

IN THE CIRCUIT COURT OF THE CITY OF SALEM  
SALEM, VIRGINIA

Douglas MacArthur West, Albert Simpson, Nanalou Sauder, Ruby Tucker, Shirley N. Tyler, Shanta Reid, John Mumford, Sam Werbel, Collins Howlett, Ira J. Coleman, Maryann Coleman, Carl Waterford, Regina Harris, Herman L. Carter, Jr., Grindly Johnson, Mary Margaret Whipple, Leslie Byrne, Yvonne Miller, Henry Marsh, Bob Brink, C. Richard Cranwell, Viola Baskerville, Mary T. Christian, L. Karen Darner, Jay W. DeBoer, R. Creigh Deeds, Franklin P. Hall, Robert D. Hull, Thomas M. Jackson, Jr., Jerrauld C. Jones, Kenneth R. Melvin, William P. Robinson, Jr., Marian Van Landingham, Mitchell Van Yahres, Clifton A. Woodrum,

Plaintiffs,

vs.

Governor James S. Gilmore, III, Lt. Governor and President of the Senate John H. Hager, Acting Attorney General Randolph A. Beales, Speaker of the House of Delegates S. Vance Wilkins, Jr., Senate Majority Leader Walter A. Stosch, House Majority Leader H. Morgan Griffith, Senator Kevin G. Miller, Delegate John H. Rust, Jr., Delegate S. Chris Jones, State Board of Elections Secretary Cameron P. Quinn, all in their official capacities.

Defendants.

BILL OF COMPLAINT  
Civil Action No.

Serve: Gov. James S. Gilmore, III  
Office of the Governor  
3<sup>rd</sup> Floor, State Capitol  
Richmond VA 23219

Lt. Gov. John H. Hager  
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## **BILL OF COMPLAINT FOR EQUITABLE RELIEF**

COME NOW the Plaintiffs, Douglas MacArthur West, Albert Simpson, Nanalou Sauder, Ruby Tucker, Shirley N. Tyler, Shanta Reid, John Mumford, Sam Werbel, Collins Howlett, Ira J. Coleman, Maryann Coleman, Carl Waterford, Regina Harris, Herman L. Carter, Jr., Grindly Johnson, Mary Margaret Whipple, Leslie Byrne, Yvonne Miller, Henry Marsh, Bob Brink, C.

Richard Cranwell, Viola Baskerville, Mary T. Christian, L. Karen Darner, Jay W. DeBoer, R. Creigh Deeds, Franklin P. Hall, Robert D. Hull, Thomas M. Jackson, Jr., Jerrauld C. Jones, Kenneth R. Melvin, William P. Robinson, Jr., Marian Van Landingham, Mitchell Van Yahres, Clifton A. Woodrum, by and through undersigned counsel, and in support of their Bill of Complaint for Equitable Relief, state as follows:

1. Plaintiffs are citizens of the Commonwealth of Virginia, who live in legislative districts affected by the Republican redistricting plans.

2. Defendants are: James S. Gilmore, III, the Governor of the Commonwealth of Virginia; John H. Hager, the Lieutenant Governor and President of the Senate; Randolph A. Beales, the Acting Attorney General of the Commonwealth of Virginia; S. Vance Wilkins, Jr., the Speaker of the House of Delegates; Walter A. Stosch, the Senate Majority Leader; H. Morgan Griffith, the House Majority Leader; Senator Kevin G. Miller, chairman of the Senate Privileges and Elections Committee and chief sponsor of Senate Bill 1; Delegate John H. Rust, Jr., a delegate from Fairfax, Virginia, who, upon information and belief, played a leading role in drafting the redistricting plans; Delegate S. Chris Jones, a delegate from Suffolk, Virginia, and chief sponsor of House Bill 1; and who, upon information and belief, played a leading role in drafting the redistricting plans; Cameron P. Quinn is Secretary of the State Board of Elections, the agency responsible for administering elections in Virginia.

3. This is a suit for declaratory judgment, injunction, and other equitable relief, seeking a judgment declaring that the 2001 state House of Delegates and Senate districting plans violate the Constitution of the Commonwealth of Virginia, enjoining the use of the House of Delegates plan for the 2001 elections, and providing such other equitable relief as the Court deems appropriate.

