

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

Latasha Holloway, et al.,

Plaintiffs,

v.

City of Virginia Beach, et al.,

Defendants.

Civil Action No. 2:18-CV-69

ANSWER OF DEFENDANTS TO AMENDED COMPLAINT

COME NOW Defendants City of Virginia Beach, Virginia Beach City Council, Louis Jones, James Wood, Jessica Abbott, Aaron Rouse, Robert Dyer, Barbara Henley, Shannon Kane, John Moss, David Nygaard, Sabrina Wooten, Rosemary Wilson, John Uhrin, Ben Davenport¹, in their official capacity as members of the Virginia Beach City Council, David L. Hansen, in his official capacity as City Manager, and Donna Patterson, in her official capacity as Director of Elections/General Registrar for the City of Virginia Beach (collectively “Defendants”), by counsel, and for their Answer to the Amended Complaint (ECF No. 62), filed by the Plaintiffs Latasha Holloway and Georgia Allen (“Plaintiffs”), state as follows:

1. Paragraph 1 contains legal conclusions which do not require a response. To the extent that any facts are alleged in Paragraph 1, all such allegations are denied and strict proof thereof is hereby demanded.

¹ Councilmen John Uhrin and Ben Davenport were named in their official capacity in the Amended Complaint but were not re-elected in the 2018 election; therefore, in accordance with Rule 25(d) of the Federal Rules of Civil Procedure, this Answer to the Amended Complaint includes those individuals but also includes the following newly elected councilmembers: Aaron Rouse, Sabrina Wooten and David Nygaard. Upon information and belief, an agreed Motion to Substitute Parties is forthcoming. Accordingly, this Answer is submitted on behalf of all originally named defendants and all defendants properly substituted as a matter of law.

2. In response to the allegations contained in Paragraph 2, Defendants admit only that City Council for the City of Virginia Beach is the governing body in Virginia Beach and its exercise of its legislative discretion impacts the health, well-being and livelihood of Virginia Beach residents. To the extent that any other facts are alleged in Paragraph 2, all such allegations are denied and strict proof thereof is hereby demanded.

3. In response to the allegations contained in Paragraph 3, Defendants admit only that the City of Virginia Beach is the most populous in the Commonwealth of Virginia and that some version of an at-large election system has been in place since 1966. To the extent that any other facts are alleged in Paragraph 3, all such allegations are denied and strict proof thereof is hereby demanded.

4. In response to the allegations contained in Paragraph 4, Defendants admit only that the City of Virginia Beach has elected six minority candidates and that no black candidate has been re-elected to a second term. To the extent that any other facts are alleged in Paragraph 4, all such allegations are denied and strict proof thereof is hereby demanded.

5. In response to the allegations contained in Paragraph 5, Defendants aver that the U.S. Census was conducted in 2010 and that the data collected therefrom speaks for itself and should be read in its entirety. Defendants further aver that an American Community Survey was conducted from 2012-2016 and the data collected therefrom speaks for itself and should be read in its entirety. To the extent that any other facts are alleged in Paragraph 5, all such allegations are denied and strict proof thereof is hereby demanded.

6. Defendants deny the allegations contained in Paragraph 6 and demand strict proof thereof.

7. In response to the allegations contained in Paragraph 7, Defendants admit only that City Council for the City of Virginia Beach has eleven members. To the extent that any other facts are alleged in Paragraph 7, all such allegations are denied and strict proof thereof is hereby demanded.

8. Paragraph 8 contains legal conclusions which do not require a response. To the extent that any facts are alleged in Paragraph 8, all such allegations are denied and strict proof thereof is hereby demanded.

9. In response to the allegations contained in Paragraph 9, Defendants deny any wrongdoing and deny that Plaintiffs are entitled to any of the relief sought for any reason whatsoever. To the extent that any other facts are alleged in Paragraph 9, all such allegations are denied and strict proof thereof is hereby demanded.

10. Paragraph 10 contains legal conclusions which do not require a response. To the extent that any facts are alleged in Paragraph 10, all such allegations are denied and strict proof thereof is hereby demanded.

11. Paragraph 11 contains legal conclusions which do not require a response. To the extent that any facts are alleged in Paragraph 11, all such allegations are denied and strict proof thereof is hereby demanded.

