

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

Latasha Holloway, et al.,

Plaintiffs,

v.

Civil Action No. 2:18-cv-0069

City of Virginia Beach, et al.,

Defendants.

DEFENDANTS' REPLY TO PLAINTIFFS' BRIEF IN OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

COME NOW the Defendants, by counsel, and for their Reply to Plaintiffs' Brief in Opposition to Defendants' Motion for Summary Judgment, state as follows:

STATEMENT OF UNDISPUTED FACTS

Despite their best efforts, Plaintiffs cannot hide from the undisputed facts that form the basis of Defendants' Motion for Summary Judgment by relying generally upon sophistic wordplay and misplaced editorializing about other related facts. That Plaintiffs' quibbles fail to create any genuine material factual disputes is evidenced in both parties' briefs. Defendants' undisputed facts all arise from the content of Plaintiffs' own expert reports, expert witness deposition testimony and factual allegations. Defendants therefore reassert that, there remain no genuine material disputes as to the facts essential to resolution of this Motion in Defendants' favor.

Def. Facts Nos. 3 and 6: Plaintiffs and Defendants agree that Plaintiffs' expert Anthony Fairfax has produced a report that purports to contain his opinions. Plaintiffs' assertion that Fairfax may have offered opinions on additional subjects to those mentioned by Defendants is not contested. There is no meaningful dispute regarding these facts.

Def. Fact No. 7: Defendants' statement of fact is admitted by the Plaintiffs. Plaintiffs have only added superfluous argument by referencing other materials from Fairfax's report that the Defendants have not referenced. There is no meaningful dispute regarding this fact as written.

Def. Fact No. 10: Plaintiffs do not dispute this fact as written by Defendants. Plaintiffs instead reference additional related testimony. There is no meaningful dispute regarding this fact: Fairfax did not calculate margins of error for his proposed minority-majority districts.

Def. Fact No. 20: Spencer explained in his Rebuttal Report that "precinct-level populations [of Asians and Hispanics] are simply too small to draw reliable conclusions about the voting

preferences of these groups independently.” (Ex. 5 at 6). Spencer also testified that the information available in this case does not allow him to make a reliable estimate because “[t]here are no precincts where the population size of Hispanic and Asian is larger than 15 or 20 percent.” (Ex. 4 at 71; *see also* Ex. 6 at 49-55, 68-71, Ex. 8 at 40 (Lichtman identifying 90% or greater as proper for homogenous precincts and going down to 80%, if necessary)). It is true that Spencer did not testify “that Hispanic voters or Asian voters were ‘too insufficiently concentrated in precincts in Virginia Beach to produce reliable estimates,’” in those exact words, but that phrasing is a wholly accurate interpretation of Spencer’s own words. There is no genuine dispute of fact here.

Def. Facts Nos. 21-22: There is no genuine dispute as to these facts. Plaintiffs do not attempt to rebut the language quoted directly from Spencer’s own report. Spencer wrote that elections with a minority candidate are probative. Plaintiffs’ reference to the appendix of Spencer’s report, which concludes the Furman elections should be discounted, does not alter the undisputed fact that Spencer used the exact words quoted by the Defendants.

Def. Fact No. 24: Plaintiffs apparently dispute this fact only to the extent they contend that Spencer reserved the right to “confirm” his work. Spencer has not done so to date. Spencer’s Initial Report identified Sessoms (2016), Davenport (2014) and Jones (2010) as minority candidates of choice. Plaintiffs’ own discovery responses—which have not been further supplemented or amended as to these three candidacies—confirm these undisputed facts.¹ Spencer’s assertion that he may, at some unknown future date, wish to “confirm” or “double-check” (i.e., change) his statements is not a basis to dispute his current testimony.

Def. Fact No. 25: Plaintiffs misapprehend the undisputed material fact being identified here. The parties, and all retained experts, agree that Dr. Spencer is the only retained expert who

¹ *See* Exhibit 9 (Plaintiffs’ Supplemental Discovery Responses dated July 30, 2019, identifying Sessoms (2016), Davenport (2014), and Jones (2010) as minority candidates of choice).

has generated any independent voting pattern data in this case. To the extent Lichtman intends to opine on Prongs 2 and 3, he does so only to support his “totality of the circumstances” analysis. More specifically, where Lichtman may offer opinions as to racially polarized voting, which may overlap in some ways with Prongs 2 and 3, Lichtman himself admits that he relies upon Spencer’s data to create his tables (this includes those initially produced or subsequent to his deposition) and Lichtman has not generated his own independent data in this case. (*See* Ex. 8 at 44-46, 220-221). Therefore, it is undisputed that Spencer’s voting pattern data is the exclusive data source for Plaintiff’s voting pattern statistical evidence in this case.

