

**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.

Case No. 2:18-cv-0069

DEFENDANTS' NOTICE OF NEW AUTHORITY

Defendants respectfully ask this Court to take notice of new controlling law that affects this case. Plaintiffs allege that the at-large system used to elect members of the Virginia Beach City Council violates Section 2 of the Voting Rights Act, 52 U.S.C. § 10301. (*See, e.g.*, Amend. Compl. ¶ 1, ECF No. 62.) Plaintiffs seek to enjoin Defendants from “administering, implementing, or conducting any future elections in the City of Virginia Beach under the current at-large method of election[.]” (*See* Amend. Compl. p. 16; *see also* Pls.’ Proposed Conclusions of Law at ¶ 41, ECF No. 238.)

On March 18, 2021, Governor Ralph Northam signed Virginia General Assembly House Bill 2198, now Acts of Assembly Chapter 225, into law (*see* Exhibit A). This legislation amends Section 24.2-222 of the Virginia Code to, in relevant part, prohibit at-large voting for candidates “in a city or town that imposes district-based or ward-based residency requirements for members of the city or town council.” (Exhibit A at 1:44-46.) Acts of Assembly Chapter 225 will take effect on January 1, 2022, before the next City Council election on November 8, 2022. *See Elected Offices and Terms: Schedule of General Elections*, CITY OF VIRGINIA BEACH, <https://www.vbgov.com/government/departments/voter-registrar/elections/>

Pages/elected-offices-and-terms.aspx (last visited Mar. 22, 2021). Virginia Beach's current at-large system includes district-based residency requirements. (*See* Amend. Compl. ¶ 21.) Therefore, by operation of law, as of January 1, 2022, and without further action of the Virginia Beach City Council or the Virginia General Assembly, the City of Virginia Beach will be prohibited by Acts of Assembly Chapter 225 from conducting future elections for City Council under the challenged electoral system, and will instead have a seven-district ward system with only the voters who reside in each ward eligible to vote for the ward representative. The current three at-large seats and the Mayor seat are unaffected by this legislation.

For these and other reasons, Acts of Assembly Chapter 225 moots Plaintiffs' challenge to the City's pre-existing at-large residence system, and compels this Court to withhold or stay adjudication of or dismiss this case. "A case can become moot either due to a change in factual circumstances, or due to a change in the law." *Simmons v. United Mortg. & Loan Inv., LLC*, 634 F.3d 754, 763 (4th Cir. 2011) (quoting *BankWest, Inc., v. Baker*, 446 F.3d 1358, 1364 (11th Cir. 2006)) (internal quotations removed). The City's current at-large system is no longer legally permissible as a matter of state law, and accordingly this Court's adjudication of whether that system violates Section 2 of the Voting Right Act is moot.

DATE: March 22, 2021

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CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will then send a notification of the filing to:

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EXHIBIT A

2021 SPECIAL SESSION I

ENROLLED

ENROLLED

HB2198ER

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 An Act to amend and reenact §§ 15.2-1400, 22.1-29, 24.2-218, 24.2-222, and 24.2-223 of the Code of
3 Virginia, relating to local elections for governing bodies; elections for school boards; qualification of
4 voters.

5 [H 2198]

6 Approved

7 **Be it enacted by the General Assembly of Virginia:**

8 **1. That §§ 15.2-1400, 22.1-29, 24.2-218, 24.2-222, and 24.2-223 of the Code of Virginia are**
9 **amended and reenacted as follows:**

10 **§ 15.2-1400. Governing bodies.**

11 A. The qualified voters of every locality shall elect a governing body for such locality. The date,
12 place, number, term, and other details of the election shall be as specified by law, general or special.
13 Qualification for office is provided in *Article 4* (§ 15.2-1522 et seq.) of *Chapter 15*.

14 B. The governing body of every locality shall be composed of not fewer than three nor more than
15 eleven members.

16 C. Chairmen, mayors, supervisors, and councilmen are subject to the prohibitions set forth in
17 §§ 15.2-1534 and 15.2-1535.

18 D. A governing body may punish or fine a member of the governing body for disorderly behavior.

19 E. *Notwithstanding any other provision of law, general or special, in a locality that imposes*
20 *district-based or ward-based residency requirements for members of the governing body, the member*
21 *elected from each district or ward shall be elected by the qualified voters of that district or ward and*
22 *not by the locality at large.*

23 **§ 22.1-29. Qualifications of members.**

24 Each person appointed or elected to a school board shall, at the time of his appointment or election,
25 be a qualified voter and a bona fide resident of the district from which he is selected if appointment or
26 election is by district or of the school division if appointment or election is at large; and if he shall
27 cease to be a resident of such district or school division, his position on the school board shall be
28 deemed vacant. *Notwithstanding any other provision of law, general or special, in a locality that*
29 *imposes district-based or ward-based residency requirements for members of the school board, the*
30 *member elected from each district or ward shall be elected by the qualified voters of that district or*
31 *ward and not by the locality at large.*

32 **§ 24.2-218. Election and term of county supervisors.**

33 A. The qualified voters of each county election district shall elect one or more supervisors at the
34 general election in November 1995, and every four years thereafter for terms of four years, except as
35 provided in § 24.2-219 or as provided by law for those counties having the optional form of government
36 under the provisions of Article 2 (§ 15.2-702 et seq.) of Chapter 7 of Title 15.2.

