

**PLAINTIFF'S SWORN STATEMENT OF FACTS**

1. Where accurate, the Defendant's statement of facts is incorporated herein as discussed in paragraph's # 165-179, *supra*.
2. Prior to 2021, upon information and belief, Defendants were aware 2021 would be a reapportionment year.
3. Prior to 2021, upon information and belief, Defendants were aware of the changes made to the Constitution of Virginia by the voters last year.
4. Prior to 2021, upon information and belief, Defendants were aware that these changes required the redistricting process to abide by judicial decisions interpreting the Equal Protection Clause of the 14<sup>th</sup> Amendment to the Constitution of the United States.
5. Prior to 2021, upon information and belief, Defendants were aware that in 1981, 1982 and 1983, the decision in *Cosner v. Dalton*, *infra*, required general elections for the House of Delegates in all three years.
6. Prior to 2021, upon information and belief, Defendants were aware the reason this occurred had been due to the failure of those in charge of the redistricting process had failed to produce a constitutionally valid reapportionment plan in time for the upcoming primary and general elections.
7. Prior to 2021, upon information and belief, Defendants and/or their legal advisors were aware of *Harper v. Va State Board of Elections*, *infra*.
8. Prior to 2021, upon information and belief, Defendants and/or their legal advisors were aware of *Mahan v. Howell*.
9. Prior to 2021, upon information and belief, Defendants and/or their legal advisors were aware that there were several cases in this 4<sup>th</sup> Circuit favorable mentioning the rationale of the decision in *Cosner*.
10. Prior to 2021, upon information and belief, Defendants and/or their legal advisors were aware that at since at least since the *Harper v. Va State Board of Elections*, such Board, through its members have been those responsible for conducting state elections by the federal courts.
11. Prior to 2021, so far as Plaintiff can determine, no Attorney General, no Governor, and no Virginia State Board of Elections has ever suggested that the state has the power to hold an election in a reappointment year under the existing, out of date districts without a court order.
12. Prior to 2021, the State of Virginia has never held an election for the House of Delegates using the old districts in a reapportionment year for the reasons stated in *Cosner*, at 363.
13. Prior to 2021, so far as Plaintiff can determine, no federal court has ever suggested holding such an election would be constitutional, indeed *Cosner* specifically pointed out that holding such an election would violate the one person one vote standard in a growing state like Virginia. *Id*.
14. Prior to 2021, upon information and belief, Defendants and their lawyers were aware that the U.S. Census Bureau data normally provided to Virginia to produce new redistricting maps in time for the November 2, 2021, election for the House of Delegates would be delayed likely well into 2021. See Amended Complaint, website cited in paragraph # 82.

15. The Virginia Redistricting Commission admitted they were likely to fail to meet their constitutional duty to provide new House of Delegate districts in time for the November election. *Id.*

16. The Virginia Redistricting Commission conceded this violated the plain wording of Article II, Section 6 of the Constitution of Virginia. *Id.*

17. At all times, the Code of Virginia provided a mechanism for the Governor and the members of the Virginia Board of Elections to seek a formal written of the Attorney General as to how such a failure might impact their duties to conduct elections as established by the very court decisions now enshrined in the Constitution of Virginia. Amended Complaint, paragraph # 13.

18. None of these Defendants took advantage of this provision, which would require the Attorney General of Virginia to formally provide such advice. Amended Complaint, paragraph # 14.

19. The state of Virginia, operating through the appropriate officials did not seek to authorize holding a statewide primary election under unconstitutional districts even though *Cosner*, the only case to consider such a circumstance, authorized the holding of such an election prior to the primary and seemingly says this may be required.

20. On August 3, 2021, Defendants filed their first Motion to Dismiss in the instant matter.

21. Defendants claimed the Plaintiff lacked standing.

22. In their second such Motion, the Defendants do not claim Plaintiff lacks standing, as his standing is self-evident based on the Amended Complaint, paragraph's # 36-45, 55-60, Exhibit 1.

23. In their first Motion to Dismiss, Defendants claimed they lacked the data to determine if the unconstitutionality claimed by Plaintiff did indeed exist.

24. In their second such Motion, Defendants do not claim they lack the census data to make such a judgment.

25. Since the 1966 litigation in the poll tax case, through the cases cited herein, Plaintiff is unaware of any Defendant Governor, any Defendant Virginia Board of Elections, any Defendant State Election Office, upon opinion and belief, no such Defendant has ever suggested who, other themselves, might be the responsible governmental official to ensure the constitutionality and integrity of any such general election as is upcoming the November 3, 2021.

26. Defendants do not deny that the upcoming general election for the House of Delegates must satisfy the same basic constitutional requirement as found in *Cosner v. Dalton*.

27. Defendants do not deny the wildly excessive unconstitutional population deviations between the House of Delegate seats being contested this November as discussed in the Amended Complaint. See paragraph # 151, *infra*.

28. Earlier this month, adhering to Local Rule 83.6, Plaintiff tried to invoke the mediation offered by the rule and encouraged therein.

29. Defendants rejected such a discussion.

30. Defendants have had access to the U.S. Census Bureau data they deemed so important to this matter for over a month. See Amended Complaint, since at least August 26<sup>th</sup> and likely sooner. Plaintiff's Motion for an Expedited Hearing, paragraph # 17.

31. Therefore, it is one month since Defendants have had the data demonstrating, beyond any doubt, that they are conducting an unconstitutional election, without any court approval, under the prevailing constitutional case law as to the permissible population deviations.

32. Indeed, Defendants have now known, for at least over a month, that the districts now being contested violate state law as to permissible population deviations between the 100 House of Delegate seats to be contested this November. Va. Code § 24.-2 304.04(1).

33. As in *Cosner*, a Court order "direct(ing) the state election officials (the same named Defendants in the instant matter) to conduct a new election" in 2022 for the House of Delegates "under a...new (reapportionment) act, or our own...(on) the same days as the (2022) general election)" will achieve the basic goals of the Plaintiff's lawsuit, although as Plaintiff says in his Amended Complaint, he also believes the Court can grant and he can ask, for "such other relief" as may be deemed necessary in the instant matter.

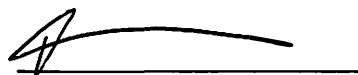
34. Defendants do not deny Plaintiff's assertion that the Virginia State Board of Elections (hereinafter, "State Board") is tasked by state law to ensure "legality and purity in all elections" and to "ensure that major risks to election integrity are...addressed as necessary to promote election uniformity, legality and purity." Va. Code § 24.2 103(A).

35. Defendants do not deny that the Virginia Department of Elections is the operational arm used by the State Board to ensure that the State Board is fulfilling its duty to ensure the integrity, purity, and uniformity of state elections.

36. As the *Cosner* court found and so ruled, the relief requested by Plaintiff, as regards restoring his state and federal constitutional rights now being violated, will do such restoration and protection, as it did for similarly situated Plaintiffs 40 years ago, since now, as then, Defendants are the proper parties for a citizen to sue in federal court in this instant matter.

I, Paul Goldman, declare under penalty of perjury that the foregoing "Plaintiff's Sworn Statement of Facts" is true and correct. Executed on this 29<sup>th</sup> day of September, 2021.

Signed,



Paul Goldman  
P.O. Box 17033  
Richmond, Virginia 23226  
804 833 6313  
Goldmanusa@aol.com