

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

Douglas MacArthur West, et al.,

Plaintiffs,

vs.

Governor James S. Gilmore, III, et al.,

Defendants.

Civil Action No. CH01-84

**PLAINTIFFS' MOTION FOR EXPEDITED DISCOVERY AND FOR LEAVE OF
COURT TO TAKE DEPOSITIONS PRIOR TO FILING OF DEFENDANTS'
RESPONSIVE PLEADING AND FOR LEAVE OF
COURT TO ENLARGE LIMITATION ON DEPOSITIONS**

COME NOW Plaintiffs, by and through undersigned counsel, and move this Honorable Court to order expedited discovery and to grant leave to take depositions of certain individuals, including certain parties, prior to the filing of defendants' responsive pleading and for leave of court to enlarge the limitation on the number of depositions that may be taken in this suit. In support of this motion, Plaintiffs state as follows:

1. Va. Sup. Ct. Rule 4:8 states that "a defendant may serve answers or objections [to interrogatories] within 28 days after service of the bill of complaint or motion for judgment upon that defendant," and that the "court may allow a shorter or longer time." Va. Sup. Ct. 4:8 (2001). Similarly, Va. Sup. Ct. Rule 4:9 states that "a defendant may serve a response [to a request for production of documents] within 28 days after service of the bill of complaint or motion for judgment upon that defendant," and that the "court may allow a shorter or longer time." Va. Sup. Ct. 4:9 (2001). Attached to this motion are Plaintiffs' First Set of Requests for Production

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of Documents and Things on Named Defendants (Ex. A) and Plaintiffs' First Set of Interrogatories to Named Defendants (Ex. B). These two (2) discovery requests are contemporaneously being served on defendants Gilmore, Beales, and Quinn, along with service of this motion.

2. Va. Sup. Ct. Rule 4:5(a) states that "[l]eave of court, granted with our without notice, must be obtained only if the Plaintiff seeks to take a deposition before the expiration of the period within which a defendant may file a responsive pleading under Rule 2:7 or 3:5..." Va. Sup. Ct. 4:5(a) (2001).

3. The 2002 election for the Virginia House of Delegates is less than four months away. The ruling of this Honorable Court could affect the district boundaries of the House of Delegates districts. In order for candidates to run effective campaigns, they must know the boundaries of their district. In order for voters to study the issues and decide which candidate to support, they must know which candidates are running to represent them. If this Honorable Court is to have enough time to consider the evidence in this case and issue its ruling in time for candidates and voters to prepare adequately for the 2002 elections, the parties must be permitted to begin discovery immediately. If defendants use the entire 28 day period to respond to discovery requests, there may not be adequate time to resolve this case.

4. Counsel for defendants Gilmore, Beales, and Quinn has informed plaintiffs' counsel that those defendants are unwilling to expedite discovery before this Honorable Court rules on preliminary responsive motions that they intend to file.

5. Va. Sup. Ct. Rule 4:6A states that: "No party shall take the deposition of more than five witnesses for any purpose without leave of court for good cause shown." Va. Sup. Ct. Rule 4:6A (2001).

6. There is good cause for Plaintiffs to take the depositions of more than five individuals. Upon information and belief, the following individuals, and perhaps others, have specific first-hand knowledge of the facts alleged in the Bill of Complaint:

- a) Delegate S. Chris Jones
- b) Speaker Vance Wilkins
- c) Delegate Lionel Spruill
- d) Delegate Anne G. Rhodes
- e) Delegate Riley E. Ingram
- f) Delegate Dwight C. Jones
- g) Senator Bennett Lambert
- h) Senator John H. Rust, Jr.
- i) Senator Kevin Miller
- j) Delegate H. Morgan Griffith
- k) Senator Walter A. Stosch
- l) Staff Members of, and expert consultants to, the limited liability cooperation established by the Republican party for assistance in designing the 2001 redistricting plans.

In particular Plaintiffs believe that each of these individuals was directly involved in the drafting of the 2001 redistricting plans and/or in the legislative strategy for enacting the plans and/or in the negotiations leading to the enactment of the plans. Each individual is likely to have relevant knowledge as to the reasons for the size, shape, and racial and political demographics of the districts challenged in this lawsuit.

7. The number of individuals with direct and personal knowledge of the facts of this case number more than five.

8. Plaintiffs' request is consistent with the spirit of Va. Sup. Ct. Rule 4:6A, the Comment to which states: "This new rule, designed to limit discovery sharply, is taken from the rules of the United States District Court for the Eastern District of Virginia." Va. Sup. Ct. Rule 4:6A (Comment) (2001). Plaintiffs desire "to limit discovery sharply," as it will clearly be in the Defendants' interest to drag out litigation for as long as possible. Defendants know that Plaintiffs have limited resources, and more importantly, limited time to achieve a satisfactory result in this litigation. Thus, Plaintiffs do not seek leave to enlarge the number of depositions for the impermissible reason of delaying litigation; on the contrary, Plaintiffs want to expedite litigation.

9. For the reasons stated above, Plaintiffs respectfully request that this Court order expedited discovery; specifically, that Defendants Gilmore, Beales, and Quinn be ordered to respond to interrogatories and requests for production within 17 days.

10. Further, Plaintiffs respectfully request that this Court grant leave to take depositions of certain individuals, including certain parties, prior to the filing of Defendants' responsive pleading and for leave of court to enlarge the limitation on the number of depositions that may be taken in this suit.

Dated: July 9, 2001

Respectfully submitted,

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