12. Paragraph 12 contains legal conclusions which do not require a response. To the extent that any facts are alleged in Paragraph 12, all such allegations are denied and strict proof thereof is hereby demanded.

13. Paragraph 13 contains legal conclusions which do not require a response. To the extent that any facts are alleged in Paragraph 13, all such allegations are denied and strict proof thereof is hereby demanded.

14. Paragraph 14 contains allegations with regard to which Defendants lacks the requisite knowledge to affirm or deny. Therefore, Defendants deny all such allegations and demand strict proof thereof.

15. In response to the allegations contained in Paragraph 15, Defendants admit only that Georgia Allen was a candidate for City Council for the City of Virginia Beach in 2008 and was not elected. Defendants deny all remaining and further allegations contained in Paragraph 15 and demand strict proof thereof.

16. In response to the allegations contained in Paragraph 16, Defendants admit only that the City of Virginia Beach is a municipal corporation located in southeastern Virginia established under the City's Charter and the laws of the Commonwealth of Virginia. Paragraph 16 also contains legal conclusions which do not require a response. To the extent that any other facts are alleged in Paragraph 16, all such allegations are denied and strict proof thereof is hereby demanded.

17. Defendants admit the allegations contained in Paragraph 17.

18. In response to the allegations contained in Paragraph 18, Defendants admit only that Louis Jones, James Wood, Jessica Abbott, Aaron Rouse, Robert Dyer, Barbara Henley, Shannon Kane, John Moss, David Nygaard, Sabrina Wooten and Rosemary Wilson, are the current members of the City Council for the City of Virginia Beach, and that Plaintiffs have sued certain members of City Council, and former members Ben Davenport and John Uhrin, in their official capacity as members of the Virginia Beach City Council only. To the extent that any other facts are alleged in Paragraph 18, all such allegations are denied and strict proof thereof is hereby demanded.

19. Defendants admit the allegations contained in Paragraph 19.

20. Defendants admit the allegations contained in Paragraph 20.

21. Defendants admit the allegations contained in Paragraph 21.

22. In response to the allegations contained in Paragraph 22, Defendants admit only that elections in Virginia Beach are nonpartisan. To the extent that any other facts are alleged in Paragraph 22, all such allegations are denied and strict proof thereof is hereby demanded.

23. In response to the allegations contained in Paragraph 23, Defendants admit only that the City of Virginia Beach's Charter provides for a council-manager system of government. To the extent that any other facts are alleged in Paragraph 23, all such allegations are denied and strict proof thereof is hereby demanded.

24. Defendants admit the allegations contained in Paragraph 24.

25. Paragraph 25 contains legal conclusions which do not require a response.

Defendants aver that 52 U.S.C. § 10301 *et. seq.* speaks for itself but must be read and considered in its entirety and in conjunction with all applicable case law. To the extent that any facts are alleged in Paragraph 25, all such allegations are denied and strict proof thereof is hereby demanded.

26. Paragraph 26 contains legal conclusions which do not require a response.

Defendants aver that 52 U.S.C. § 10301 *et. seq.* speaks for itself but must be read and considered in its entirety and in conjunction with all applicable case law. To the extent that any facts are alleged in Paragraph 26, all such allegations are denied and strict proof thereof is hereby demanded.

27. Defendants deny the allegations contained in Paragraph 27 and demand strict proof thereof.

28. Defendants deny the allegations contained in Paragraph 28 and demand strict proof thereof.

29. Defendants deny the allegations contained in Paragraph 29 and demand strict proof thereof.

30. In response to the allegations contained in Paragraph 30, Defendants admit only that Virginia Beach is in southeastern Virginia and that Virginia Beach is the most populous city in Virginia. Defendants aver that the decennial census data from the 2010 census lists the population of the City of Virginia Beach as 437,994. To the extent that any other facts are alleged in Paragraph 30, all such allegations are denied and strict proof thereof is hereby demanded.

31. Defendants deny the allegations contained in Paragraph 31 as stated and demand strict proof thereof. Defendants aver that the United States decennial census and the American Community Survey speak for themselves but must be read and considered in their entirety and should be read in conjunction with all other available demographic information. To the extent that any other facts are alleged in Paragraph 31, all such allegations are denied and strict proof thereof is hereby demanded.

