

July 14, 2015

The Honorable Allyson K. Duncan
United States Circuit Judge

The Honorable Robert E. Payne
Senior United States District Judge

The Honorable Liam O'Grady
United States District Judge

U.S. District Court for the Eastern District of Virginia
Richmond Division
701 East Broad Street
Richmond, VA 23219

RE: *Page, et al., v. Virginia State Board of Elections, et al.*, No. 3:13-cv-678; Notice of the Scheduling of a Special Session of the Virginia General Assembly

Dear Judges Duncan, Payne and O'Grady:

On June 5, 2015, this Court enjoined the Commonwealth of Virginia from holding elections for Congress until such time as a the legislative map of congressional districts is redrawn. *See Page, et al., v. Virginia State Board of Elections, et al.*, No. 3:13-cv-678 (Dkt. No. 171) (filed June 5, 2015). The Court further ordered that the General Assembly exercise its primary jurisdiction in adopting a compliant remedial map “[a]s expeditiously as possible, but no later than September 1, 2015.” *Id.*

The Virginia General Assembly is writing to notify the Court that it will convene a Special Session of the House and Senate for purposes of adopting a new congressional map consistent with the Court's remedial directive. The General Assembly respects the order and takes very seriously the task of redistricting. However, our current challenge is to undertake the necessary deliberation with the full participation of the House and Senate prior to the Court's end of summer deadline all while the Intervener-Defendants' direct appeal to the U.S. Supreme Court is pending. These calendar constraints therefore make it impossible to schedule a Special Session before the end of August. Therefore, the General Assembly respectfully requests that the Court extend the deadline and accept this notice that the General Assembly will hold a Special Session beginning on November 9, 2015, for the purpose of considering and adopting a new congressional redistricting map for the Commonwealth of Virginia.

As set forth in greater detail below, the General Assembly hopes that the Court will grant this accommodation recognizing the summer travel schedule, the election calendar, the benefit of additional direction from the U.S. Supreme Court and the fact that it is a modest extension that does not compromise the timeframe for completing the process in advance of the 2016 congressional elections. Moreover, it will surely allow for more

meaningful and focused deliberation as the General Assembly proceeds during the Special Session.

Neither the Virginia House of Delegates nor the Senate of Virginia are parties to this litigation and the General Assembly asks that the Court extend its September 1, 2015 deadline to November 16, 2015. This Court has previously exercised its power to modify injunctions and grant extensions of time to comply with the injunction. *See Page v. Va. State Bd. of Elections*, No. 13-678, 2015 U.S. Dist. LEXIS 21346 *3 (E.D. Va. Feb. 23, 2015) (three-judge court) (granting Defendant-Intervener's request for a five-month extension of time to comply with this Court's October 7, 2014 order). The General Assembly believes that it is appropriate for the Court to grant the request for an extension of time for the following reasons:

First, the General Assembly hopes that the Court would provide it additional time to comply with this Court's June 5th order (Dkt. Nos. 170 and 171) and in the meantime refrain from acting on its own to impose a new map. *See, e.g., Perry v. Perez*, 132 S. Ct. 934, 940-41 (2012) ("Redistricting is primarily the duty and responsibility of the State...The failure of a State's newly enacted plan to gain preclearance prior to an upcoming election does not, by itself, require a court to take up the state legislature's task.") (internal quotation marks and citations omitted). Should this Court enact its own map prior to the Special Session, any map adopted as a result of that Special Session by the Legislature and Executive of the Commonwealth would replace any map drawn by this Court prior to the upcoming Special Session.

More importantly, if the General Assembly were to pass a new redistricting map that was then signed by the Governor, the current appeal for the United States Supreme Court would be mooted. The General Assembly should be able to have the benefit of the Supreme Court's review of the General Assembly's duly enacted redistricting plan prior to developing a map that is compliant with this Court's June 5th order. To prevent the General Assembly from having this guidance forces the General Assembly to make a Hobbesian choice: wait for the Supreme Court to act but risk waiving the General Assembly's legal right to draw redistricting maps; or comply with this Court's September 1, 2015 deadline but moot the Intervener-Defendant's direct appeal to the Supreme Court.

