

VIRGINIA:

August 17, 2015

Congressional Redistricting

Morning Session

GENERAL ASSEMBLY

1000 Bank Street

House Room D

Richmond, Virginia

CRANE-SNEAD & ASSOCIATES, INC.

4914 Fitzhugh Avenue

Henrico, Virginia 23230

Tel. No. (804)355-4335

1                   DELEGATE JONES: I want to thank everyone  
2 for being here. I'm sorry we are a few minutes late  
3 getting started. We had some technical difficulty  
4 with the microphone.

5                   I would like to welcome each and everyone  
6 of you this morning as we begin today a special  
7 session for redistricting dealing with the 3rd  
8 Congressional District. We will have a public  
9 hearing this afternoon at 3:00, to proceed with  
10 public comment on the issue of the court's order in  
11 Paige vs. Virginia State Board of Elections. This  
12 morning the function of this body will be to get an  
13 overview of the Paige case and to adopt  
14 congressional redistricting criteria.

15                   With that being said, I'll let the members  
16 of the committee introduce themselves starting with  
17 my right.

18                   DELEGATE LINDSEY: I'm Joe Lindsey from the  
19 90th District, representing parts of Virginia Beach  
20 and Norfolk.

21                   DELEGATE JOANNOU: I'm Johnny Joannou,  
22 representing the 79th District. It's parts of  
23 Portsmouth and Norfolk.

24                   DELEGATE O'BANNON: Good morning. John  
25 O'Bannon, 73rd House District in the near westend of

1 Henrico County.

2 DELEGATE ALBO: Dave Albo, 42nd District,  
3 which is the southern tip of Fairfax County.

4 DELEGATE JONES: Chris Jones, the 76th  
5 District, parts of Suffolk and Chesapeake.

6 With that, Meg, if you would like to give  
7 us an overview of the case.

8 MS. BURRUSS: Certainly, Mr. Chairman.

9 I'm sure everyone is familiar with the  
10 history of this case, but just as a quick refresher:  
11 this case was first heard by the United States  
12 District Court of the Eastern District in the summer  
13 of 2014.

14 In October of that year, the court found  
15 that the 3rd Congressional District, or CD 3, was  
16 unconstitutional and ordered a new congressional  
17 district plan be drawn. The decision was appealed  
18 to the United States Supreme Court. In March of  
19 2015, the Supreme Court ruled on Alabama Legislative  
20 Black Caucus v. Alabama, and shortly thereafter,  
21 vacated and remanded the decision in this case to be  
22 reconsidered in light of the Alabama decision.

23 In June the district court found that CD 3  
24 was unconstitutional and ordered a new congressional  
25 district plan be drawn. This decision has been

1 appealed to the United States Supreme Court but in  
2 the meantime, here we are.

3                   Turning to the case itself, the first issue  
4 was whether race was the predominant factor in the  
5 drawing of CD3. Plaintiffs had to show that  
6 traditional race-neutral redistricting principles  
7 were subordinated to racial considerations. The  
8 court concluded that the plaintiffs, by offering  
9 direct and circumstantial evidence, met that burden.  
10 Direct evidence included statements made by the  
11 defendants and by the plaintiff's author.  
12 Circumstantial evidence included the shape and  
13 compactness of the district and splits in political  
14 subdivisions.

15                   Specifically, the court found that maps of  
16 the district reflect both an odd shape and a  
17 composition of a disparate chain of communities,  
18 predominantly African-American, loosely connected by  
19 the James River. The court also noted that the  
20 defendant's expert conceded that the three primary  
21 statistical procedures used to measure the degree of  
22 compactness of a district all indicated that the  
23 district was the least compact congressional  
24 district in Virginia.