32. Defendants deny the allegations contained in Paragraph 32 as stated and demand strict proof thereof. Defendants aver that the United States decennial census and the American Community Survey speak for themselves but must be read and considered in their entirety and should be read in conjunction with all other available demographic information. To the extent that any other facts are alleged in Paragraph 32, all such allegations are denied and strict proof thereof is hereby demanded.

33. Defendants deny the allegations contained in Paragraph 33 as stated and demand strict proof thereof.

34. Defendants deny the allegations contained in Paragraph 34 as stated and demand strict proof thereof. Defendants aver that the United States decennial census and the American Community Survey speak for themselves but must be read and considered in their entirety and should be read in conjunction with all other available demographic information. To the extent that any other facts are alleged in Paragraph 34, all such allegations are denied and strict proof thereof is hereby demanded.

35. Defendants deny the allegations contained in Paragraph 35 as stated and demand strict proof thereof. Defendants aver that the United States decennial census and the American Community Survey speak for themselves but must be read and considered in their entirety and should be read in conjunction with all other available demographic information. To the extent that any other facts are alleged in Paragraph 35, all such allegations are denied and strict proof thereof is hereby demanded.

36. Defendants deny the allegations contained in Paragraph 36 as stated and demand strict proof thereof. Defendants aver that the United States decennial census and the American Community Survey speak for themselves but must be read and considered in their entirety and should be read in conjunction with all other available demographic information. To the extent that any other facts are alleged in Paragraph 36, all such allegations are denied and strict proof thereof is hereby demanded.

37. Defendants deny the allegations contained in Paragraph 37 as stated and demand strict proof thereof.

38. Defendants admit the allegations contained in Paragraph 38.

39. In response to the allegations contained in Paragraph 39, Defendants admit only that Prescott Sherrod was appointed to City Council in 2011 and was not re-elected to his seat during the following election. To the extent that any other facts are alleged in Paragraph 39, all such allegations are denied and strict proof thereof is hereby demanded.

40. Defendants deny the allegations contained in Paragraph 40.

41. Defendants admit the allegations contained in Paragraph 41.

42. Defendants admit the allegations contained in Paragraph 42.

43. Defendants admit the allegations contained in Paragraph 43.

44. Defendants admit the allegations contained in Paragraph 44.

45. Paragraph 45 contains allegations with regard to which Defendants lack the requisite knowledge to affirm or deny. Therefore, Defendants deny all such allegations and demand strict proof thereof.

46. Paragraph 46 contains allegations with regard to which Defendants lack the requisite knowledge to affirm or deny. Therefore, Defendants deny all such allegations and demand strict proof thereof.

47. In response to the allegations contained in Paragraph 47, Defendants admit only that Jessica Abbott was a twenty-seven year old white woman when she was elected in 2016 to City Council for the City of Virginia Beach and that Dr. Amelia Ross-Hammond was not reelected in 2016. To the extent that any other facts are alleged in Paragraph 47, all such allegations are denied and strict proof thereof is hereby demanded.

48. Paragraph 48 and all its sub-parts contain legal conclusions which do not require a response. To the extent that any facts are alleged in Paragraph 48 and its sub-parts, all such allegations are denied and strict proof thereof is hereby demanded.

49. Defendants deny the allegations contained in Paragraph 49 as stated and demand strict proof thereof.

50. Paragraph 50 contains allegations with regard to which Defendants lack the requisite knowledge to affirm or deny. Therefore, Defendants deny all such allegations and demand strict proof thereof.