37 B. *Notwithstanding any other provision of law, general or special, in a county that imposes*
38 *district-based or ward-based residency requirements for members of the board of supervisors, the*
39 *member elected from each district or ward shall be elected by the qualified voters of that district or*
40 *ward and not by the county at large.*

41 **§ 24.2-222. Election and terms of mayor and council for cities and towns.**

42 A. The qualified voters of each city and town shall elect a mayor, if so provided by charter, and a
43 council for the terms provided by charter. *Notwithstanding any other provision of law, general or*
44 *special, in a city or town that imposes district-based or ward-based residency requirements for members*
45 *of the city or town council, the member elected from each district or ward shall be elected by the*
46 *qualified voters of that district or ward and not by the locality at large.*

47 B. Except as provided in § 24.2-222.1, and notwithstanding any other provision of law, general or
48 special: (i) any election of mayor or councilmen of a city or town whose charter provides for such
49 elections at two-year or four-year intervals shall take place at the May general election of an
50 even-numbered year and (ii) any election of mayor or councilmen of a city or town whose charter
51 provides for such elections at one-year or three-year intervals shall take place at the general election in
52 May of the years designated by charter. The persons so elected shall enter upon the duties of their
53 offices on July 1 succeeding their election and remain in office until their successors have qualified.

54 **§ 24.2-223. Election and term of school board members.**

55 In any county, city or town wherein members of the school board are elected, pursuant to Article 7
56 (§ 22.1-57.1 et seq.) of Chapter 5 of Title 22.1, elections shall be held to coincide with the election of

57 members of the governing body at the regular general election in November or the regular general
58 election in May, as the case may be. Elected school board members shall serve terms ~~which~~ *that* are the
59 same as those of the governing body, to commence on January 1 following their election or July 1
60 following their election, as the case may be.

61 *Notwithstanding any other provision of law, general or special, in a locality that imposes*
62 *district-based or ward-based residency requirements for members of the school board, the member*
63 *elected from each district or ward shall be elected by the qualified voters of that district or ward and*
64 *not by the locality at large.*

65 **2. That the provisions of this act shall become effective on January 1, 2022.**

2021 SPECIAL SESSION I

HB 2198 Local elections for governing bodies; elections for school boards, qualification of voters.

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SUMMARY AS PASSED HOUSE: (all summaries)

Local elections for governing bodies; elections for school boards; qualification of voters. Provides that in a locality that imposes district-based or ward-based residency requirements for members of the governing body or school board, the member elected from each district or ward is to be elected by the qualified voters of that district or ward and not by the locality at large. The bill has a delayed effective date of January 1, 2022.

FULL TEXT

01/13/21 House: Prefiled and ordered printed; offered 01/13/21 21102650D [pdf](#) | [impact statement](#)

01/27/21 House: Committee substitute printed 21103129D-H1 [pdf](#) | [impact statement](#)

01/27/21 House: Substitute bill reprinted 21103129D-H1 [pdf](#) | [impact statement](#)

02/24/21 Senate: Floor substitute printed 21200645D-S1 (DeSteph) [pdf](#) | [impact statement](#)

02/26/21 House: Bill text as passed House and Senate (HB2198ER) [pdf](#) | [impact statement](#)

AMENDMENTS

[House subcommittee amendments and substitutes offered](#)

[House subcommittee amendments and substitutes adopted](#)

[Senate committee, floor amendments and substitutes offered](#)

HISTORY

01/13/21 House: Prefiled and ordered printed; offered 01/13/21 21102650D

01/13/21 House: Referred to Committee on Privileges and Elections

01/14/21 House: Assigned P & E sub: Voting Rights

01/20/21 House: Subcommittee recommends reporting with substitute (7-Y 0-N)

01/27/21 House: Reported from Privileges and Elections with substitute (14-Y 8-N)

01/27/21 House: Committee substitute printed 21103129D-H1

01/27/21 House: Substitute bill reprinted 21103129D-H1

01/28/21 House: Read first time

01/29/21 House: Read second time

01/29/21 House: Committee substitute agreed to 21103129D-H1

01/29/21 House: Engrossed by House - committee substitute HB2198H1

02/01/21 House: Read third time and passed House (55-Y 45-N)

02/01/21 House: VOTE: Passage (55-Y 45-N)

02/02/21 Senate: Constitutional reading dispensed

02/02/21 Senate: Referred to Committee on Privileges and Elections

02/05/21 Senate: Continued to 2021 Sp. Sess. 1 in Privileges and Elections (15-Y 0-N)

02/16/21 Senate: Reported from Privileges and Elections (8-Y 6-N 1-A)

02/18/21 Senate: Constitutional reading dispensed (39-Y 0-N)

02/19/21 Senate: Read third time

02/19/21 Senate: Passed by for the day

02/22/21 Senate: Read third time

02/22/21 Senate: Passed by for the day

02/23/21 Senate: Read third time

02/23/21 Senate: Passed by temporarily

02/23/21 Senate: Passed by for the day

02/24/21 Senate: Passed by temporarily

02/24/21 Senate: Floor substitute printed 21200645D-S1 (DeSteph)

02/24/21 Senate: Read third time

02/24/21 Senate: Reading of substitute waived

02/24/21 Senate: Substitute by Senator DeSteph rejected 21200645D-S1 (18-Y 20-N)

02/24/21 Senate: Passed Senate (21-Y 18-N)

02/26/21 House: Enrolled

02/26/21 House: Bill text as passed House and Senate (HB2198ER)

02/26/21 House: Signed by Speaker

02/27/21 Senate: Signed by President

03/01/21 House: Enrolled Bill communicated to Governor on March 1, 2021

03/01/21 Governor: Governor's Action Deadline 11:59 p.m., March 31, 2021

03/18/21 Governor: Approved by Governor-Chapter 225 (effective 1/1/22)