## INTRODUCTION

4. This suit arises under Article I, §§ 1, 11 & 12 and Article IV, § 6, of the Virginia Constitution. The suit alleges that the 2001 House and Senate districting plans (collectively "the 2001 plans" or "the plans") impermissibly discriminate among voters (i) on the basis of race by including a number of districts whose borders are predominantly drawn on the basis of race; (ii) on the basis of political viewpoint by packing Democrats into a few key districts and by pairing high-profile Democratic leaders, thereby diluting the impact of Democratic voters; and (iii) on the basis of gender by intentionally and effectively diminishing the re-election chances of incumbent women Democratic legislators by combining their districts with those of other Democratic incumbents with other Democratic incumbents at a rate significantly higher than the rate for male incumbents. The suit further alleges that numerous bizarrely-shaped districts in both plans depart radically from constitutional compactness and contiguity requirements.

## FACTUAL ALLEGATIONS

5. The Virginia House of Delegates contains 100 seats, which are assigned to geographic "districts" of roughly equal population. The Senate contains 40 seats, which are also assigned to roughly equipopulous geographic districts. The population of measure of the House and Senate districts is determined on the basis of the decennial United States Census.

6. It is well-settled that the "head count" method of Census-taking results in an actual undercount of minorities in urban areas. It is equally well-settled that statistical adjustment can significantly improve the accuracy of population determinations in these and other areas. With full knowledge of those facts, the General Assembly nevertheless enacted a law in 2000 prohibiting the use of statistical adjustments to the 2000 Census, thereby virtually

guaranteeing an actual undercount of the number of minority voters in urban areas throughout the state.

7. The "head count" result of the 2000 Census estimated that Virginia's population had increased 14.4 percent over its 1990 population, to a total of 7,078,715 people. The final Census numbers were reported to the Commonwealth on March 7, 2001. Following the receipt of the Census data, the General Assembly convened a special session for the exclusive purpose of establishing a new set of electoral district "maps" for state legislative districts. The session commenced on April 5, 2001.

8. By tradition and law, a critical part of the General Assembly's legislative redistricting process is the adoption and application of particular "criteria" embodying the legal requirements and public policy objectives governing the process. Past criteria had required that each district be within plus-or-minus five percent of the equipopulation target for all districts, as the state and federal constitutions allow. The new districting criteria adopted on April 3, 2001, altered that requirement, now requiring that each district be within two percent over or under the equipopulation number for each district.

9. The Virginia House and Senate are both governed by Republican majorities, and the Governor is a Republican. In consequence, a House plan and a Senate plan that were each initially drafted in secret by the Republican leadership and staff were first submitted in the session as House Bill 1 and Senate Bill 1. The final plans were amended versions of these Republican plans, and were passed on virtually party-line votes. Alternative plans offered by Democratic legislators that included much more compact and contiguous districts, respected political subdivisions more than the Republican plans, and were much less partisan in outcome, were rejected on party-line votes.

10. Drafters of the Plans openly admitted that they were motivated by race in the drawing of district lines. The General Assembly's goal was to pack as many minority voters as possible into only a few districts. And because of the change in the districting criteria to reduce the acceptable total population deviation, the General Assembly had to draw lines "picking up" thousands more minority voters to make each district close enough to the equipopulation target. Thus, the General Assembly found itself forced to draw ever-more bizarrely shaped lines to "find" enough minority voters to "fill out" sufficiently-sized districts. These effects were exacerbated by the Assembly's decision not to rely upon accurate population data, which made it more difficult to satisfy the General Assembly's race-based goal without disregarding traditional districting principles.

11. In drawing the districts that comprised the 2001 plans, the House and Senate leadership had access to Census block data that included more detailed racial information than ever before available. The map-drawing software utilized to design the districts was also capable of revealing extensive racial information. On information and belief, the House and Senate leadership relied on such information to draw district lines and divide voters on a predominantly racial basis.

12. The interplay of the factors discussed above caused many of the bizarre, and facially unconstitutional, districts included in the 2001 plans. As a comparison between the precisely selected location of the boundary lines in these districts and the racial populations on either side of those lines reveals, the 2001 plans are, in operation and effect, nothing more than racial segregation – it is clear that the lines of many districts were drawn to segregate voters on the basis of race. Racial minorities have experienced a significant increase in political influence throughout the state in recent years as their numbers have grown and as communities slowly

have become more integrated. The 2001 plans staunch the growth of that influence by relying on sophisticated computer analyses to choose district lines that explicitly re-segregate, on racial grounds, political divisions that had become racially integrated. By dividing voters on racial lines and "packing" as many minority voters as possible into just a few newly created political communities – communities with no other historical, residential or geographic basis whatsoever – the 2001 plans minimize the political influence of minorities, while ensuring that "white" voting communities need not address or respond to the needs of nearby minority voters.

