IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

DAWN CURRY PAGE, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**Civil Action No. 3:13cv678**
	)	
VIRGINIA STATE BOARD OF ELECTIONS, *et al.*,	)	
	)	
Defendants.	)	

REPLY MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

Defendants Charlie Judd, in his capacity as Chairman of the Virginia State Board of Elections, Kimberly Bowers, in her capacity as Vice-Chair of the Virginia State Board of Elections, and Don Palmer, in his capacity as Secretary of the Virginia State Board of Elections (collectively "the SBE defendants"), by counsel, and pursuant to this Court's December 6, 2013 Order, state as follows for their Reply to Plaintiffs' Response In Opposition To Defendants' And Intervenors' Motions For Summary Judgment ("Plaintiffs' Response").

I. INTRODUCTION

Plaintiffs' Response confirms their position that Virginia's compliance with federal law in 2012 - without which no congressional elections could have taken place in Virginia - now somehow renders the Third Congressional District unconstitutional. The plaintiffs concede that Virginia, as a covered jurisdiction under Section 4 of the Voting Rights Act of 1965, was required to avoid any retrogression in the ability of minority voters to elect a candidate of choice. But, according to the plaintiffs, Virginia's compliance with federal law by seeking to maintain Virginia's only majority-minority congressional district - while required at the time - has now

become unconstitutional in the wake of *Shelby County v. Holder*, 133 S. Ct. 2612 (2013). The plaintiffs cite to no language in *Shelby County* and to no other authority that applies *Shelby County* so as to retroactively render unconstitutional actions that were required by federal law as it applied before *Shelby County*. If the plaintiffs' arguments are accepted, the General Assembly needed to *disregard federal law* in order to avoid application of strict scrutiny and a determination that it acted unconstitutionally. Thus, out of necessity the plaintiffs' arguments must fail.

In addition, Plaintiffs' Response is at least as notable for what it seeks to evade and ignore as it is for what it attempts to argue. Perhaps most consequential in this regard - Plaintiffs' Response seeks to avoid their "demanding" threshold burden. The plaintiffs must establish that race was the "predominant factor" motivating the General Assembly and, in doing so, the plaintiffs must affirmatively exclude factors other than race (*e.g.*, equal population, partisanship, incumbency protection, core preservation, communities of interest) that would explain the changes made by the General Assembly to Virginia's congressional districts. *See Easley v. Cromartie*, 532 U.S. 234, 241 (2001) ("*Cromartie II*"). Plaintiffs have not done so. Also, by relying on citations demonstrating Virginia's consideration of race as one of many factors, Plaintiffs' Response ignores case law expressly acknowledging the fact that race can, and often must be considered - particularly for what were covered jurisdictions under the Voting Rights Act. Plaintiffs' Response then prematurely skips ahead to a strict scrutiny analysis. But, because the plaintiffs have not met their threshold burden, no strict scrutiny analysis is reached and the plaintiffs' case must be dismissed.

II. STATEMENT OF UNDISPUTED LEGISLATIVE FACTS

The plaintiffs argue that Virginia's record of its redistricting process - a public document submitted pursuant to federal law - somehow does not warrant this Court's consideration, even though the plaintiffs included it in their Complaint. Specifically, the plaintiffs challenge the SBE defendants' reliance on Virginia's 2012 submission to the U.S. Department of Justice seeking preclearance under Section 5 ("DOJ Submission"). The plaintiffs' challenge is misplaced for several reasons. First, as indicated, the plaintiffs have attached portions of the DOJ Submission to their Complaint, refer to it in their Complaint and, therefore, have incorporated it into their Complaint. *See* Compl. ¶¶ 36-38, Ex. A. *See also Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986) (moving party who does not have burden of proof at trial need not introduce affidavits and may support summary judgment motion by referencing pleadings); *Fields v. Verizon Servs. Corp.*, 493 Fed. Appx. 371, 374 (4th Cir. 2012) (same); *Gasner v. County of Dinwiddie*, 162 F.R.D. 280, 282 (E.D. Va. 1995) (on a Rule 12(b)(6) motion to dismiss, the court can consider "not only documents quoted, relied upon, or incorporated by reference in the complaint, but also official public records pertinent to the plaintiffs' claims.").