25                   The court also found that CD 3 split 9

1 counties or cities and 14 voting precincts,  
2 contributed to a majority of the splits in its  
3 neighboring congressional districts, and that the  
4 population swaps that resulted in locality splits  
5 were predominantly race-based. Populations moved  
6 out of the 3rd Congressional District were primarily  
7 white and the populations moved into the District  
8 were primarily African-American. It is worth noting  
9 that the court acknowledged that water contiguity is  
10 legal under Virginia law, but still weighed that  
11 factor together with the other ones I just  
12 mentioned.

13                   So, based on that evidence, the court  
14 concluded that race was the primary consideration  
15 when CD 3 was drawn. But the district was not found  
16 to be unconstitutional simply because of that. The  
17 district could have still been found to be  
18 constitutional if it was narrowly tailored to  
19 achieve a compelling state interest, here,  
20 compliance with Section 5 of the Voting Rights Act.

21                   The critical question in the narrow  
22 tailoring analysis is to what extent must existing  
23 minority percentages be preserved in order to  
24 maintain the minority's present ability to elect the  
25 candidate of its choice. The court in this case

1 found that CD3 was not narrowly tailored to achieve  
2 Section 5 compliance because the legislature relied  
3 heavily on a mechanically numerical view as to what  
4 counts as forbidden retrogression without a strong  
5 basis in evidence for doing so.

6                   Specifically, the court found that there  
7 was no basis to conclude that the increase in the  
8 district's black voting age population from 53.1% to  
9 56.3% was necessary to ensure nonretrogression in a  
10 district that had been a safe majority-minority  
11 district for two decades and that the use of a 55%  
12 black voting age population threshold, rather than  
13 an analysis of racial voting patterns, suggested  
14 that voting patterns were not actually considered  
15 individually.

16                   So, having found that the 3rd Congressional  
17 District was unconstitutional because it was not  
18 narrowly tailored to achieve Section 5 compliance,  
19 the court ordered new districts be drawn to remedy  
20 the unconstitutional district.

21                   Mr. Chairman.

22                   MR. CHAIRMAN: And, if you don't mind, what  
23 is it since 2011 and today seems to be the Voting  
24 Rights Act?

25                   MS. BURRUSS: Section 5 rendered

1 nonfunctional with Section 4 of the preclearance  
2 formula being stricken down.

3 MR. CHAIRMAN: So, in essence, this map,  
4 whatever would be drawn or approved by legislature  
5 and governor signed or even done by a court, would  
6 not have preclearance from the --

7 MS. BURRUSS: Yes.

8 MR. CHAIRMAN: In that regard?

9 MS. BURRUSS: That is correct.

10 MR. CHAIRMAN: Any questions from the  
11 panel?

12 If not, we'll move on to the adoption of  
13 congressional criteria. And, Meg, if you would like  
14 to review that with us or I can, whatever works best  
15 for you.

16 MS. BURRUSS: Mr. Chairman, I can quickly  
17 go through it and if there is anything you would  
18 like to highlight, you can do so.

19 This criteria is very similar to the  
20 congressional district criteria that was adopted by  
21 the senate in 2011. We did focus the result clause  
22 focusing on the 3rd Congressional District pursuant  
23 to the eastern district, state board of elections.  
24 But for the most part everything else has stayed the  
25 same.

1 MR. CHAIRMAN: And I believe, if I can,  
2 Section 2 we actually took out the unwarranted  
3 retrogression because of the fact Section 5 no  
4 longer applies.

5 MS. BURRUSS: That is correct.

6 MR. CHAIRMAN: Any questions from the  
7 members of the panel?

8 DELEGATE ALBO: What is different in this  
9 thing that we passed eight years ago?

10 MR. CHAIRMAN: We added, adopt the  
11 following criteria for the redrawing of Virginia's  
12 3rd Congressional District pursuant to the eastern  
13 district's order. As we know, redistricting is done  
14 every ten years. We are dealing with the Paige v.  
15 State Board of Elections case. That would be number  
16 one.