13. The fact that voters are consciously segregated on the basis of race is plainly evidenced by the district boundaries themselves, which frequently track racial population divisions and not any traditional districting divisions, including political subdivisions such as precincts, cities and counties, and or other common communities of interest. Examples include, but are not limited to:

- (a) House District 74. House District 74 runs 45 miles long and is only a half mile wide at some points. The District is not contiguous, as it links two pieces of land on either side of the James River, where there is no bridge. The District splits a major political subdivision by including only two precincts in the City of Hopewell. The District was clearly drawn to include as many African Americans as possible. In Hopewell, Richmond, Charles City, and Henrico, the District lines swerve in and out, carefully including precincts with high percentages of African Americans and excluding precincts where African American numbers are low. The District has the highest percentage of African Americans in the entire Commonwealth (63.5% of total population; 59.7% of Voting Age Population).

- (b) House District 77. House District 77 is a bizarrely shaped district that, although centered mainly in Suffolk, includes a protruding "claw" that reaches up to the northern side of Chesapeake to "grab" a few heavily African American precincts. The District lines meticulously take in precincts with heavy percentages of African American voters, excluding white voters in surrounding precincts. The district is contiguous only by water. African Americans comprise 58.8% of the District's total population and 55.9% of the district's Voting Age Population.
- (c) House Districts 69, 70, 71. House Districts 69, 70, 71, located in and around Richmond City, wind around each other and do not appear to follow any traditional redistricting criteria. All three are contiguous by water only. All three have multiple finger-like protrusions that carve up the City of Richmond and "grab" heavily black precincts in the surrounding counties. Districts 69, 70, and 71 have 62.1%, 61.7%, and 60.7% African American total population, respectively, and 57.6%, 57.2% and 55.5%, respectively, African American Voting Age Population.
- (d) House District 49. House District 49 is a "bug-splat" shaped district that sprawls across three jurisdictions: Arlington, Fairfax, and Alexandria. Although the district is centered in Arlington, the District crosses into Fairfax to pull in heavily African American and Hispanic precincts and also reaches into Alexandria to pull two precincts with large African American populations. The District lines divide the Alexandria precincts of Mt. Vernon and Cora Kelly from their community of interest. The District lines exclude two precincts in south Arlington that have historically been represented by an "Arlington" delegate. There appears to be no

legitimate justification for drawing the district this way, other than to maximize the number of minorities in this District.

14. The Senate leadership similarly intended to divide voters along racial lines, and also did so by "packing" minorities into bizarrely-shaped districts the boundaries of which are defined by race and not traditional districting principles. Examples include, but are not limited to:

- (a) Senate District 2. Senate District 2 is contiguous by water only and includes precincts in parts of Hampton, Newport News, and Portsmouth. The District lines carefully track areas where there are heavy concentrations of African Americans, particularly in Hampton, dividing the eastern part of the city from the rest of the jurisdiction. African Americans comprise 58.5% of the total population, and 55.8% of the voting age population.
- (b) Senate District 18. District 18 runs nearly 105 miles east to west, but is barely two miles wide at its narrowest point. Geographically, the district is centered in the rural southside, but has a long "arm" that stretches northeast from Suffolk into Portsmouth and "grabs" roughly a dozen heavily African American precincts in the city of Portsmouth. The District has the largest concentration of African Americans of any Senate district, with 60.6% of the total population, and 58.5% of the voting age population.
- (c) Senate District 5. Senate District 5 is a bizarrely shaped "bug-splat" district that claims heavily African American areas in both Portsmouth and Norfolk. On the eastern edge, the District "jumps over" two predominantly white precincts to "grab" an African American precinct that more properly belongs to District 7,

which is centered in Virginia Beach. On the northern edge, the District also "jumps over" several white precincts to pull in African American voters in Norfolk. The District has the second highest concentration of African Americans in a Virginia Senate district, with 59.9% of the total population and 55.9% of the Voting Age Population.