More importantly, this Court may grant relief on the basis of legislative facts, legislative history, and other evidence subject to judicial notice. *See* Fed. R. Civ. P. 56(c)(1)(A) & (B); Fed. R. Evid. 201; *Clatterbuck v. City of Charlottesville*, 708 F.3d 549, 557-58 (4th Cir. 2013) ("[T]he government's purpose as stated in a legislative record may constitute a fact obtained from public record and subject to judicial notice" and a challenged law "and its legislative history [a]re legislative facts, the substance of which cannot be trumped upon judicial review" (quotation marks and citations omitted)); *see also Heublein, Inc. v. United States*, 996 F.2d 1455, 1461 (2d

Cir. 1993) ("Questions of . . . legislative history present legal issues that may be resolved by summary judgment") (citation omitted).

The DOJ Submission is the most comprehensive and complete record of legislative action on redistricting. It was compiled and submitted in accordance with applicable federal statutes and regulations, which dictate its contents. *See* 42 U.S.C. § 1973c(a); 28 C.F.R. §§ 51.27 and 51.28. The DOJ Submission is the legislative record based on which the DOJ determined that Virginia may proceed with elections under its redistricting plan because it avoids any retrogression in the ability of minority voters to elect a candidate of choice. It is the type of public record that federal courts consider in determining legislative intent. *See Chen v. City of Houston,* 206 F.3d 502, 515 (5th Cir. 2000); *Vera v. Richards,* 861 F. Supp. 1304, 1337 (S.D. Tex. 1994) ("[T]he public record created in the process of enacting HB1 and the § 5 preclearance submission by the State are important to determining the legislative intent.") (citation omitted). Perhaps most significant is the fact that, while the plaintiffs challenge the SBE defendants' reliance on this public record, with one exception, the plaintiffs offer no evidence challenging the information cited from the DOJ Submission.[1]

[1] Citing to their expert's report, the plaintiffs challenge the DOJ Submission's calculation of locality and precinct splits in the Third Congressional District. Plaintiffs' Response at 5. The plaintiffs ignore the point that locality and precinct splits that had no effect on populations were not included in the DOJ Submission's calculation. *See* Def. Mem. Supp. Sum. Jud. at nn. 2, 3. Regardless, this issue, by itself, does not preclude summary judgment for the SBE defendants. Where plaintiffs fail to establish an essential element of their case, all other facts are rendered immaterial, and entry of summary judgment is required as a matter of law. *Celotex,* 477 U.S. at 322-25; *see Laing v. Federal Express Corp.*, 703 F.3d 713, 722-23 (4th Cir. 2012) (holding that plaintiff's failure to present proof of racially discriminatory motive for plaintiff's termination entitled defendant employer to summary judgment); *Chen,* 206 F.3d at 515) (affirming summary judgment where there was no adequate showing that race predominated).

III. ARGUMENT

A. Plaintiffs' Response Ignores Their Demanding Threshold Burden.

Plaintiffs' Response offers a truncated and incomplete discussion of the demanding legal standard that they must meet in order to state a racial gerrymandering claim. The plaintiffs first correctly note that they bear the burden of proving that race was the "predominant factor" motivating the districting decision in question. *See* Plaintiffs' Response at 11 (citing *Miller v. Johnson,* 515 U.S. 900, 916 (1995)). The plaintiffs then avoid any discussion of what they must show to meet that standard and, instead, skip ahead to note that strict scrutiny applies once that standard is met.

The plaintiffs fail to acknowledge at least two critical points regarding their threshold burden. First, to meet their burden, the plaintiffs must exclude factors other than race that would explain the changes made by the General Assembly to Virginia's congressional districts. *Cromartie II,* 532 U.S. at 241-42 ("*Plaintiffs must show* that a facially neutral law is unexplainable on grounds other than race.") (emphasis added, quotations and citations omitted). As discussed below, Plaintiffs' Response does not even attempt to do so. Second, legislatures are not only permitted, but also often *required by law* to consider race as a factor in the drawing of district lines. *Id.*; *Backus v. South Carolina,* 857 F. Supp. 2d 553, 565 (D.S.C. 2012), *aff'd* 133 S.Ct. 156 (2012) (three judge court). Therefore, the plaintiffs cannot carry their burden by selectively singling out instances where legislatures considered race due to their obligation to comply with federal law. Because the plaintiffs do not acknowledge - let alone attempt to meet - these elements of their demanding threshold burden, this Court need not reach a strict scrutiny analysis and the plaintiffs' case must be dismissed. *See Backus,* 857 F. Supp. 2d at 559 (citing *Shaw v. Hunt,* 517 U.S. 899, 905 (1996)); *see also Chen,* 206 F.3d at 506.