Second, pursuant to 28 U.S.C. § 1253, the Intervener-Defendants have filed a direct appeal to the U.S. Supreme Court of this Court's June 5, 2015 order enjoining the Commonwealth of Virginia from holding congressional elections. *See* (Dkt. No. 174) (filed June 19, 2015) (Intervener-Defendants' notice of appeal); *see also Wittman v. Personhuballah*, No. 14-1504 (docketed at the Supreme Court on June 22, 2015 with the opposition brief due July 22, 2015) (Ex. A). According to the Supreme Court's schedule, this means that the Intervener-Defendants's jurisdictional statement will be distributed for the Supreme Court's September 28, 2015 conference, twenty-seven days *after* this Court's September 1, 2015 compliance deadline. *See* (Ex. B). Typically, if the Supreme Court summarily affirms this Court's June 5, 2015 order, the Supreme Court will do so within one to two weeks. Therefore, this Court should permit the General Assembly time to have the benefit of the Supreme Court's additional guidance, if any, before it endeavors to draw its congressional map. *See Page*, No. 13-678, 2015 U.S. Dist. LEXIS 21346 at *6 ("[W]e conclude that it is wasteful for the General Assembly to devise a

redistricting plan without the views and instructions of the Supreme Court...To proceed with review before the parties and we know the views and instructions of the Supreme Court would be wasteful of the resources of the parties and the Court.”).

Third, it is a substantial expense to hold a special session of the General Assembly. In its filing opposing the Defendant-Interveners’ Motion to Postpone Remedial Deadline, The Virginia State Board Elections informed this Court that according 2014 estimates, “[e]ach day of a special session would cost \$40,999, and a one-week session would cost \$141,799.” (Defs.’ Oppn. To Intervener-Defendants’ Mot. To Postpone Remedial Deadline) (Dkt. No. 133 at 12) (ECF pagination). The \$40,999 figure represents the \$25,200 in daily per diems (\$180 each for senators and \$170 each for delegates) paid to each General Assembly member, plus the “[\$]15,799 for mileage for a one round trip to Richmond.”¹ This Court should permit the General Assembly to preserve its scarce resources and not require the General Assembly to meet in Special Session during the summer months. Requiring that the General Assembly meet now risks that in the fall, the Supreme Court will undue the General Assembly’s efforts causing the General Assembly to have to call an additional special session. It would be a great help to the General Assembly to have the benefit of any additional guidance that the Supreme Court may give.

Furthermore, it is an additional challenge for the part-time General Assembly to call every legislator to Richmond to meet during the summer months, especially the summer before the Commonwealth’s regularly scheduled November 2015 legislative elections.

Fourth, the requested modest extension is appropriately tailored so that the General Assembly’s concerns are addressed without causing prejudice to the Plaintiffs. This Court can enact a map or appoint a special master in late November or early December and promulgate a compliant map well in advance of the date the General Assembly enacted its map in 2012. *See* Va. Code § 24.2-302.2 (enacted January 25, 2012, precleared by the Department of Justice March 14, 2012); *see also Larios v. Cox*, 314 F. Supp. 2d 1357, 1359, 1363-64 (N.D. Ga. 2012) (three-judge court) (noting that after Georgia legislature failed to enact a map consistent with three-judge panel’s decision, on March 1, 2004, the three-judge court appointed a special master to draw a map and the court approved the map on March 25, 2004); *see also generally* (Defendant-Interveners’ Reply Memorandum In Support Of Its Motion To Postpone Remedial Deadline Until September 1, 2015, Dkt No. 135, 5 (filed February 12, 2015)).

Fifth, and finally, the General Assembly will hold a Special Session on November 9, 2015. During the Special Session, the General Assembly will address the concerns raised in this Court’s June 5, 2015 opinion. *See* (Dkt. No. 170) reported at *Page v. Va. State Bd. of Elections*, No. 13-678, 2015 U.S. Dist. LEXIS 73514 (E.D. Va. June 5, 2015).

¹ <http://wtvr.com/2014/03/24/special-session-costs-va-taxpayers-more-money-daily-than-many-make-annually/> (last visited, July 6, 2015).

We are grateful for the opportunity to provide the views of the General Assembly to the Court. We look forward to the upcoming Special Session of the General Assembly.

Respectfully submitted,

/s/
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