15. The bizarrely-shaped majority-minority districts in the House and Senate plans are not narrowly tailored to serve any compelling state interests. As the alternative Democratic plans establish, the Assembly could have enacted plans that include the same number of majority-minority districts but with districts more compact and contiguous and respectful of political subdivisions and communities of interest.

16. The leadership in both the House and Senate also designed the plans with open and avowed hostility to Virginia voters of a particular political viewpoint. By manipulating district lines, the leadership consciously and intentionally packed as many Democratic voters as possible into as few districts as possible, thus minimizing the political influence of voters with Democratic viewpoints to the greatest extent possible. The leadership has openly advertised its belief and satisfaction that party representation in either chamber will not reflect the political makeup of Virginia's population, but will be skewed heavily in favor of Republicans. In addition, the plans targeted the Democratic leadership by pairing with other Democrats the following Democratic leaders: House Minority Leader C. Richard Cranwell, House Assistant Minority Leader Tom Jackson, House Democratic Caucus Chair R. Creigh Deeds, former House Speaker Thomas W. Moss, Jr., Black Caucus Chair Jerrauld C. Jones, and Senate Democratic Caucus Chair Mary Margaret Whipple. In these respects the plans are worthy of ersatz

"democracies" elsewhere in the world, where the dominant political party wields the machinery of the state to ensure its own continued political supremacy.

17. a. Nowhere was the partisan gerrymandering more egregious than it was in the Roanoke Valley. The Republican leadership, principally through Majority Leader Morgan Griffith working out of his law office in Salem with Republican provided computers and software, set out a plan which would pair Minority Leader, C. Richard Cranwell, with his long-time friend, Democratic Del. Clifton A. Woodrum, III. Thinking Cranwell continued to live in the Town of Vinton as he had done for a number of years, Griffith devised a plan to split Cranwell's strongest political base by separating the Town of Vinton from the Lindenwood and Mount Pleasant precincts in Roanoke County which adjoined the Town of Vinton and putting the Town of Vinton in a district dominated by the City of Roanoke in the belief that they were putting Woodrum and Cranwell in the same district.

b. This action was taken in spite of the fact the Town of Vinton is a political subdivision which is a part of Roanoke County. The Town of Vinton has been in a House of Delegates legislative district for at least fifty years, that encompasses the Town of Vinton and parts of Roanoke County, to the exclusion of the City of Roanoke. There is a strong community of interest between the Town of Vinton and Roanoke County, but very little, if any, exists between the Town of Vinton and Roanoke City.

c. Believing that Cranwell lived in the Town of Vinton, the Republicans drafted their redistricting plan ("Jones 08"), putting the two Town of Vinton precincts in the Roanoke City district. By doing this they believed they had put Del. Woodrum and Del. Cranwell in the same district. The Lindenwood precinct, in which Del. Cranwell actually lives (a fact which was unknown to the Republicans) was put in a district encompassing much of eastern

Roanoke and much of the southern part of Roanoke City, where Delegate A. Victor Thomas lives. At that time it was believed that Del. Thomas was going to retire. On information and belief, this district was drawn in concert with William Fralin, a prominent Republican in Roanoke City who had just two years ago lost a Senate race to Senator John Edwards. On information and belief, William Fralin intended to run and had been encouraged by the Republicans to run because Del. Thomas was going to retire.

d. The Republicans made a public pronouncement that Delegates Cranwell and Woodrum had been placed in the same House district, only to discover that Delegate Cranwell lived in the Lindenwood precinct. In order to correct their error and legitimize their public pronouncement, Republicans, principally through Morgan Griffith, altered the plan, splitting the Lindenwood precinct by lopping off 107 out of the approximately 3,700 registered voters in that precinct and placing them in with the House district which included the two Vinton precincts and some 60,000+ people in Roanoke City. Del. Cranwell is one of these 107 residents. They have very little, if any, community of interest with the portion of the district that is overwhelmingly dominated by Roanoke City.

e. The Republicans avowed and acknowledged that their purpose for doing this was an intentional political act to place Del. Cranwell and Del. Woodrum in the same district. This scheme, which pulled 2% of the Lindenwood voters out of the district in which they have a strong community of interest, was a flagrant attempt to pair the Democratic Minority Leader with another Democratic delegate whom the Republicans knew had no intention of retiring. This was acknowledged by the Majority Leader, Morgan Griffith, on the floor of the House of Delegates and by Del. Chris Jones, the Chief Patron on the Republic Redistricting Plan.