Def. Fact No. 27: It is undisputed that three candidates listed by Spencer in his Initial Report as minority candidates of choice in the Furman elections – Sessoms (2016), Davenport (2014), and Jones (2010) – were not listed in Table 1 of Spencer’s Rebuttal Report. Plaintiffs distract from that fact by arguing over whether these three elections should be considered probative. Regardless of the attempted explanation, these three successful candidates, who were previously identified by Spencer and by Plaintiffs as minority candidates of choice, were undisputedly not included in Table 1 of Spencer’s Rebuttal.

Def. Fact No. 29: The material fact in this paragraph is that Spencer, through counsel for Plaintiffs, provided a data set to the Defendants, by email, on September 5, 2019 which comprised the underlying data Spencer used to generate Table 1 in his Rebuttal Report. This was the first time this data was produced in this format to the Defendants. Plaintiffs’ quibbling about whether providing a “code” is equal to providing the expert’s actual calculated data as eventually produced (along with a baseless insult) does not create a genuine dispute about Spencer’s Data Set. While Plaintiffs may disagree with Defendants’ recounting of the process by which Plaintiffs provided the Data Set, the email and attachment provided on September 5, 2019 show that Spencer provided

point estimates for Hispanic voters (alone) and Asian voters (alone) for the 13 candidates he analyzed in Table 1 of his Rebuttal Report. There is no genuine dispute about the material facts.

Def. Fact No. 30. Plaintiffs assert this quote from Spencer’s Initial Report is taken “out of context” but do not explain their assertion or point to any language providing a fuller context. Defendants invite the Court to review the Rebuttal Report, confident it will reach the same conclusion. Plaintiffs have no basis whatsoever for challenging a material fact where their own expert’s written report is directly and accurately quoted.

Def. Fact No. 31. This is a direct quotation from Exhibit 6 at 125. Plaintiffs make no effort to dispute the accuracy of the quote from Spencer’s Deposition. Plaintiffs’ reliance on other portions of the deposition amount to nothing more than argument and obfuscation. Plaintiffs’ denial of this fact is also deeply misleading for the reasons explained previously and further explained herein. (*See* ECF No. 115 at 24, n. 12).

Def. Fact No. 33. Plaintiffs have not disputed the stated fact that Spencer’s Data Set shows only 6 of 13 candidates analyzed received 50% or more support from both Black voters and Hispanic voters. Plaintiffs have not disputed that Spencer’s Data Set shows only 3 of 13 candidates analyzed received 50% or more support from both Black voters and Asian voters. (Ex. 7). Plaintiffs dispute of the appropriate “threshold” is a legal argument that is not a proper basis to dispute a clear fact that Plaintiffs do not actually challenge.

Def. Fact No. 34: Plaintiffs’ dispute again relies on Spencer’s apparent desire to at some undefined later date “double-check” his work. Spencer has not provided any supplementation to his Initial Report, his Rebuttal Report, and his deposition testimony. Spencer’s statement that he may, at some unknown future date, wish to “confirm” a fact is not a basis to dispute a material fact where the record before this Court is clear. To the extent Spencer were to later provide opinion

testimony or evidence that Flores should be included as a minority candidate of choice, as Plaintiffs' counsel apparently hopes, the result of Table 1 would still show four of eight minority candidates of choice winning their elections.

Def. Fact No. 35: By Lichtman's own admission, his analysis is predicated on and informed by Spencer's data. Lichtman did not generate his own data. (*See* Ex. 8 at 44:16-18 (Lichtman testified that "I did not do any of my own independent statistical analysis of racially polarized voting."); *see also id.* at 118-122, 220-222). Plaintiffs cannot dispute this fact.

