

2014 SPECIAL SESSION I

INTRODUCED

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HOUSE JOINT RESOLUTION NO. 5129

Offered June 19, 2014

Directing the Speaker of the House of Delegates to appoint counsel in the court in which Bostic v. Rainey is pending to permit the General Assembly to intervene and defend vigorously the constitutionality of Article I, Section 15-A in such court and in all other proceedings in any other court.

Patron—Marshall, R.G.

Committee Referral Pending

WHEREAS, the plaintiffs in *Bostic v. Rainey (Bostic)*, now pending in the United States Court of Appeals for the Fourth Circuit, attack the constitutionality of Article I, Section 15-A of the Constitution of Virginia; and

WHEREAS, engagement of special counsel in *Bostic* is necessary because Mark R. Herring, the Attorney General of Virginia, without legal authority and without precedent, not only ceased defending the validity of Article I, Section 15-A but joined the plaintiffs in convincing the trial judge to hold that Article I, Section 15-A was unconstitutional; and

WHEREAS, engagement of special counsel in *Bostic* is also necessary because the Governor of Virginia, violating his constitutional obligation under Article V, § 7 of the Constitution of Virginia to ensure that the laws of the Commonwealth be faithfully executed, has refused to exercise the authority granted to him by § 2.2-510 of the Code of Virginia to employ special counsel to defend the constitutionality of Article I, Section 15-A of the Constitution of Virginia; and

WHEREAS, the case of *INS v. Chada*, 462 U.S. 919 (1983), involved a situation analogous to that involved in *Bostic* in which the United States House of Representatives and Senate successfully intervened, and the United States Supreme Court stated that Congress is the proper party to defend the validity of a statute when an agency of government, as a defendant charged with enforcing the statute, agrees with plaintiffs that the statute is inapplicable or unconstitutional; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Speaker of the House of Delegates engage special legal counsel to move the court in which *Bostic v. Rainey* is pending to permit the General Assembly to intervene and defend vigorously the constitutionality of Article I, Section 15-A in such court and in all other proceedings in any other court.

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