B. Plaintiffs' Response Confirms That The Virginia General Assembly Sought To Comply With Federal Law As It Applied To Virginia At That Time.

There is no dispute that, at the time the General Assembly adopted its 2012 Congressional Plan, Virginia was a covered jurisdiction under Section 5 and the Congressional Plan was subject to preclearance requirements before it could take effect. There also is no dispute that, to obtain preclearance, Virginia was required to demonstrate that its Congressional Plan avoided retrogression in the ability of minorities to elect candidates of choice. And there is no dispute that a new districting plan that has the effect of reducing the number of minority group representatives would be considered retrogressive. Thus, if Virginia did not maintain the Third District as a majority-minority district in which African-Americans can elect their candidate of choice, Virginia could not obtain preclearance, could not enact its Congressional Plan, and could not hold Congressional elections. *See, e.g.*, 42 U.S.C. § 1973c(a); *Ketchum v. Byrne*, 740 F.2d 1398, 1402 n.2 (7th Cir. 1984) ("'Retrogression' may be defined as a decrease in the new districting plan or other voting scheme from the previous plan or scheme in the absolute number of representatives which a minority group has a fair chance to elect.") (citing *Beer v. United States*, 425 U.S. 130, 141 (1976); *Rybicki v. State Board of Elections of the State of Illinois*, 574 F. Supp. 1082, 1108-09 and nn. 74 & 75 (N.D. Ill. 1982)).

Plaintiffs' Response concedes that, in enacting the Congressional Plan, Virginia's General Assembly sought to comply with its federally mandated obligations under Section 5. *See* Plaintiffs' Response at 16. But then Plaintiffs' Response claims that the General Assembly's efforts to comply with federal law requiring Virginia to maintain the Third District as a majority-minority district somehow "supports the conclusion that racial considerations drove Virginia's reapportionment efforts and that Plaintiffs have met their initial burden in this case." *Id.* In other words, according to the plaintiffs, the General Assembly acted unconstitutionally *because*

it complied with federal law requiring the legislature to ensure that the Third District was a majority-minority district in which African-Americans could elect a candidate of their choice.

In support of their argument the plaintiffs cite to statements by the legislator (Delegate Janis) who, in 2011, initially introduced the plan that the General Assembly eventually adopted for its 2012 Congressional Plan, redistricting criteria adopted by the Senate Committee on Privileges and Elections, and argument in the SBE defendants' Memorandum in Support of Summary Judgment. But the plaintiffs' citations refute rather than support the plaintiffs' argument.

In citing to Delegate Janis, the plaintiffs ignore both the context of the statements they cite and other statements confirming that traditional redistricting criteria were considered by him. Delegate Janis began his presentation by identifying the criteria considered in the redistricting plan and restated them later in his presentation. These criteria included:

- ensuring compliance with one-person one-vote requirements;
- ensuring compliance with the non-retrogression requirements of the Voting Rights Act;
- maintaining the core of districts;
- preserving the will of the electorate by maintaining current incumbents;
- maintaining and, where possible, reuniting jurisdictions;
- maintaining and, where possible, reuniting communities of interest; and,
- obtaining the recommendations and approval of each of Virginia's congressmen.

Plaintiffs' Response at Roche Decl., Ex. F, 0:59-5:41 and 18:52-21:17.

In the quotes selectively chosen by the plaintiffs, Delegate Janis was responding to questions specific to the consideration of race and the racial composition of the Third District and, therefore, race was the relevant issue in that discussion. Throughout his responses to these

questions, Delegate Janis consistently indicated that he sought to comply with the non-retrogression requirements of the Voting Rights Act. Plaintiffs' Response at Roche Decl., Ex. F. Moreover, Delegate Janis also repeatedly noted his consideration of other factors, such as: 1) recommendations from all eleven of Virginia's Congressmen, including specifically Congressman Scott (*id.* at 13:11-13:45, 14:40-15:13, 24:57-25:55, 38:36-39:20); 2) the need to increase the overall population of the Third District so as to meet the ideal congressional district population (*id.* at 13:57-14:33, 23:40-24:18, 38:36-39:20); and, 3) comments from the public in a series of public meetings (*id.* at 38:36-39:20). Rather than showing that race was the predominant motivation of the General Assembly to the exclusion of traditional redistricting factors, the plaintiffs' citations support the conclusion that the General Assembly sought to comply with federal law, while also considering traditional redistricting factors.[2]

As for the Senate's redistricting criteria, they demonstrate the legislature's intent to comply with federal law mandating both equal population among districts and non-retrogression, while simultaneously considering traditional redistricting factors. The plaintiffs somehow seek to turn the legislature's compliance with the law into an unconstitutional act.