Def. Fact Nos. 37 and 39: Lichtman stated in deposition testimony: "I also don't think you can isolate Hispanic and Asian voting...." and "...you can certainly get estimates, but the error margins are going to be large, which is why you've got to use the equivalence testing analysis." (*See* Exhibit 8 at 58; *see also* Exhibit 8 at 216, ("As I said, you can't isolate Hispanics and Asians....")). While Defendants agree with Plaintiffs' apparent admission that equivalence testing is not appropriate in the present context, Lichtman's testimony makes clear be believed Spencer's original data to be insufficient to isolate the voting preferences of Hispanics and Asians.

ARGUMENT

In Plaintiffs' Brief in Opposition to Defendants' Motion for Summary Judgment ("Response Brief"), they contend that Defendants misunderstand the complex issues involved in this litigation. However, having confirmed in their Response Brief both their inability to statistically isolate Hispanic and Asian voting preferences in Virginia Beach and the inappropriateness of using equivalence testing for such purpose, Plaintiffs cast about to survive summary judgment by employing various smokescreens and alternative theories designed to cloak the patent insufficiency of their evidence. Defendants arguments presented herein demonstrate how easily the smoke is cleared away to reveal facts that warrant summary judgment in their favor.

I. Coalition Claims are Not Cognizable under the Voting Rights Act.

Plaintiffs' use a substantial portion of their Response Brief addressing the unresolved threshold legal question of whether a multiracial coalition claim is cognizable under the Voting Rights Act. Plaintiffs' treatment of the Fourth Circuit's opinion casting doubt on the appropriateness of coalition claims is unpersuasive. Though it appears in *dicta*, the Fourth Circuit's analysis and commentary simply is not limited to crossover districts, as Plaintiffs contend. *Hall v. Virginia*, 385 F.3d 421, 431 (2004). In fact, the opposite is true. The plain language employed by the Fourth Circuit reveals it is making a broader statement that the viability of coalition district claims is doubtful at best. In *Hall*, the Fourth Circuit cites *Nixon* favorably and makes the general statement that "any construction of Section 2 that authorizes the vote dilution claims of multiracial coalitions would transform the Voting Rights Act from a law that removes disadvantages based on race, into one that creates advantages for political coalitions that are not so defined. *Id.* at 431 (emphasis added).

Following the holding of the Sixth Circuit in *Nixon*, and considering the strong indication of support the Fourth Circuit provided in *Hall*, this Court should hold as a matter of law that the Voting Rights Act does not allow multiracial coalition vote dilution claims.

II. Plaintiffs Grossly Mischaracterize Spencer's Use of Equivalence Testing.

There is no better example of Plaintiffs' chameleon-like approach in advancing their claim than their bald mischaracterization of Spencer's use of Equivalence Testing, a dubious approach that makes a virtue of unreliable data and the use of which Spencer ultimately disavowed in his deposition testimony. It is a truly remarkable element of this litigation.

In Plaintiffs' Response Brief, they charge that "Defendants mischaracterize why Dr. Spencer provided individual estimates of voter preferences for each racial group, and why he performed equivalence testing in the first place." (ECF No. 118 at 36). Plaintiffs go on to assert

that “the purpose of Dr. Spencer’s calculation of individual estimates, along with equivalence testing, was to show that the individual estimates alone are not reliable measures of candidate preference, and thus why he necessarily relied on the combined minority estimates in his initial report.” (ECF No. 118 at 37 (emphasis added)). This is a galling claim—being either flatly untrue or an admission that Defendants were badly deceived in the first instance.

As a matter of simple logic, it is inconceivable why Spencer would expend the time and effort of misapplying a novel approach—never before used in a Section 2 Voting Rights Act claim—simply to prove an assertion that is not contested: the Hispanic and Asian populations in Virginia Beach are not concentrated enough to produce reliable voter support estimates. What is stranger yet about Plaintiffs’ gloss on this topic is that equivalence testing’s use of overlapping distribution ranges does not prove anything about the underlying reliability of the data points used.² Had Spencer wanted to emphasize the unreliability of Asians and Hispanic datapoints for voters, considered separately, he simply could have produced Spencer’s Data Set in his Rebuttal Report (which he did not do) and explained that the confidence intervals were far too large to rely upon.

