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

FILED

OCT 1 3 2015

CLERK, U.S. DISTRICT COURT
RICHMOND, VA

GLORIA PERSONHUBALLAH, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
JAMES B. ALCORN, et al.,	)	Civil Action No. 3:13cv678 REP/LO/AD
	)	
Defendants.	)	
	)	
	)	
	)	
	)	
	)	

MEMORANDUM IN SUPPORT OF GARRETT'S REDISTRICTING PLAN

Non-party Donald Garrett ("Garrett"), appearing *pro se*, submits this memorandum in

support of his redistricting plan (ECF No. 238) ("Garrett's Plan") under the Court's Order of

September 24, 2015 (ECF No. 239). Garrett's Plan proposes eleven at-large districts for the

Commonwealth of Virginia for a short period of time until the General Assembly can redraw the

lines after the results of the 2020 Census. This approach should be approved by the Court

because 1) there are judicial and legislative precedents for at-large districts in Virginia; 2)

Garrett's Plan fails the test developed by the Supreme Court in *Thornburg v. Gingles*, 478 U.S.

30 (1986); 3) Garrett's Plan works within the framework of Virginia's election laws; and 4)

Garrett's Plan is constitutional.

Judicial and Legislative Precedent for At-Large Districts

For the sake of brevity, Garrett adopts and incorporates herein the legal reasoning of the

Governor as to why the Court should undertake a comprehensive redrawing of Virginia's

congressional districts in order to remedy the racial gerrymander of the third district. *See generally* ECF No. 231, pp. 5-13.

Garrett's Plan is not a novel idea in the Commonwealth of Virginia- there is precedent for the judiciary ordering at-large elections for the US House of Representatives in response to action by the General Assembly. For the 1932 Congressional election, the General Assembly created nine districts that had high population disparities in violation of Constitutional and Congressional mandates that the districts attempt to be equal in population. *Brown v. Saunders*, 159 Va. 28, 46 (1932). In that case the Supreme Court of Virginia ordered, "It will be necessary for the electors in the State at large to select the nine members to represent the State in the national legislature [for the 1932 election]." *Id.*, at 47. The Supreme Court of Virginia lamented that although "the result of this decision will be that for the first time in 144 years the entire membership in the House of Representatives from Virginia will be chosen by the electors in the State at large" it is the Court's duty "as it is the duty of all others, to obey the mandate of the fundamental law." *Id.*, at 48.

This Court is faced with a similar dilemma. Although it gave the General Assembly several months to fix the constitutional deficiencies with the congressional districts, it chose to adjourn its special session after just one day, abdicating the duty it had to draw the lines under the State and US Constitutions and in accordance with the Voting Rights Act. Since the racial gerrymander of Virginia's congressional districts cannot be remedied without addressing the shape of most of them, it is only fair that the Court throw out the lines.

The General Assembly has also chosen to use an at-large district as a temporary measure to address issues with Virginia's congressional districts. The results of the 1880 Census gave Virginia an additional seat in the US House of Representatives. For the 48th Congress (March

1883 to March 1885) the Virginia General Assembly simply made the additional district an at-large seat until it could decide where in the Commonwealth to draw the district lines for the 49th Congress. This action shows the Commonwealth's acceptance of at-large representation as a temporary measure until the General Assembly is able to address redistricting issues, similar to the situation faced currently by Virginia. Hopefully the approval of Garrett's Plan can be a wakeup call for the General Assembly so that it will take its obligations more seriously in the future, with this three-election period serving as a period of reflection.

Garrett's Plan Fails the *Thornburg* Test

The Supreme Court has developed a test to determine if multimember districts have the effect of diluting the voting strength of minority communities. In order for this type of district to impair the ability of minorities to elect representatives of their choice, the minority group must be able to demonstrate:

1) It is sufficiently large and geographically compact to constitute a majority in a single-member district;

2) It is politically cohesive; and

3) The white majority votes sufficiently as a bloc to enable it usually to defeat the minority's preferred candidate. *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986).

Garrett does not dispute that his plan passes the first two parts of the *Thornburg* test: there are a large number of African American Democrats that stretch from the City of Richmond towards the Hampton Roads area that could constitute a majority in a single-member district. However, Garrett's Plan fails the third part of the test.