18. The plans also have the effect, and, on information and belief, the intention of, discriminating on the basis of gender against woman members of the General Assembly. Under the new lines, female legislators have been placed at a political disadvantage in a greater proportion than their male counterparts. Female legislators were targeted for district changes and for other political disadvantages. The House and Senate legislative leadership and, as a result, the districting plan, pursued a strategy of diminishing the prospects that women would be elected to the Virginia legislature, in violation of the Commonwealth's constitutional protection of equal rights.

19. In addition, female legislators were significantly more likely to be paired with other incumbents than male legislators were. This was the principal method that the legislature used to reduce the share of women serving in both the House and the Senate. In the House, 20 % of the women incumbents were forced to run with other incumbents; just 16 % of the male incumbents were subjected to the same liability. In the Senate, the discrepancy was even greater: 25 % of the women incumbents were paired with other incumbents; just 6 % of the male incumbents were so injured. Combining both chambers, 5 of 23 female incumbents were paired (22 %); but just 18 of the 117 men were paired (15 %) -- thus, women were almost 46 % more likely to be paired than men. The result is likely to be a reduction of the number of women in the Virginia legislature, a product of discrimination against those women, and an impairment of women's efforts to obtain representation in the legislature.

20. This discrimination is further illustrated by specific examples of pairing. The Senate plan pairs two high-profile woman from Northern Virginia -- Senator Mary Margaret Whipple, the Democratic Caucus Chair, and Senator Leslie Byrne, who was the first woman from Virginia elected to the United States Congress. The Republican leadership also retaliated

against Delegate Anne G. Rhodes — a moderate Republican woman who declined to support the Republican plan — by giving her a much more conservative district centered in Chesterfield, away from her base in Richmond. As a result, Delegate Rhodes has announced that she will retire.

21. The House of Delegates plan also includes several extremely irregular, noncompact and noncontiguous districts, including but not limited to those identified in ¶ 13, *supra*. Under several measurements of compactness, the Democratic alternative plan was more compact than the Commonwealth's plan. The Commonwealth's plan split 58 counties and cities, several more than necessary. The Commonwealth's plan also split 73 precincts. The odd shape of these districts is not necessary and serves no legitimate constitutional purpose.

22. The Senate plan also includes several extremely irregular, noncompact and noncontiguous districts, including but not limited to those identified in ¶ 14, *supra*. Under several measurements of compactness, the Democratic alternative plan was more compact than the Commonwealth's plan. The Commonwealth's plan split 41 counties and cities, several more than was necessary. The Commonwealth's plan also split 15 precincts. The odd shape of these districts is not necessary and serves no legitimate constitutional purpose.

23. The House plan included five districts that are contiguous by water only, and none of the five has direct bridge access from one part of the district to the other. The districts are 64 (James River), 74 (James River), 79 (inlet between Portsmouth and Norfolk), 91 (inlet in Poquoson), 100 (Chesapeake Bay). The Senate plan included four districts that are contiguous by water only, and one district (6) is contiguous by water in two places.

24. All of the plaintiffs are aggrieved by the foregoing actions of the defendants and by the 2001 redistricting plans and therefore have standing to bring this action.

25. An actual and justifiable controversy ripe for adjudication exists between the parties concerning the constitutional validity of the 2001 redistricting plans.

26. The plaintiffs have no adequate remedy at law to solve this matter, and will be irreparably harmed by implementation of the 2001 plans. The defendants will suffer no cognizable harm from the implementation of unconstitutional plans, and the harm to the plaintiffs outweighs any harm the defendants may assert.