² During Spencer’s deposition testimony, Defendants exposed the absurdity of Spencer’s use of Equivalence Testing by asking questions about its application to unreliable datapoints (i.e. those having large confidence intervals). As Defendants explained in their Brief in Support, Spencer confirmed that the larger the confidence interval in question (i.e. the more unreliable the datapoint), the more likely Spencer was to find the distribution overlap he used as a measure of a given group’s support for a particular candidate. Spencer was thereafter forced to admit that equivalence testing has no place in this litigation.

In making the implausible assertion that Spencer was using equivalence testing to demonstrate that he could not produce reliable point estimates for Asians and Hispanics, separately, Plaintiffs fail to make a key distinction: although Defendants were able to highlight the absurdity of Spencer’s conclusions by pointing out his reliance on unreliable datapoints, equivalence testing itself does not measure of the reliability of those datapoints. Stated differently, the results reached through equivalence testing are affected by the reliability of the datapoints: equivalence testing does not measure the reliability of those datapoints. Spencer himself explained that equivalence testing is a method of comparing groups, (Ex. 6 at 124-127), not measuring the reliability of data points. Lichtman also confirmed that equivalence testing has no impact on the reliability of datapoints. (Ex. 8 at 226:3-7).

Why, then, did Spencer feel the need to build the peculiar Rube Goldberg contraption that is Equivalence Testing? Further, why create a table based upon an approach that Plaintiffs now seem to suggest was used for ironic effect only? A more likely common-sense answer is that Spencer employed a desperate measure to try to save the Plaintiffs' crumbling case but was forced to retreat when the folly of his efforts was exposed. Plaintiffs' final attempt at explaining this chicanery is revealed by the striking contrast between how Spencer describes Table 1, whose inputs are based upon his equivalence testing, in his deposition testimony as compared to the explanation he provided in his Rebuttal Report. In Spencer's deposition, he testified:

Procedurally, I don't think Table 1 is very meaningful, which is why I did not generate it for my original report. I don't think the estimates that are used in this table actually mean much. I am not confident in their findings at all, but I generated it in response to some comments made by Dr. Kidd to try to—to try to point out exactly why I didn't do this in my original report.

(emphases added). Compare that with Spencer's statements about the same Table 1 in his Rebuttal Report (which was generated prior to Defendants' receipt of Spencer's Data Set and Spencer's deposition):

In Table 1, I present a summary of minority support for the thirteen candidates (ten black, three white) that I identified as minority candidates of choice in my report. In 11 of the 13 cases, I find that coalitional voting was sufficient enough for minority-preferred candidates to have been elected in the absence of white bloc voting. In just two of the 13 cases (Cabiness in 2014 and Jackson in 2010) I find that minority support was likely not due to coalitional voting.

(emphases added). Neither this nor any other passage found in the Rebuttal Report suggests even a whiff of ironic distance between Spencer's actual views and his many statements about (and based upon) equivalence testing. Defendants took at face value both Spencer's question, "How do we make sense of this uncertainty [caused by large confidence intervals]?" and his answer, "To draw my conclusions, I adopt the logic of equivalence testing." (emphasis added). Spencer now eschews the logic of equivalence testing. That is seismic shift of opinion.

The Plaintiffs have continually shifted their basis for proving cohesion: first offering only an “All Minority” data point that is plainly insufficient; next attempting to cure this deficiency by offering equivalence testing; and finally retreating to their first position when the absurdity of their second attempt was exposed. Although it is somewhat unfair that Defendants are asked to defend this case on a field of shifting sands, for the reasons expounded upon *infra* it is of no moment because all of Plaintiffs’ approaches fail.

III. Plaintiffs’ Admissions Confirm that Their Evidence Cannot Prove Cohesion Among Black, Hispanic, and Asian Voters

a. Plaintiffs’ “All Minority” voter support data is insufficient to prove cohesion.

Plaintiffs make clear throughout their Response Brief that they no longer wish to rely upon the opinions and conclusions that Spencer set forth in his Rebuttal Report. Instead, Plaintiffs now return to the “All Minority” voter support datapoints Spencer provides in his Initial Report—which are a combined estimate of the support of Black, Asian, Hispanic, and all other non-White voters—claiming they constitute competent evidence to prove cohesion. Plaintiffs further insist that “[t]he parties’ disagreements over the reliability of a combined minority estimate” give rise to a “classic ‘battle of the experts.’” (ECF No. 118, at 18). The truth, however, is that the “All Minority” datapoints do absolutely nothing to prove cohesion among the three specific minority groups in question, and no special expertise is needed to reach this inescapable conclusion. Rather, all that is needed is a reliance upon simple logic and basic math.

