

Nos. 21-1533, 21-2431

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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Latasha Holloway, et al.,

*Plaintiffs-Appellees,*

v.

City of Virginia Beach, et al.,

*Defendants-Appellants.*

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On Appeal from the United States District Court  
for the Eastern District of Virginia  
Case No. 2:18-cv-00069  
The Honorable Raymond A. Jackson

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**Appellants' Unopposed Motion to Correct Case Caption**

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**APPELLANTS' UNOPPOSED MOTION  
TO CORRECT CASE CAPTION**

Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Defendants-Appellants move to correct the list of parties named as Defendants-Appellants in the case caption. This is a suit in equity under Section 2 of the Voting Rights Act against the City of Virginia Beach, the City Council, and various officers of the City, all named in their official capacities only. Under FRAP 43(c)(2), the proper named parties are the current officers, not former officers. But the case caption, as presently styled, names several former officers who were in office at the time of Defendants' appeal of the district court's liability decision, but who have since left their positions, and omits their successors. The purpose of this motion is to remove the former officers from the case caption and replace them with the current officers. Counsel for Plaintiffs have informed counsel for Defendants that the motion is unopposed and that they do not intend to file a response. In support of the motion, Defendants state as follows:

1. Plaintiffs are two Virginia Beach voters who contend that the at-large method of electing members to the Virginia Beach City Council violates Section 2 of the Voting Rights Act.

2. Defendants are the City of Virginia Beach, the City Council, the mayor, the council members, the city manager, and the city registrar, all in their official capacities. There are no individual-capacity claims in this case.

3. The current case caption reflects the identifies of these officials at the time of Defendants' appeal of the district court's liability decision. *See* ECF Nos. 5 (Docketing Statement) & 6 (Disclosure Statement).<sup>1</sup>

4. However, there has been turnover in office since Defendants' initial appeal. Specifically, two council members resigned and two new members were appointed to the vacate positions, and an existing council member and current Defendant was named as Vice Mayor.

5. During the remedial phase, and while this case was held in abeyance, ECF No. 29, the district court granted the parties' joint motion for an order under Federal Rule of Civil Procedure 25(d) to reflect this turnover and substitute the current officers for the former officers. Dist. Ct. Dkt. 287. At the time of the district court's final judgment, the correct parties were named as Defendants, and Defendants' appeal of the district court's final judgment listed the correct Defendants. Dist. Ct. Dkt. 292.

6. The law is clear on which parties are the correct parties to this appeal. Under FRAP 43(c)(2), "[w]hen a public officer who is a party to an appeal or other proceeding in an official capacity dies, resigns, or otherwise ceases to hold office....[t]he public officer's successor is automatically substituted as a party." The rule applicable in district court is materially identical. Fed. R. Civ. P. 25(d). As a result, the current caption does not control

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<sup>1</sup> Defendants previously moved to amend the case caption to reflect similar changes in office, ECF No. 17, which this Court granted. ECF No. 18.

which public officials are properly Defendants in this action. The persons currently holding the offices of those persons named as Defendants are the correct Defendants-Appellants.

7. Under this principle the following names should be removed from the case caption, as these individuals no longer hold any office relevant to this matter: Jessica Abbott and James Wood. The following parties should be added, as they have assumed offices of persons named Defendants: Rocky Holcomb and Linwood Branch, both in their official capacities as members of the Virginia Beach City Council. Additionally, Rosemary Wilson, currently identified as a member of the Virginia Beach City Council, should be named in her official capacity as Vice Mayor of Virginia Beach.

8. Accordingly, the full correct listing of Defendants-Appellants should read:

City of Virginia Beach; the Virginia Beach City Council; Donna Patterson, in her official capacity as General Registrar of the City of Virginia Beach; Robert Dyer, in his official capacity as the Mayor of Virginia Beach; Rosemary Wilson, in her official capacity as Vice Mayor of Virginia Beach; Patrick Duhaney, in his official capacity as City Manager of Virginia Beach; and Michael Berlucchi, Linwood Branch, Barbara Henley, Rocky Holcomb, Louis Jones, John Moss, Aaron Rouse, Guy Tower, and Sabrina Wooten, in their official capacities as members of the Virginia Beach City Council.

## CONCLUSION

For the foregoing reasons, the Court should grant this motion and direct the Clerk of Court to amend the case caption consistent with this motion. To the extent there is any remaining confusion, the Clerk of Court is welcomed to contact counsel for Defendants-Appellants, listed below.

Dated: February 22, 2022

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

Pursuant to FRAP 32(g)(1), I hereby certify that the foregoing motion complies with the type-volume limitation in FRAP 27(d)(2). According to Microsoft Word, the motion contains 760 words and has been prepared in a proportionally spaced typeface using Calisto MT in 14-point size.

Dated: February 22, 2022

/s/ Katherine L. McKnight  
Katherine L. McKnight

*Counsel for Defendants-Appellants*

**CERTIFICATE OF SERVICE**

I certify that on February 22, 2022, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

Dated: February 22, 2022

/s/ Katherine L. McKnight  
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*Counsel for Defendants-Appellants*