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COMMONWEALTH OF VIRGINIA

HOUSE OF DELEGATES
RICHMOND

COMMITTEE ASSIGNMENTS:
TRANSPORTATION
FINANCE
COUNTIES, CITIES AND TOWNS

The Honorable Mark R. Herring
Attorney General, Commonwealth of Virginia
Barbara Johns Building
202 North Ninth Street
Richmond, VA 23219

26 April, 2021

Attorney General Herring,

I write this letter to request a formal opinion from the Office of the Attorney General with regard to the constitutionality of the 2021 elections for the House of Delegates being conducted under electoral districts established in 2011.

In 2020, Virginia's voters approved an amendment to the Constitution of Virginia that established the Virginia Redistricting Commission. Article II, Section 6 of the Constitution now reads, in part:

The Commonwealth shall be reapportioned into electoral districts in accordance with this section and Section 6-A in the year 2021 and every ten years thereafter.

...

The districts delineated in the decennial reapportionment law shall be implemented for the November general election for the United States House of Representatives, Senate, or House of Delegates, respectively, that is held immediately prior to the expiration of the term being served in the year that the reapportionment law is required to be enacted.

This constitutional language would seem to require conducting the next elections for the House of Delegates this November, under new electoral districts to be established by the Virginia Redistricting Commission. However, due to delays in receipt of the census data, no such maps have currently been established, and the Department of Elections is conducting primary elections for the House of Delegates under electoral districts established in 2011.

This decision to use decade-old electoral districts has the practical effect of diminishing the voting power of areas of the Commonwealth which have seen rapid population growth since 2011, and giving additional voting power to those areas which have seen stagnation or decline in population in that time. Those high growth areas tend to have a much higher degree of racial, ethnic, and religious diversity on average than the Commonwealth as a whole, meaning that the electoral power of racial, ethnic, and religious minorities is likely to be directly diminished by the conduct of 2021's elections under 2011's electoral districts.

The United States Census Bureau has announced that the results of the 2020 Census are to be released beginning at 3pm today, thus allowing the Virginia Redistricting Commission the opportunity to establish electoral districts as prescribed by Article II, Section 6 of the Virginia Constitution, and to do so with the most recently available population data.

Therefore, I am requesting a formal opinion which will be helpful and instructive in determining the following pressing matters:

- 1) The Constitutional authority, if any such authority exists, under which the Virginia Department of Elections is currently conducting the 2021 House of Delegates elections for the electoral districts established in 2011.
- 2) Whether, in the absence of timely data from the United States Census Bureau, the Virginia Redistricting Commission is Constitutionally bound to establish new electoral districts with the best available population data for the House of Delegates elections in the year 2021 and in each tenth subsequent year thereafter.

As voting has already begun in the state-run primaries for the 2021 House of Delegates elections, this issue is of the utmost importance, and therefore deserves your immediate attention.

Respectfully,



Lee J. Carter
Delegate
Virginia's Fiftieth District