The Plaintiffs’ watchword regarding the “All Minority” voter datapoints is “reliability.” It well may be that their “All Minority” datapoints are “reliable”,³ but Plaintiffs grossly

³ For purposes of Defendants’ Motion for Summary Judgment, Defendants do not challenge the reliability (i.e. general accuracy) of the “All Minority” voter support datapoints offered by Dr. Spencer and do not object to the Court’s assuming *arguendo* that the datapoints are accurate. As explained herein, Defendants argue only that Plaintiffs and their experts misuse these datapoints as their evidence of cohesion.

misunderstand for what purpose these datapoints may be reliable. In fairness, Plaintiffs hit the mark as to the narrow reliability of the “All Minority” datapoints exactly once, stating, “Dr. Spencer’s ‘All Minority’ estimate is exactly what Plaintiffs’ experts say it is: an estimate of the preferences of Hispanic, Black, and Asian voters *together*.”⁴ (ECF No. 118 at 15 (emphasis original)). That is exactly correct. However, whatever reliability the “All Minority” datapoints have begins and ends with their being estimates only of the total voting support level for all minority groups when combined together.

The pivotal question is: How can a datapoint that combines all minority groups together into a single datapoint ever serve as a basis for comparing or contrasting three (or more) constituent groups that are included therein? The answer is simple: they cannot. Neither can these created datapoints themselves justify the choice to band these groups together in the first place.

A hypothetical example may be useful in explaining why the “All Minority” voter datapoints do nothing to prove cohesion amongst the constituent groups. Plaintiffs voiced displeasure with Defendants’ “Jack and Jill” hypothetical, complaining that it was “based on a single measurement” only—whereas Spencer “use[s] three different statistical models.” (ECF No. 118 at 16). Perhaps Plaintiffs will be more amenable to the example of Mack and Bill. Assume an accountant wants to compare the net worth of Mack, a plumber, and Bill, the owner of a large software company. However, the accountant can arrive at a reliable estimate only for the average net worth of Mack and Bill combined—not of each man. Could a combined “Both Mack and Bill” datapoint, estimating the two men’s average net worth at \$30 billion, serve as a basis for comparing

⁴ The Plaintiffs are generally correct, here, but omit the fact that other non-White voters also are included in these datapoints, as Dr. Spencer himself explains in his Initial Report. (*See, e.g.*, Ex. 4 at 9 (“All minority support includes Hispanic, Asian, and other minority groups”), Ex. 4 at 13 (the listed *p* values are based on “minority vs. white support”)).

the net worth of these two men to each other? Further, could one take this datapoint as proof that Mack and Bill have a similar net worth?

Before answering these questions, some additional details may serve to inoculate this hypothetical against Plaintiffs' aforementioned critique. Suppose now that this brilliant accountant—who is much smarter than Defendants and their experts—uses three highly complex methodologies to produce three different estimates of the average net worth of Mack and Bill: \$28 billion, \$30 billion, and \$33 billion. In that case, could any of these three “Both Mack and Bill” average net worth estimates—or any pattern observed between all three estimates—ever serve as a basis for comparing Mack's net worth with Bill's net worth? The answer is a resounding “no.” One needs no special expertise to understand this point.

For the same reason, Spencer's All Minority datapoints do not—and cannot—provide a basis for comparing the constituent groups incorporated therein. The numerosity and complexity of Spencer's methodologies in arriving at these estimates does not alter this basic fact. Spencer opined that the “most reliable method for interpreting the candidate preferences of Black, Hispanic, and Asian voters is to estimate their joint vote share.” (Ex. 5 at 6). This statement is facially absurd, and Plaintiffs cannot point to anything in Spencer's report explaining how he can determine the candidate preferences of an individual group by looking at this “joint vote share number.” The reason is that he cannot do it. Instead, he merely presumed these groups share the same preference.

b. Comparing Black voter support to the All Minority voter support datapoint actually suggests a lack of cohesion amongst these three groups.

