



COMMONWEALTH OF VIRGINIA  
HOUSE OF DELEGATES  
RICHMOND

DAVID J. TOSCANO  
MINORITY LEADER

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

August 13, 2018

COMMITTEE ASSIGNMENTS:  
COURTS OF JUSTICE  
COMMERCE AND LABOR  
RULES

Via USPS and email: [delKCox@house.virginia.gov](mailto:delKCox@house.virginia.gov)  
Honorable M. Kirkland Cox  
Speaker of the Virginia House of Delegates  
P. O. Box 1205  
Colonial Heights, VA 23834

Dear Kirk:

On August 8, 2018, the U.S. District Court for the Eastern District of Virginia issued a new Order to follow its June 26, 2018, Memorandum Opinion in *Golden Bethune-Hill, et al, v. Virginia State Board of Elections, et al.* The June 26, 2018, Opinion found 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. In that decision, the court provided the General Assembly the opportunity to redraw the districts by October 30, 2018. The Court has now requested the "House-Intervenors" to provide information as to whether the House will convene to address the problem and draw new lines. They have requested this information by August 24, 2018.

This litigation began in 2014. As you recall, the Eastern District was directed by the U.S. Supreme Court to reconsider its initial decision upholding the constitutionality of the decision, stating that the court had not applied the appropriate legal analysis to the case. After a second trial in October of 2016, the District Court issued an opinion on June 26, 2018, consistent with the earlier opinions of the U.S. Supreme Court as applied to the evidence in this case.

Based on this opinion, I wrote to you on July 16, 2018, to request we convene immediately to modify the challenged districts. I read in the paper that you refused this request. In light of the most recent court order, I renew my request that a session be scheduled as soon as possible.

The District Court's June 26 opinion is clear and unambiguous; it found overwhelming evidence that the 2011 House redistricting plan improperly sorted voters into districts based on the color of their skin and concluded that the plan violates the Equal Protection Clause of the U.S. Constitution.

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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 the House's redistricting plans to be unconstitutional. On June 5, 2015, the U. S. Supreme Court struck down the House plan to redistrict Congressional districts, finding that the body illegally concentrated African-Americans in one Congressional district to reduce their influence in others. The opinion of the District Court places the responsibility for addressing the constitutional infirmities squarely in the hands of the General Assembly, and it is our duty to the citizens of the Commonwealth of Virginia to remedy these constitutional deficiencies as quickly as possible. 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 recognized in the June 26, 2018, decision of the U. S. District Court. Since we are presently in session, all that needs to be done is to modify the procedural resolution so we can take up new maps.

The Court has given us until August 24 to tell them if and when we will act. October 30 is looming. 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 no later than 12:00 pm on Friday, August 17, 2018, so our colleagues can plan to return as soon as possible and begin this process.

Sincerely

A handwritten signature in black ink, appearing to read "D. Toscano", written in a cursive style.

David J. Toscano