And as for the plaintiffs' citations to arguments in the SBE defendants' Memorandum, the plaintiffs ignore the fact that these arguments accurately reflect - and in one instance, is

---

[2] To the extent the comments of any single legislator are relevant in determining the intent of the legislature as a body, the plaintiffs further ignore their own exhibit setting forth the comments of Delegate Rob Bell, who reintroduced the Congressional Plan through a 2012 bill.

> [W]hen you look at the map, it does several things. It preserves the core of the existing congressional districts, it complies with the rule of one man one vote . . . it complies with other federal statutes, most importantly the Voting Rights Act, and it has been [sic] individual members who were consulted with and approved their individual districts.

Plaintiffs' Response at Roche Decl., Ex. A.

pulled verbatim from - case law that acknowledges the need to consider race when drawing district lines. *Cromartie II,* 532 U.S. at 241; *Backus,* 857 F. Supp. 2d at 565 ("[R]ace can be - and often must be - a factor in redistricting."). That "there are points in the drawing of the district where race must predominate" are not the words of the SBE defendants, but those of a federal court expressly acknowledging the need to consider race where the Voting Rights Act requires that a majority-minority district be maintained. *Colleton v. McConnell,* 201 F. Supp. 2d 618, 640 (D.S.C. 2002)).

Finally, the plaintiffs then engage in sleight-of-hand by referencing *Shelby County* only in the context of applying strict scrutiny - a standard that is applied *only after* the plaintiffs first show that race was the General Assembly's predominant motivation *and* exclude factors other than race that would explain the General Assembly's actions. In their Complaint, the plaintiffs acknowledged that prior to *Shelby County*, there was no basis for a constitutional challenge to the Third District because Virginia was required to avoid non-retrogression under Section 5.[3] And during this Court's initial telephonic conference with counsel on November 21, 2013, in response to questioning from this Court about why the plaintiffs waited until October 2013 to bring this suit, the plaintiffs, by counsel, explained the timing of this suit by noting that the *Shelby County* decision in June 2013 provided the basis for their racial gerrymandering claim. Thus, under the theory articulated by the plaintiffs, prior to *Shelby County,* there was no basis for a racial gerrymandering claim and the lawsuit could not be brought. If the plaintiffs are

[3] As noted in Defendants' Memorandum, the defendants dispute the characterizations in paragraph 3 of the Complaint that "Virginia has used Section 5 as a justification to racially gerrymander congressional districts" and in paragraph 5 that, because Virginia is no longer a covered jurisdiction, "Virginia can no longer seek refuge in Section 5 as an excuse to racially gerrymander Congressional District 3." But, by these allegations, as well as the plaintiffs' representations through counsel, the plaintiffs have acknowledged that Section 5 expressly required Virginia to consider race in the drawing of district lines.

attempting to claim that the Third District as it existed before *Shelby County* was not constitutional, then there was no need to wait until October 2013 and no need to base their challenge on *Shelby County*.

In actuality, the plaintiffs' treatment of *Shelby County* in Plaintiffs' Response is an attempt to avoid the fact that the General Assembly sought to comply with federal law in its Congressional Plan by ensuring that the Third District remained a majority-minority district in which African-Americans could elect a candidate of choice and, therefore, strict scrutiny does not apply. Because compliance with the mandates of federal law as it applied to Virginia prior to *Shelby County* - not racial composition for its own sake - was the basis for maintaining Virginia's only majority-minority district, the plaintiffs cannot carry their demanding threshold burden of proof. And the plaintiffs cite to no language in *Shelby County*, nor any authority applying *Shelby County*, such that Virginia's efforts to comply with federal law must now be deemed unconstitutional. If the plaintiffs' arguments are accepted, the General Assembly needed to *disregard federal law* in order to avoid application of strict scrutiny to the Congressional Plan.

C. The Plaintiffs Cannot Meet Their Demanding Threshold Burden Because The Undisputed Legislative Facts Establish That The General Assembly Considered Traditional Districting Principles And The Plaintiffs Have Not Even Attempted To Exclude Factors Other Than Race That Explain The Lines Drawn By The General Assembly.