In order to demonstrate cohesion amongst three minority groups, one must compare the minority groups' voting preferences to each other. Spencer acknowledges as much in both his Initial Report and in his deposition testimony. This common-sense principle is also affirmed by the Fifth Circuit Court of Appeals' holding in *Brewer v. Ham*, 876 F.2d 448 (5th Cir. 1989). If

Spencer actually had conducted such a comparison of each group to the others in his Initial Report, his analysis might give rise to a so-called “battle of the experts.” But no such comparisons were ever performed.

The only comparison of datapoints that Plaintiffs or their experts undertake is between estimates for Black voter support and All Minority voter support. This comparison is to no avail for the reasons set forth in Defendants’ initial Brief in Support: because the Black voting age population in Virginia Beach is larger than the combined voting age populations of Hispanics and Asians in Virginia Beach, strong Black support for a given candidate can mask weak support among Hispanics and/or Blacks.

Plaintiffs nonetheless have the temerity to assert that “the combined estimate is not ‘masking’ differences between racial groups.” (ECF No. 118 at 16). Plaintiffs specifically point to the 2016 Kempsville election that pitted Dr. Amelia Ross-Hammond, an African American incumbent, against Jessica Abbott to support their contentions. This is a curious choice on Plaintiff’s part. In his Initial Report, Spencer estimates Black support for Ross-Hammond at 83.3% using ecological regression (“ER”) and 76.8% using ecological inference (“EI”). (ECF No. 118 at 16). Spencer estimates All Minority support for Ross-Hammond using these two methods at 65.9% and 59.9%. Thus, these two estimates reveal gaps between Black and All Minority support of 17.4% and 16.9%, respectively. Spencer’s homogenous precinct (“HP”) estimates for Black and All Minority support are nearly identical to each other—though Spencer gives “less weight” to this method because of the lack of homogenous precincts in Virginia Beach.⁵ (ECF No. 118 at 91).

⁵ Lichtman testified that in conducting homogenous precinct (“HP”), or ‘extreme case’ analysis, he would “like to get at 90 percent [precinct population] for whatever group I’m looking at. Sometimes you can’t get there and you’ve got to go down to 80 percent.” (Ex. 8 at 40: 4-7.) Spencer testified that there was not a single Virginia Beach precinct with an all-minority population that

The parties have sharply divergent views about what the above-cited datapoints indicate, but facts and logic support only the Defendants' view. Defendants aver that without any data regarding Asian and Hispanic voters, considered separately, simple logic dictates that one simply cannot conclude that each of the three groups preferred Ms. Ross-Hammond. Further, Defendants maintain that the substantial gap between the Black and All Minority datapoints (using Spencer's two preferred methods) actually indicates strongly that, because Black voters are included in the All Minority estimate, the combined Asian and Hispanic voter support must be substantially lower than Black support. Plaintiffs—who seem to believe that the immutable operation of mathematical averages somehow does not apply to their inconvenient data—contend that this same data indicates that “[i]n this race, Hispanic, Black, and Asian voters together strongly preferred Ross-Hammond over Abbott.” (ECF No. 118 at 16 (emphasis added)). To Plaintiffs, this dispute is more evidence of a “battle of the experts.” It simply is not.

Were basic logic not sufficient to resolve this “dispute” in Defendants' favor—though it is—Spencer's own data settles the matter definitively. According to Spencer's Data Set, generated using a modified EI method, Black support for Ross-Hammond was 81.2%, closely tracking his original EI and ER estimates. Hispanic support is estimated at 49% and Asian support at 26.2%.⁶ (Ex. 7). Spencer's own data thus indicates that the All Minority voter datapoint did indeed mask dramatically weak support for Ross-Hammond among Asian voters. Two other implications regarding this two-person race are that Hispanic voters were split roughly evenly between the two candidates while Asian voters favored Ms. Abbott decisively. One wonders whether the actual

exceeded 70 percent. (Ex. 6 at 49-50). It appears by the account of Plaintiffs' witnesses that HP analysis has no value in this case—though its consideration does not alter the Defendants' analysis to any degree.

⁶ This estimate of Asian support at 26.2% is also the basis for Spencer's inclusion of an “x” in Table 1 of the Rebuttal Report, which indicates Asians did not support Ross-Hammond in 2016.

will of Asian and Hispanic voters—who are entirely and conspicuously absent as plaintiffs in this case—is of genuine concern to the Plaintiffs.

