

COMMONWEALTH OF VIRGINIA

HOUSE OF DELEGATES

RICHMOND



**WILLIAM J. HOWELL**  
SPEAKER

COMMITTEE ASSIGNMENTS:  
RULES (CHAIRMAN)

August 27, 2015

The Honorable Terence R. McAuliffe  
Patrick Henry Building, 3rd Floor  
1111 East Broad Street  
Richmond, Virginia 23219

Dear Governor McAuliffe,

I am writing to inform you that the Virginia General Assembly remains in session pursuant to your July 16, 2015 call for a special session, House Joint Resolution 5001 and Article IV, Section 6 of the Constitution of Virginia.

As you know, the General Assembly reconvened on Monday, August 17 at your call to address the U.S. Eastern District Court's ruling in *Page v. Va. State Board of Elections et. al.* The House of Delegates convened at 11:00 a.m. to begin the redistricting process, despite a strong belief that the defendants should have the opportunity to fully litigate their appeal. The Senate of Virginia convened at 12:00 p.m.

The House of Delegates recessed at 3:12 p.m. on August 17 to allow the House Committee on Privileges & Elections to hold a public hearing and solicit citizen input on potential redistricting plans. The House Majority Leader stated on the floor that the House intended to reconvene before September 1 to continue work on redistricting. The House stands in recess subject to my call pursuant to House Joint Resolution 5001, which passed both chambers unanimously.

Shortly thereafter, the Senate of Virginia attempted to adjourn sine die. Despite requests by Senate Majority Leader Norment for an explanation, Lt. Governor Northam offered none when he ruled incorrectly that the Senate could adjourn sine die without the concurrence of the House.

The Constitution of Virginia is clear, unambiguous, and emphatic: "Neither house shall, without the consent of the other, adjourn to another place, nor for more than three days." The language in Virginia's Constitution can be traced back more than 150 years and similar clauses are found in the constitutions of nearly every state.

Virginia's 1776 Constitution specifically provided that either house could adjourn unilaterally. This provision was changed in 1830. The primary author of Virginia's current constitution, Professor A.E. Dick Howard notes in his commentaries the provision has remained substantively unchanged since then and that the constitutions of nearly every other state, and the U.S. Constitution, contain similar provisions. *Mason's Manual of Legislative Procedure* also contains a similar provision.

The attempt by Senators in your party to adjourn without the concurrence of the House of Delegates is a plain violation of the Constitution. The Senate simply cannot adjourn sine die without the concurrence of the House, which the House has not offered. Therefore, the General Assembly remains in session.

Several state supreme courts have concluded that neither house can adjourn sine die without the concurrence of the other. The Alabama Supreme Court has reached this conclusion repeatedly, *In re Opinion of the Justices*, 47 So.2d 642 (1950); *In re Opinion of the Justices*, 257 So.2d 336 (1972); *Alabama Citizens Action Program v. Kennamer*, 479 So.2d 1237 (1985). A majority of the justices of the Florida Supreme Court concluded that such an adjournment was improper in *Joyner v. Florida House*, 163 So.2d 503 (2015).

Moreover, the Pennsylvania Supreme Court concluded in *Frame v. Sutherland*, 327 A.2d 623 (1974) that one chamber of the legislature could not adjourn without the concurrence of the other. In that case, the Governor attempted to make "interim" appointments which were challenged in court by members of the legislature. The Court found that such appointments would only be valid if the Senate had finally adjourned. However, the Court held that "the Senate's attempt to adjourn sine die failed because of the absence of consent by the House of Representatives. Our holding rests on a conclusion that the Constitution prohibits either house from adjourning sine die without the consent of the other." The Court ultimately invalidated all of the Governor's attempted appointments that were challenged.

Several official opinions of state attorneys general reach the same conclusion. The Minnesota attorney general concluded in 1986 that "final adjournment 'of the legislature' like other actions of 'the legislature' requires the action of both houses to be complete." The Michigan attorney general wrote in 1937 that an attempt by the State Senate to adjourn "was unconstitutional because the House did not concur[.]" Official opinions in Idaho and Iowa are the same.

Based on the joint procedural resolution agreed to by all members of both the Virginia House of Delegates and the Senate of Virginia, the plain language of the Constitution of Virginia and a review of relevant case law and legal opinions, it is without question that the General Assembly remains in session.

Sincerely,

A handwritten signature in black ink that reads "W - J Howell". The signature is written in a cursive, slightly slanted style.

William J. Howell