In support of their racial gerrymandering claim, the plaintiffs rely primarily on the racial composition of populations traded into and out of the Third District. Plaintiffs' Response at 14. Indeed, the plaintiffs' expert relies on these population trades in support of his opinion - which, in terms of its analysis, is substantively indistinguishable from an opinion previously rejected by another Court because the same expert failed to consider race neutral criteria that guide

redistricting.[4] *Backus*, 857 F. Supp. 2d at 562. But while the experts' opinion may provide the Court with information concerning the racial composition of populations brought into or taken out of the Third District, such analysis, by itself, cannot establish that race was the motivating factor in drawing district lines. Neither Plaintiffs' Response nor their expert's report make any effort to exclude other considerations that explain the population trades.

For example, in general discussions about redistricting, politics, partisanship and protection of incumbents are often described as primary motivations in redistricting efforts. Yet both Plaintiffs' Response and their expert report are strangely silent on these considerations. Their inability to exclude these considerations as factors motivating the General Assembly's drawing of district lines is fatal to the plaintiffs' case, because the burden is on the plaintiffs to do just that.

Moreover, the public record demonstrates that politics, partisanship and protection of incumbents - among other traditional redistricting considerations - *were* factors motivating the General Assembly. The vote projection for the traditionally Democratic Third District reduced the Republican vote by three percent. The Republican vote was projected to increase by one to two percent in the traditionally Republican Fourth and Seventh Districts, both of which border the Third District. *See* DOJ Submission - Att. 3, at 12, 19 (Tables 1 and 2) (Table 3) (Ex. E to Def. Mem. Supp. Sum. Jud.).

[4] Plaintiffs attempt to rescue their expert's flawed report by simply stating the obvious, *i.e.* that the report in *Backus* addressed different districts in a different state. But these are distinctions without a difference. The expert's report - and, therefore, the plaintiffs' approach - is flawed in its analysis and its failure to account for other considerations that could explain the legislature's actions. *Backus*, 857 F. Supp. 2d at 562 ("Because Dr. McDonald did not consider all of the traditional race-neutral principles that guide redistricting in South Carolina, the Court is unconvinced by his opinion that the General Assembly subordinated them to race.")

Indeed, the largest exchange of populations - the entire city of Petersburg from the Fourth to the Third District and the entire county of New Kent from the Third to the Seventh District - demonstrate the consideration of elections results in the drawing of these lines. The residents of Petersburg overwhelmingly and reliably vote for the Democratic candidates and are now in a reliably Democratic congressional district, while the residents of New Kent overwhelmingly and reliably vote for Republican candidates and are now in a reliably Republican congressional district. *See* 2012, 2010, 2008 General Election Official Results for Petersburg, attached as Exhibit A; 2012, 2010, 2008 General Election Official Results for New Kent, attached as Exhibit B.

The plaintiffs have made no attempt to demonstrate that "race *rather than* politics *predominantly* explain[s]" these largest of population shifts, or any other population shifts involving the Third District and, therefore, the plaintiffs have not carried their threshold burden. *Cromartie II,* 532 U.S. at 243 (emphasis in original); *see also Fletcher v. Lamone,* 831 F. Supp. 2d 887, 901 (D. Md. 2011) (granting summary judgment because "the plaintiffs have not shown that the State moved African-American voters from one district to another because they were African-American and not simply because they were Democrats.")

Politics, partisanship and incumbency protection are only a few of the considerations that the plaintiffs and their expert ignore. For example, Virginia's congressional districts are all at 0.00 percent deviation, demonstrating Virginia's consideration of this traditional redistricting principle and compliance with applicable law. *See* DOJ Submission - Att. 3, at 9 (Ex. E to Def. Mem. Supp. Sum. Jud.). Prior to redistricting, the Third District was 63,976 below the required population. *Id.* at 5. Now it has exactly the ideal population (727,366). *Id.* at 9. The Third District maintains substantially the same core jurisdictions as both the benchmark plan and

Virginia's 1998 plan. *Compare* 2012 Third Congressional District map (Ex. D to Def. Mem. Supp. Sum. Jud.), 2001-2011 Third Congressional District map (Ex. C to Def. Mem. Supp. Sum. Jud.), *and* 1998 Third Congressional District map (Ex. B to Def. Mem. Supp. Sum. Jud.). The Third District retained 83% of its benchmark district's core constituency population. *See* DOJ Submission - Att. 3, at 12, 15-16 (Tables 1 and 2) (Ex. E to Def. Mem. Supp. Sum. Jud.). Communities of interest considerations for the Third District included the commonalities in urban areas such as the cities of Richmond, Petersburg, Hampton, Newport News, Portsmouth and Norfolk, as well as communities of interest with regard to the James River. *See* 2012 Third Congressional District map (Ex. D to Def. Mem. Supp. Sum. Jud.). Neither Plaintiffs' Response nor their expert's report address politics, partisanship, incumbency protection, preservation of district cores or communities of interest.