51. Defendants deny the allegations contained in Paragraph 51 as stated and demand strict proof thereof.

52. Defendants deny the allegations contained in Paragraph 52 as stated and demand strict proof thereof.

53. Defendants deny the allegations contained in Paragraph 53 as stated and demand strict proof thereof.

54. Defendants deny the allegations contained in Paragraph 54 as stated and demand strict proof thereof.

55. Defendants deny the allegations contained in Paragraph 55 as stated and demand strict proof thereof.

56. Defendants deny the allegations contained in Paragraph 56 as stated and demand strict proof thereof.

57. Defendants deny the allegations contained in Paragraph 57 as stated and demand strict proof thereof.

58. In response to the allegations contained in Paragraph 58, Defendants admit only that Dr. Amelia Ross-Hammond, Aaron Rouse and Sabrina Wooten were all elected to City Council for the City of Virginia Beach between 2010 and 2018, Dr. Amelia Ross-Hammond was not re-elected to a second term, and that Aaron Rouse and Sabrina Wooten are currently serving

the City of Virginia Beach in their first terms as city councilmembers. To the extent that any other facts are alleged in Paragraph 58, all such allegations are denied and strict proof thereof is hereby demanded.

59. Defendants deny the allegations contained in Paragraph 59 as stated and demand strict proof thereof.

60. In response to the allegations contained in Paragraph 60, Defendants admit only that Dr. Amelia Ross-Hammond defeated Chuck Smith, A.M. “Don” Weeks and Bill J. Dale in the 2012 election. To the extent that any other facts are alleged in Paragraph 60, all such allegations are denied and strict proof thereof is hereby demanded.

61. Defendants deny the allegations contained in Paragraph 61 as stated and demand strict proof thereof.

62. Defendants deny the allegations contained in Paragraph 62 as stated and demand strict proof thereof.

63. Defendants deny the allegations contained in Paragraph 63 as stated and demand strict proof thereof.

64. Defendants deny the allegations contained in Paragraph 64 as stated and demand strict proof thereof.

65. In response to the allegations contained in Paragraph 65, Defendants admit only that Shannon Kane defeated James Cabiness and the other candidates in the 2014 special election to fill a vacancy in the Rose Hall District. To the extent that any other facts are alleged in Paragraph 65, all such allegations are denied and strict proof thereof is hereby demanded.

66. Defendants deny the allegations contained in Paragraph 66 as stated and demand strict proof thereof.

67. Defendants deny the allegations contained in Paragraph 67 as stated and demand strict proof thereof.

68. Defendants deny the allegations contained in Paragraph 68 as stated and demand strict proof thereof.

69. In response to the allegations contained in Paragraph 69, Defendants admit only that Scott Taylor defeated Shaun Brown in the 2016 Congressional election. To the extent that any other facts are alleged in Paragraph 69, all such allegations are denied and strict proof thereof is hereby demanded.

70. Defendants deny the allegations contained in Paragraph 70 as stated and demand strict proof thereof.

71. Paragraph 71 contains legal conclusions which do not require a response. To the extent that any facts are alleged in Paragraph 71, all such allegations are denied and strict proof thereof is hereby demanded.

72. Paragraph 72 contains legal conclusions which do not require a response. To the extent that any facts are alleged in Paragraph 72, all such allegations are denied and strict proof thereof is hereby demanded.

73. Defendants deny the allegations contained in Paragraph 73 as stated and demand strict proof thereof.

74. Paragraph 74 contains legal conclusions which do not require a response. To the extent facts are alleged in Paragraph 74, all such factual allegations are denied as stated and strict proof thereof is hereby demanded.

75. Paragraph 75 contains legal conclusions which do not require a response. To the extent that any facts are alleged in Paragraph 75, all such allegations are denied and strict proof thereof is hereby demanded.

76. Defendants deny the allegations contained in Paragraph 76 as stated and demand strict proof thereof.

77. Defendants deny the allegations contained in Paragraph 77 as stated and demand strict proof thereof.

78. In response to the allegations contained in Paragraph 78, Defendants admit only that City Council for the City of Virginia Beach is the governing body in Virginia Beach and its exercise of its legislative discretion impacts the public spending, health, well-being and livelihood of Virginia Beach residents. To the extent that any other facts are alleged in Paragraph 78, all such allegations are denied and strict proof thereof is hereby demanded.

79. Defendants deny the allegations contained in Paragraph 79 as stated and demand strict proof thereof.

80. Defendants deny the allegations contained in Paragraph 80 as stated and demand strict proof thereof.

81. Defendants deny the allegations contained in Paragraph 81 as stated and demand strict proof thereof.

82. Defendants deny the allegations contained in Paragraph 82 as stated and demand strict proof thereof.

83. Defendants reallege and reincorporate their collective responses to Paragraphs 1 – 82 as stated above as if fully set forth herein.

