

# 2014 SPECIAL SESSION I

INTRODUCED

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## HOUSE RESOLUTION NO. 534

Offered June 11, 2014

*Directing the House Committee on Rules to meet within eight calendar days following passage of this resolution for the purpose of selecting and engaging special counsel to move the Court in which Bostic v. Rainey is pending to permit the House 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.*

Patrons—Marshall, R.G. and Ingram

Committee Referral Pending

WHEREAS, House Resolution 502 (2014 Special Session I) states that no bill or resolution shall be introduced in the 2014 Special Session I without unanimous consent except (among other things) "Budget Bill(s)" and "joint resolutions or resolutions affecting the rules of procedure or schedule of business of the General Assembly or any of its committees"; and

WHEREAS, since this resolution relates to a Budget Bill and also affects the schedule of business of a standing House committee, it is properly before the House without unanimous consent; and

WHEREAS, House Bill 5002 is a Budget Bill that was passed by the House on March 25, 2014, but has not yet been enacted into law; and

WHEREAS, Item 4-0.01 (e) of HB 5002 (2014 Special Session I), in part, directs the Speaker to appoint legal counsel to represent the Commonwealth's interests in the case of *Bostic v. Rainey* (*Bostic*), including any appeals, now pending in the Fourth Circuit Court of Appeals; and

WHEREAS, the plaintiffs in *Bostic* 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, not only ceased defending the validity of Article I, Section 15-A, but he joined the plaintiffs in convincing the trial judge to hold that Article I, Section 15-A was unconstitutional; and

WHEREAS, the case of *INS v. Chada*, 462 U.S. 919 (1983), involved an analogous situation to the one involved in *Bostic* in which the United States House of Representatives 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; and

WHEREAS, it is unknown whether the provisions of Item 4-0.01 (e) of HB 5002 directing the Speaker to appoint special counsel to represent the Commonwealth will be enacted into law; and

WHEREAS, if such provisions of Item 4-0.01 (e) of HB 5002 are not enacted into law, then it is necessary for the House of Delegates to intervene in *Bostic* by engaging special counsel to represent the House; now, therefore, be it

RESOLVED by the House of Delegates, That the House Committee on Rules be directed to meet within eight calendar days following passage of this resolution for the purpose of selecting and engaging special counsel to move the Court in which *Bostic v. Rainey* is pending to permit the House 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.

The Committee shall conduct its meetings until such time as its work is completed even if such meetings extend beyond the 2014 Special Session I.

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