Regarding shape, it is telling that Plaintiffs' Response - as well as their expert's report - describe the district in words rather than referring the Court to a map of the district. *See id.* Other districts, with shapes more accurately described as bizarre have survived racial gerrymandering claims. *See, e.g.*, *Fletcher,* 831 F. Supp. 2d at 902-03 & n.5. (rejecting a racial gerrymandering claim even though the districts were "unusually odd" and one district made the "original Massachusetts Gerrymander look[] tame by comparison" and was "reminiscent of a broken-winged pterodactyl, lying prostrate across the center of the State.").

D. The Plaintiffs' Reliance On *Moon v. Meadows* Is Misplaced Because The Current Third District Is Substantially Different Than The 1993 Third District.

In Plaintiffs' Response, the plaintiffs continue to assert that the current Third District is similar to the Third District struck down in *Moon v. Meadows,* 952 F. Supp. 1141 (E.D. Va. 1997). In doing so, the plaintiffs ignore any comparison of the current Third District to its

benchmark 2001 version, which would be the analysis required by Section 5. It is telling that, once again, the plaintiffs do not invite the Court to engage in a visual comparison of the current Third District to the version struck down in *Moon* - likely because such a comparison reveals that the two versions are substantially different. *Compare* 1991 3rd Congressional District map (Ex. A to Def. Mem. Supp. Sum. Jud.) *with* 2012 Third Congressional District map (Ex. D to Def. Mem. Supp. Sum. Jud.). In fact, the 2012 version is similar to its benchmark 2001 version, thereby demonstrating efforts to preserve the core of the district - a traditional redistricting consideration - while balancing the need to ensure equal population among the surrounding districts. *Compare* 1991 3rd Congressional District map (Ex. A to Def. Mem. Supp. Sum. Jud.) to 2001 Third Congressional District map (Ex. C to Def. Mem. Supp. Sum. Jud.).

IV. CONCLUSION

For the foregoing reasons, the SBE defendants respectfully request that their Motion for Summary Judgment be granted and that the plaintiffs' Complaint be dismissed with prejudice.

Respectfully submitted,

By: _____/s/ Mike F. Melis_____

Mike F. Melis (VSB No. 43021)
Assistant Attorney General
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219
Telephone: (804) 786-2071
Fax: (804) 371-2087
mmelis@oag.state.va.us
Counsel for Defendants

Kenneth T. Cuccinelli, II
Attorney General of Virginia

Patricia L. West
Chief Deputy Attorney General

Wesley G. Russell, Jr.
Deputy Attorney General

*Joshua N. Lief (VSB No. 37094)
Senior Assistant Attorney General

*Mike F. Melis (VSB No. 43021)
Assistant Attorney General

**Counsel of Record*

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of January, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing (NEF) to the following:

John K. Roche, Esq.
Mark Erik Elias, Esq.
John Devaney , Esq.
Perkins Coie, LLP
700 13th St. N.W., Suite 600
Washington, DC 20005-3960
Phone: (202) 434-1627
Fax: (202) 654-9106
JRoche@perkinscoie.com
MElias@perkinscoie.com
JDevaney@perkinscoie.com

Kevin J. Hamilton, Esq.
Perkins Coie, LLP
1201 Third Avenue, Ste. 4800
Seattle, WA 98101-3099
Phone: (206) 359-8000
Fax: (206) 359-9000
KHamilton@perkinscoie.com

Counsel for Plaintiffs

Michael Anthony Carvin, Esq.
John Matthew Gore, Esq.
Jonathan Andrew Berry, Esq.
Jones Day
51 Louisiana Avenue, N.W.
Washington, DC 20001
Phone: (202) 879-3939
Fax: (202) 626-1700
macarvin@jonesday.com
jmgore@jonesday.com
jberry@jonesday.com

Counsel for Intervenor-Defendants

_____/s/ Mike F. Melis_____
Mike F. Melis (VSB No. 43021)
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219
Telephone: (804) 786-2071
Fax: (804) 371-2087
mmelis@oag.state.va.us
Counsel for Defendants