**Count One – Article I, §§ 1 & 11 – Race Discrimination**

27. The allegations in the preceding paragraphs are hereby incorporated by reference as if set forth fully herein.

28. Article I, § 1 of the Virginia Constitution declares that all persons are “equally free and independent” and that they “enjoy certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity,” including “the enjoyment of life and liberty” and “pursuing and obtaining happiness and safety.” Section 11 of Article I further provides that “the right to be free from governmental discrimination upon the basis of religious conviction, race, color, sex, or national origin shall not be abridged.” This specific prohibition against race discrimination is at least coterminous with the prohibition against race discrimination implicit in the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. *See Archer v. Mayes*, 213 Va. 633, 638, 194 S.E.2d 707, 711 (1973). The United States Supreme Court has held that it is an impermissible form of government race discrimination to enact a redistricting plan that includes districts that divide voters on a predominantly racial basis. *See, e.g., Shaw v. Reno*, 509 U.S. 630 (1993). Under the *Shaw* line of cases, a district reflects impermissible race discrimination when its lines

subordinate traditional districting principles to predominantly racial considerations without a compelling reason for doing so.

29. The House and Senate plans include numerous districts that violate the prohibitions on race discrimination set forth in *Shaw v. Reno* and progeny. Specifically, districts 49, 63, 69, 70, 71, 74, 77, 79, 80, 89, 90, 92, and 95 in the House plan, and districts 2, 5, 9, 16, 18 in the Senate plan, were each designed with the avowed, race-based goal of maximizing the number of minority voters. In each case, the Assembly relied on racial data in drawing district borders to accomplish that goal. The resulting districts do not respect traditional districting principles, but instead subordinate them to the race-based goal of maximizing the number of African-Americans within their borders.

30. The Commonwealth has no compelling interest in the extraordinary subordination of districting principles to race exemplified by these districts. The Assembly could have established an equal number of majority-minority districts with much more compact and contiguous borders, as evidenced by alternative plans that were rejected by the Assembly during the redistricting process.

31. The subordination of traditional districting principles to racial considerations in the design of the aforementioned districts constitutes impermissible race discrimination in violation of Article I, §§ 1 & 11 of the Virginia Constitution.

**Count Two - Article I, §§ 1 & 11 - Gender Discrimination**

32. The allegations in the preceding paragraphs are hereby incorporated by reference as if set forth fully herein.

33. Article I, § 1 of the Virginia Constitution provides that all persons are "equally free and independent," and § 11 explicitly prohibits government discrimination on the basis of gender.

34. The 2001 districting plans have the purpose and effect of discriminating against incumbent female Democratic legislators on the basis of gender. As set forth more fully above in ¶¶ 18-20, the Assembly leadership was aware that the 2001 plans would disproportionately increase the odds against re-election of certain Democratic female legislators, and intended that result.

35. The conscious discrimination on the basis of gender evidenced by the 2001 plans violates Article I, §§ 1 & 11 of the Virginia Constitution.

**Count Three – Article I, §§ 1 & 12 – Political Viewpoint Discrimination**

36. The allegations in the preceding paragraphs are hereby incorporated by reference as if set forth fully herein.

37. Article I, § 1 of the Virginia Constitution guarantees all persons the right to enjoy liberty and pursue happiness. Section 12 of Article I further provides that "the General Assembly shall not pass any law abridging the freedom of speech." Analogous language in the Free Speech Clause of the First Amendment to the United States Constitution has been held to protect the rights of political belief and association. *Elrod v. Burns*, 427 U.S. 347, 356 (1976) ("[P]olitical belief and association constitute the core of those activities protected by the First Amendment."). Thus, the government may not discriminate among citizens on the basis of political party affiliation. See *O'Hare Truck Services, Inc. v. City of Northlake*, 518 U.S. 712 (1996); *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990); *Branti v. Finkel*, 445 U.S. 507 (1980).

38. The 2001 redistricting plans overtly and intentionally discriminate against Virginia voters on the basis of political viewpoint. As set forth more fully above in ¶¶ 16-17, the 2001 plans intentionally and effectively dilute the votes of Democratic voters in Virginia and suppress the participation of such voters in the political processes of the Commonwealth. Such vote dilution was among the explicit purposes of the partisan gerrymander reflected in the plans, and the Republican leadership has already acknowledged – indeed, proudly trumpeted – that such dilution will be the immediate consequence of the plans' enactment.

39. The conscious political viewpoint discrimination evidenced by the 2001 plans violates the Free Speech protections of Article I, §§ 1 & 12 of the Virginia Constitution.

**Count Four – Article II, § 6 – Compactness/Contiguity**

40. The allegations in the preceding paragraphs are hereby incorporated by reference as if set forth fully herein.

41. Article II § 6 of the Virginia Constitution provides that all state legislative districts “shall be composed of contiguous and compact territory.”