In 1989 the Commonwealth of Virginia elected the first African-American governor of any state since Reconstruction. Since then, Virginia has elected several Democratic officers

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statewide and has additionally chosen electors for the first African American President both in 2008 and 2012. The white majority of Virginia does not sufficiently vote in a bloc to usually defeat these candidates minority communities have preferred.

Multi-member districts have been successful on a smaller scale throughout Virginia as well. Currently the City of Roanoke, Virginia elects its of its City Council members on an at-large basis. Since the 1970's there has been at least one African American member. In this case, although the City has a White majority, it has not voted as a bloc to inhibit the African American residents from electing their preferred candidates.

Garrett's Plan Fits within Virginia's Election Laws

The Court should consider that Garrett's Plan fits within the parameters of Virginia's election laws and would require no additional action by the General Assembly. Currently, §24.2-208 of the Code of Virginia provides that the "qualified voters of each congressional district shall elect one member of the United States House of Representatives." Under this language, a qualified voter would essentially be within the lines of 11 congressional districts and would elect one member for each district.

Since Va. Code §24.2-504 limits candidates for federal office to appearing no more than twice on the ballot, it would be up to the candidates and political parties to coordinate who runs for each of the 11 slots. Determining which area of the Commonwealth the candidates reside in would be the decision of the political parties, who would weigh the impact regional differences would have on their election strategy.

Approving Garrett's Plan, however, would *not* preclude the General Assembly and Governor from approving legislation that would alter the method of elections. For example, Virginia's 1932 election with at-large representatives was decided by the top eleven candidates

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to receive the highest number of votes.[1] While this falls outside of the charge of the Court to correct the deficiencies of Virginia's congressional district map, it is important to note that Garrett's Plan would not cause a grave disturbance in the administration of elections under the current scheme.

Garrett's Plan is Constitutional

Finally, at-large districts fit within Constitutional parameters. Art. 1 §2 of the US Constitution simply requires members of the US House to "be an Inhabitant of that State in which he shall be chosen" and does not have any further geographic limitations. Districts must 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. 2 §6. Districts that are comprised of the entirety of the Commonwealth of Virginia are both contiguous and compact because there is no deviation from the basemap from which districts are typically judged. Additionally, each of the eleven districts would have exactly the same population counts.
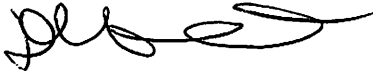
Garrett's Plan complies with the "one person, one vote" doctrine. In *Reynolds v. Sims,* the Supreme Court held, "one person's vote must be counted equally with those of all other voters in a State." 377 U.S 533, 560 (1964). Each voter of Virginia would equally be entitled to eleven votes in the United States House of Representatives. As discussed earlier in this Memorandum, at-large districts for Virginia would not dilute the power of minority voters in violation of the Voting Rights Act of 1965, the enforcement mechanism of the Fourteenth and Fifteenth Amendments.

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[1] Clerk of the US House, *Statistics of the Congressional and Presidential election of November 8, 1932,* February 3, 1933, at 38, available at http://clerk.house.gov/member_info/electionInfo/1932election.pdf.

Conclusion

For the above reasons Garrett asks this Court for an Order approving his redistricting plan until the conclusion of the 2020 Census. This temporary measure is the best method to remedy the racial gerrymander of Virginia's congressional districts.

Respectfully submitted,

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CERTIFICATION

I declare under penalty of perjury that:

(1) No attorney has prepared, or assisted in the preparation of this document.

<u>   Donald Garrett   </u>
Name of *Pro Se* Party (Print or Type)

<u>   </u>
Signature of *Pro Se* Party

Executed on: <u>   10/7/2015   </u>

Certificate of Service

I certify, under penalty of perjury, that on October 7, 2015:

1) A copy of the above memorandum was mailed for filing to the Clerk of the Court;

2) I served the following a copy of the above memorandum by electronic mail, after receiving written consent to do so under Rule 5(b)(2)(E) of the Federal Rules of Civil Procedure:

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CERTIFICATION TO ACCOMPANY ECF NO. 238

I declare under penalty of perjury that:

(1) No attorney has prepared, or assisted in the preparation of this document.

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Name of *Pro Se* Party (Print or Type)

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Executed on: ____10/7/15____