17 Number two, end of the first sentence,  
18 after and the Commonwealth of Virginia -- I'm going  
19 to paraphrase, against the unwarranted  
20 retrogression, and that was dealing with Section 5  
21 of the Voters Rights Act. So, in essence, since  
22 that no longer applies, that language was stricken  
23 from the criteria that is not applicable. I have it  
24 right here, including compliance with the  
25 protections against the unwarranted retrogression or

1 of racial or ethnic moniority voting strength.

2 DELEGATE ALBO: Mr. Chairman?

3 MR. CHAIRMAN: Yes, sir.

4 DELEGATE ALBO: And that's because the  
5 Voting Rights Act no longer applies to --

6 MR. CHAIRMAN: The Voting Rights Act does  
7 apply. There is still a requirement that whatever  
8 is drawn under Section 2, it needs to be a 50% plus  
9 1. But also it has to be what they call a  
10 performing majority minority district, meaning that  
11 they, in fact, can elect a prefer candidate of  
12 choice with the configuration of the district. So  
13 that is the best job I can do in explaining it. It  
14 has to be a preforming district. It can't just be  
15 something that meets a test in the minds of a  
16 handful of people or legislatures in that regard.

17 Are there any other questions?

18 DELEGATE LINDSEY: Mr. Chairman?

19 MR. CHAIRMAN: Yes, sir, Mr. Lindsey.

20 DELEGATE LINDSEY: Am I to understand that  
21 you believe that using a mathematical formula of 50  
22 plus 1 gets us past the hump?

23 MR. CHAIRMAN: I did not say that. That is  
24 one of the criteria that is in section 2. That in  
25 and of itself does not get you past the hump, as I

1 understand it. It has to be, what they call, a  
2 performing majority minority district, meaning that,  
3 in fact, the residents of that district could, in  
4 fact, elect a prefer candidate of their choice.

5 DELEGATE LINDSEY: Can that not also be  
6 accomplished with less than a 50% vote?

7 MR. CHAIRMAN: Theoretically, I would think  
8 it possibly could.

9 Are there any other questions?

10 DELEGATE LINDSEY: Just one last question.

11 Is that an overriding consideration or --

12 MR. CHAIRMAN: If you go to the last  
13 section of the criteria -- if you read section 6, I  
14 think that will answer your question. It will  
15 actually tell you all of the foregoing  
16 considerations shall be considered but population  
17 equality among the districts in compliance with the  
18 federal and state constitution requirements of the  
19 Voters Right Act of 1965 shall be given a priority.

20 DELEGATE LINDSEY: And I said that was my  
21 last question. But this is my last question.

22 If I understood what you just said, what we  
23 are looking at is more so Congressional District 3  
24 and that immediately around it and not the whole  
25 map?

1                   MR. CHAIRMAN: That is what the court  
2 ordered. If you read the resolve section, it's very  
3 clear. If you read the order of the Eastern  
4 District Court -- and it's clear that process should  
5 occur once every decade.

6                   Are there any other questions?

7                   If not, I'll entertain a motion on the  
8 criteria.

9                   DELEGATE LINDSEY: I move to criteria.

10                  DELEGATE O'BANNON: I second.

11                  MR. CHAIRMAN: All in favor, say Aye.

12                  THE PANEL. Aye.

13                  MR. CHAIRMAN: Oppose?

14                  Is there anything else from the panel?

15                  If not, we will have a public hearing at  
16 3:00 this afternoon to receive citizen input. Thank  
17 you for your attendance this morning. Have a good  
18 rest of the day. See you at 3:00.

19

20                                 (Session concluded.)

21

22

23

24

25

CERTIFICATE OF COURT REPORTER

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I, Anne M. Nelson, hereby certify that I was the court reporter at the General Assembly on August 17th, 2015 in Richmond, Virginia.

I further certify that the foregoing transcript is a true and accurate record of the testimony and other incidents of the hearing herein.

Given under my hand this 8th day of September, 2015.

/s/ Anne Marie Nelson