84. Defendants deny the allegations contained in Paragraph 84 as stated and demand strict proof thereof.

85. Defendants deny the allegations contained in Paragraph 85 as stated and demand strict proof thereof.

86. Defendants deny the allegations contained in Paragraph 86 as stated and demand strict proof thereof.

87. In response to the allegations contained in Paragraph WHEREFORE and all its subparts, Defendants deny any wrongdoing and deny that Plaintiffs are entitled to any of the relief demanded for any reason whatsoever. To the extent that any facts are alleged in Paragraph WHEREFORE, all such allegations are denied and strict proof thereof is hereby demanded.

88. Defendant reserves the right to amend its Answer to the Amended Complaint up to and including during trial for any reason including to conform to evidence adduced through discovery and also at trial.

AVERMENTS AND AFFIRMATIVE DEFENSES

89. Defendants aver that to the extent each allegation and paragraph of the Amended Complaint requiring a response has not been addressed, each such unaddressed allegation and paragraph is hereby denied.

90. Defendants aver that the at-large election system for the City of Virginia Beach does not violate Section 2 of the Voting Rights Act, 52 U.S.C. § 10301.

91. Defendants aver that the Virginia Beach community, as a whole, is not motivated by racial bias in its voting patterns or system.

92. Defendants aver that Plaintiffs cannot establish the necessary preconditions as set forth in *Thornburg v. Gingles*, 478 U.S. 30 (1986).

93. Defendants aver that Plaintiffs cannot establish under the "totality of the circumstances" that the City of Virginia Beach's use of at-large elections diminish the ability of minority groups to elect candidates of choice.

94. Defendants aver that American Community Survey data relied upon by Plaintiffs speaks for itself but is not applicable—or even available—for the small geography and/or census block detail needed to draw electoral districts in the City of Virginia Beach. In addition, the American Community Survey data relied upon by Plaintiffs is not from a single point in time, but instead is devised by averaging data collected from the past five years, and is therefore an inappropriate or unreliable data set for drawing electoral districts in the City of Virginia Beach.

95. Plaintiffs' claims for relief are barred by the doctrine of laches. Plaintiffs have exhibited a lack of diligence by an inexcusable and/or inadequately excused delay in failing to bring this action at an earlier date, given that (a) Plaintiffs admit in their Amended Complaint that the at-large, residence-district method of election complained of has been in use in Virginia Beach since 1966, and (b) this action was not filed until 2018, after four separate City Council elections cycles occurred following the 2011 redistricting, all such cycles utilizing the same at-large election system and the same residence districts as complained of in this action. Defendants are prejudiced—financially, administratively and logistically—at the current moment in time because Plaintiffs' challenge to the at-large electoral system comes so close in time to the 2020 census, which may potentially result in two reapportionments or changes to the City of Virginia Beach's electoral system in such a short period of time. Even assuming *arguendo* that the Court were to grant some or all of Plaintiffs' requested relief, the litigation and appeal process and any resultant court-ordered change to the City of Virginia Beach's electoral

system under 2010 census data could not realistically be completed before the 2020 election or the 2020 Census data becoming available.

96. Defendants will rely upon any and all defenses which may be justified by the evidence developed during discovery or at trial, and reserves the right to amend this Answer to the Amended Complaint, if necessary.

Respectfully submitted,

CITY OF VIRGINIA BEACH, VIRGINIA BEACH CITY COUNCIL, LOUIS JONES, JOHN UHRIN, BEN DAVENPORT, JAMES WOOD, JESSICA ABBOTT, AARON ROUSE, ROBERT DYER, DAVID NYGAARD, BARBARA HENLEY, SHANNON KANE, JOHN MOSS, SABRINA WOOTEN, and ROSEMARY WILSON, in their official capacity as members of the Virginia Beach City Council, DAVID L. HANSEN, in his official capacity as City Manager, and DONNA PATTERSON, in her official capacity as Director of Elections/General Registrar for the City of Virginia Beach,

By: _____ /s/ _____
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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of January, 2019, I will electronically file the foregoing Answer to the Amended Complaint with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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