, 2013
Lynchburg, Virginia

Respectfully submitted,

By: /s/ Alexander W. Bell
Counsel

Alexander W. Bell (VSB No. 13971)
Bell & Schneider, PLC
P. O. Box 739
Lynchburg, Virginia 24505-0739
434.528.0411
434.845.3666 Facsimile
awb@bellschneiderlaw.com