



COMMONWEALTH OF VIRGINIA
HOUSE OF DELEGATES
RICHMOND

DAVID J. TOSCANO
MINORITY LEADER

211 EAST HIGH STREET
CHARLOTTESVILLE, VIRGINIA 22902
FIFTY-SEVENTH DISTRICT

COMMITTEE ASSIGNMENTS:
COURTS OF JUSTICE
COMMERCE AND LABOR
RULES

July 16, 2018

Honorable Kirkland M. Cox
Speaker of the House
House of Delegates
PO Box 1205
Colonial Heights, VA 23834

Dear Kirk:

On June 26, 2018, the U. S. District Court for the Eastern District of Virginia issued a Memorandum Opinion in *Golden Bethune-Hill, et al, v. Virginia State Board of Elections, et al*, finding that the Virginia House of Delegates had improperly used race in drawing district boundaries following the 2010 Decennial Census in violation of the Fourteenth Amendment's Equal Protection Clause to the United States Constitution. This hopefully will bring to an end to protracted litigation which began in 2014, and which has now cost Virginia taxpayers over \$5 million to defend the drawing of unconstitutional districts.

As you recall, the Eastern District had been directed by the U. S. Supreme Court to reconsider its decision following an initial trial on this matter in July of 2015. The U. S. Supreme Court remanded the case to the district court finding that the court had not applied the appropriate legal analysis to the case. After a second trial in October of 2016, the district court has now issued an opinion consistent with the earlier opinions of the U. S. Supreme Court as applied to the evidence in this case.

The District Court's opinion is clear and unambiguous. It found overwhelming evidence that, contrary to the constitutional requirements, the House plan improperly sorted voters into districts based on the color of their skin and, concluded therefore, that the 2011 Virginia House of Delegates redistricting plan violates the Equal Protection Clause of the U. S. Constitution.

The court's June 26, 2018 188-page opinion analyzed each challenged district in exhaustive detail to develop its findings about constitutional infirmities. The court further stated that it would "allow the Virginia General Assembly until October 30, 2018, to construct a remedial redistricting map that rectifies the constitutional deficiencies identified in this opinion."

This is the second case where the courts have found recent House redistricting plans to be unconstitutional. On June 5, 2015, the U. S. Supreme Court struck down the House plan to redraw Virginia's Congressional districts, finding that the body illegally concentrated African-Americans in one Congressional district to reduce their influence in others. New maps were subsequently drawn by the court.

The opinion of the district court allows the General Assembly to address the constitutional infirmities, and I believe it is our duty to do so. We have now conducted four legislative elections using district lines that violate the Constitution. Delaying further simply frustrates the rule of law and our obligation to uphold the Constitution.

For these reasons, I propose that we move expeditiously to reconvene the General Assembly to draw new maps that can pass the constitutional tests set forth by the U. S. Supreme Court and which were recognized in the June 26, 2018, decision of the U. S. District Court. In my view, there are several ways in which this can be accomplished:

1. We can change the procedural resolution under which we presently sit in special session to include consideration of the required redistricting. Since August 16, 2018, had been earlier reserved by our colleagues to return to Richmond, it would be fairly easy to bring us together on that date.
2. We could agree to call our own special session for the sole purpose of drawing new maps. This would require a super majority vote and therefore is more problematic, but it is an option. August 16 remains a possibility because we have already reserved it on our schedule.

Toscano to Cox
July 16, 2018
Page 3

3. We could request the Governor to call us into special session for this purpose.

I hope we can agree that the legislature should exercise its responsibility and act expeditiously to bring us back on August 16 to begin the process of drawing constitutional lines consistent with the court's opinion and the criteria set forth by the U. S. Supreme Court.

When the courts struck down the House's drawing of the U. S. Congressional District lines as constitutionally infirmed, the General Assembly reconvened in special session on August 17, 2015, to remedy this problem. We ultimately failed, with the result that the court had to intervene to draw the lines. We can do better this time, but only if we act quickly. We have a constitutional responsibility to draw fair district boundaries and do it as quickly as possible. We should move forward without expending more taxpayer monies on this case.

I hope you can consult with your leadership and get back to me by the end of this week (by Friday, July 20, 2018) so our colleagues can plan to return on August 16 and begin this process.

Sincerely

A handwritten signature in black ink, appearing to read "David J. Toscano". The signature is fluid and cursive, with a prominent initial "D" and "T".

David J. Toscano