

January 6, 2009

Delegate David B. Albo  
Chairman, House Courts of Justice  
General Assembly Building, Room 529  
Capitol Square  
Richmond, VA 23219

Senator Henry L. Marsh III  
Chairman, Senate Courts of Justice  
General Assembly Building, Room 432  
Capitol Square  
Richmond, VA 23219

Dear Chairman Albo and Chairman Marsh:

The undersigned respectfully submit this letter in opposition to the reelection of Gaylord L. Finch, Jr. as a Judge on the Nineteenth Judicial Circuit of Virginia.

Our opposition to Judge Finch's reelection is based principally on his conduct in the case *Joe Pascale, et al v. Fairfax County School Board*, CL 2008-4186. This case was brought by parents of students attending various Fairfax County public schools seeking judicial review of the Fairfax County School Board's decision approving boundary adjustments for South Lakes, Oakton, Chantilly, Madison and Westfield High Schools, Thoreau and Hughes Middle Schools, and Wolftrap and Sunrise Valley Elementary Schools. On July 28, 2008, Judge Finch issued a letter ruling in favor of the School Board, a copy of which is attached hereto.

The undersigned were supporters of petitioners in this case. Our opposition to Judge Finch's reelection is not because he ruled in favor of the School Board, but because we do not believe he provided this case with the care, diligence and professionalism that should be expected and required of a Judge in every case that comes before him or her. In this case, there were seven briefs or other memoranda submitted by the parties (four by the petitioners and three by the School Board), thousands of pages of backup materials submitted as the administrative record and a hearing before Judge Finch that lasted more than two hours. Additionally, both parties raised several significant legal and policy issues in their respective briefs and during the hearing. Yet, as you can see from the attached copy of the letter ruling, Judge Finch provided no legal opinion or analysis for his ruling. The failure to issue an opinion for his ruling left us with the feeling that the Judge had not devoted much time or attention to this case. Although Judge Finch stated at the hearing that he had read the materials submitted by the parties, he asked only one question at the hearing and after the hearing he asked counsel for the parties to expend additional time and cost preparing a closing brief summarizing the arguments that already had been made in the prior briefs and at the hearing. This left many of us who attended



the hearing asking if the Judge actually had reviewed the materials with care and diligence. In our opinion, Judge Finch's performance in this case was an example, at best, of lazy jurisprudence, and, at worst, exhibited a predisposition towards siding with the School Board without giving the arguments a thorough and diligent review.

One of the arguments the School Board made in this case that was particularly shocking to us was that petitioners did not have standing to challenge the School Board's decision, despite the fact each of the petitioners was the parent of a child impacted by the boundary adjustments. The School Board's claim that its decision to redraw school boundaries essentially is immune from legal challenge by parents of students impacted by the decision seemed to us to be an excessive, and even arrogant, claim of power by a government body. But Judge Finch could not even see fit to rule on this claim. In his letter ruling, Judge Finch stated that "[a]ssuming, without deciding, that the Petitioners have standing to bring their claim, the Court finds that the School Board had authority to make the boundary adjustments at issue and further that the School Board did not act arbitrarily or capriciously or abuse its discretion." First, this ruling is sloppy jurisprudence—it is well-established that a court must first determine whether a party has standing before it considers the merits of the case. If Judge Finch's ruling were that petitioners in this case did not have standing, he should have made the ruling at the beginning of the process and saved the parties the time and expense of proceeding on the merits. At a minimum, he owed petitioners a clear ruling on whether they had standing to bring this case and, if not, a reasoned legal opinion setting forth the basis for concluding that parents of students required to change schools as the result of a decision by a school board to redraw school boundaries do not have standing to challenge that decision.

The paucity of Judge Finch's letter ruling and the absence of any explanation or analysis for his ruling also has important public policy implications. One of the principal arguments of petitioners was that the School Board exceeded its statutory authority by considering socioeconomic characteristics of students in making its boundary adjustments. A school board has statutory authority to redraw school boundaries where such action will contribute to the efficiency of the school division. Petitioners argued that using socioeconomic factors—in this case, students eligible for free-and-reduced lunch and students with English as a second language—as a primary factor in redrawing school boundaries was not expressly conferred or necessarily implied from the statutory authority to redraw school boundaries to contribute to the efficiency of the schools and, accordingly, violated the Dillon Rule. The School Board responded that it necessarily had the sole discretion to determine what factors contribute to the efficiency of the school division. Judge Finch's letter ruling leaves open whether his decision was based on the School Board's expansive interpretation of its authority or a more limited rationale, which given the significance of the Dillon Rule in Virginia and the fact that many school boards across the Commonwealth likely were watching this case closely, could encourage school boards to interpret their authority broadly in a manner not intended by the General Assembly.

The cornerstone of our legal system is the faith of citizens in the system and an essential component of that faith is confidence that every case will receive a professional,

diligent and impartial hearing. No citizen has the right to a particular outcome in our courts, but every citizen has the right to a process that gives thorough and careful consideration to their claims—the right to receive their day in court. Judge Finch's performance in this case left us and many others impacted by this case feeling like we did not have our day in court and that the Judge merely rubber stamped the decision of the School Board and its very broad claim of authority without providing any reasoning or analysis for his decision. As a result, we all have lost some faith and confidence in our legal system. For this, we do not believe Judge Finch has earned the honor and privilege to continue serving the citizens of Virginia on the Circuit Court of Fairfax County.

Very truly yours,

Theresa R. Ostrowski

Neil P. D'S

Cynthia H Fry

William M. Browning

Arthur D. Wain

William M. Browning

John G. Wain

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Lisa Capello

Mary Sue Schultz



cc: Delegate H. Morgan Griffith  
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Senator Ryan T. McDougale  
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Senator Robert Hurt