42. Several districts in the 2001 plans deviate from the compactness and contiguousness requirements of Article II, § 6. Specifically, districts 49, 62, 64, 69, 70, 71, 74, 77, 79, 80, 83, 89, 90, 91, 92, 95, and 100 and others in the House plan, and districts 1, 2, 3, 4, 5, 9, 13, 16, and 18 and others in the Senate plan are either non-compact or non-contiguous or both. These districts also disregard such traditional districting criteria as precinct, city and county lines, and communities of interest.

43. Important considerations relied upon in the past by the Commonwealth in justifying noncompact districts are no longer viable. For example, while in the past the Commonwealth has argued that certain noncompact districts resulted from the use of race to

create majority-minority districts, the use of race to create noncompact districts is now specifically prohibited. *See* ¶ 28, *supra*. The stricter judicial review of noncompact districts that is now required also justifies stricter review of the reasons for departing from compactness and contiguity requirements of Article II, § 6.

44. Even in the absence of closer judicial scrutiny, however, the aforementioned districts violate Article II, § 6.

#### Count V – Article I, §§ 1 & 11 – Unequal Representation

45. The allegations in the preceding paragraphs are hereby incorporated by reference as if set forth fully herein.

46. Article I, § 1 of the Virginia Constitution guarantees the right to liberty, and Article I, § 11 prohibits race-based discrimination by government.

47. It is well-established that so-called “headcount” methods for identifying populations figures result in a statistically significant undercount of minorities in urban areas. It is also well established that a statistical adjustment of headcount results will result in a much closer estimate of actual populations in such areas. In 2000, however, the Virginia Assembly enacted a law prohibiting the use of statistical adjustments in the calculation of the Commonwealth’s population and population distribution. That law had the purpose and effect of undercounting minority populations, resulting in the dilution of minority voting strength in the undercounted areas.

48. The use of statistically adjusted, more accurate population figures in the drawing of the 2001 districting plans would have increased the representation afforded minorities in the new plans. The Commonwealth’s refusal to use the more accurate population figures resulted in the conscious and intentional dilution of minority voting strength, and deprived all uncounted

voters of the right to be treated equally in the voting and districting process, in violation of Article I, §§ 1 & 11 of the Virginia Constitution.

**Prayer for Relief**

**WHEREFORE, Plaintiffs respectfully pray:**

49. That this Court enter judgment declaring the 2001 plans in violation of the Constitution of the Commonwealth of Virginia and thus of no further effect insofar as they purport to establish the legislative districts for the Commonwealth;

50. That this Court enter judgment declaring that districts 49, 62, 63, 64, 69, 70, 71, 74, 77, 79, 80, 83, 89, 90, 91, 92, and 95 in the House plan, and districts 2, 5, 9, 13, 16, and 18 impermissibly discriminate among voters on the basis of race in violation of Virginia Constitution Article I, § 11.

51. That this Court enter judgment declaring that the 2001 plans impermissibly discriminate against incumbent female legislators on the basis of gender;

52. That this Court enter judgment declaring that the 2001 plans impermissibly discriminate against voters on the basis of political viewpoint;

53. That this Court enter judgment declaring that districts 49, 64, 69, 70, 71, 74, 77, 79, 80, 89, 90, 91, 92, 95, and 100 and others in the House plan, and districts 1, 2, 3, 4, 5, 9, 16, and 18 and others in the Senate plan violate the compactness and contiguity requirements of Virginia Constitution Article II § 6.

54. That this Court enter judgment declaring that the 2001 plans are impermissibly based on an undercount of minority voters;

55. That this Court enjoin defendants from ordering or conducting any further electoral processes on the basis of the 2001 plans, from certifying the results of any elections

under such plans, and from taking any other steps with respect to the election of state House and Senate members until districting plans are in place that comply with the requirements of the Virginia Constitution.

56. That this Court enter an order extending the filing deadline for candidates for the state House until such time as is necessary to effect relief;

57. That this Court order appropriate remedies, including solicitation of alternative districting plans from interested parties and, if necessary, the design of an alternative plan for the 2001 House elections.

58. That this Court retain jurisdiction of this action until districting plans are in place that comply with the requirements of the Virginia Constitution.

59. That the Court award Plaintiffs their costs and reasonable attorneys fees, and any other relief the Court deems appropriate.

Respectfully submitted:



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