The data regarding Prescott Sherrod’s 2011 candidacy is one of a host of other examples that confirms Defendants’ assertion about the operation of averages and reveals Plaintiffs’ falsehood that the All Minority datapoint is not masking low or wildly divergent Asian and Hispanic support levels. In Spencer’s Initial Report, he produces ER and EI estimates of Black support for Sherrod at 92.4% and 87%, respectively. (Ex. 4 at 22). Spencer’s ER and EI estimates of All Minority support are 70.9% and 64.8%, respectively. (Ex. 4 at 22). Plaintiffs ask the Court to consider this data as proof of cohesion. Defendants contend it suggests just the opposite. But now consider that, Spencer’s Data Set estimates Black support for Sherrod at 90.2%, Hispanic support at 49.5%, and Asian support at 27.2%. (Ex. 7). This same startling trend is apparent, with few exceptions, throughout Spencer’s Data Set. In the end, the immutable laws of mathematics and logic devastate Plaintiffs’ contentions.

a. Spencer’s Data Set is a death knell for Plaintiffs’ claim that cannot be un-rung

Defendants averred in their Brief in Support that Spencer’s Data Set represents a final fatal blow to Plaintiffs’ claim. Defendants maintain that this is so, for although the datapoints contained in Spencer’s Data Set are far from precise, they nonetheless point unmistakably towards the conclusion that cohesion simply does not exist among these three minority groups. Further, this data indicates that neither Hispanic nor Asian voters are cohesive within their own groups—a conclusion that becomes even more apparent when one considers data Spencer omitted.

Plaintiffs complain in their Response Brief that Defendants’ Table A, which represents some of the data provided in Spencer’s Data Set, is “meaningless when put into context,” given that Defendants did not include the wide confidence intervals attached to Spencer’s point

estimates. (ECF No. 118 at 37). A full copy of Spencer’s Data Set—including the standard error—is included, here:

				Black		Hispanic		Asian	
Year	Seat	Candidate	Threshold	est.	se	est.	se	est.	se
Minority Candidates									
2018	At-large	Rouse	45.2	83.0	6.4	33.3	21.0	53.0	15.2
2018	Centerville	Wooten	62.1	90.3	14.9	79.9	25.1	73.4	18.4
2016	Kempsville	Ross-Hammond	59.4	81.2	4.7	49.0	18.8	26.2	10.7
2014	Rose Hall	Cabiness	48.3	70.2	4.5	13.0	11.0	9.4	7.4
2012	Kempsville	Ross-Hammond	32.2	82.6	4.4	53.9	20.5	33.6	12.6
2011	At-large	Sherrod	37.0	90.2	4.3	49.5	22.0	27.2	12.7
2010	At-large	Jackson	44.8	52.9	2.5	11.6	8.6	6.9	5.0
2010	Princess Anne	Bullock	54.4	79.0	3.6	67.1	17.7	87.9	8.1
2008	At-large	Allen	44.1	79.4	3.4	77.0	14.6	29.8	9.9
2008	Kempsville	Flores	48.7	52.9	2.4	40.4	13.0	33.9	7.0
White Candidates									
2018	At-large	White	45.2	61.1	10.7	53.3	40.4	19.6	20.4
2014	Princess Anne	Henley	76.7	62.4	2.8	69.5	12.4	82.9	6.9
2010	At-large	Bellitto	44.8	8.4	2.3	45.2	12.2	47.2	6.4

Spencer’s Data Set was produced to Defendants on September 5, 2019, in the format shown above—and to which Defendants have highlighted the point estimates for each minority group presented.

The contrasts presented in this table are remarkable. For one, the average gap between Black and Asian voters is a whopping 35%. The Amended Complaint’s assertion that “Hispanic and Asian voting patterns track Black voting patterns,” therefore is demonstrably false. (ECF No. 62 at ¶ 62). In their Response Brief, Plaintiffs cite *Campos v. Baytown*, a case from the Fifth Circuit holding that Section 2 claims based on cohesive coalitions are cognizable. 840 F.2d 1240 (5th Cir. 1988). In *Brewer v. Ham*, however, the Fifth Circuit refined *Campos*’ sometimes vague language regarding the cohesion standard that applied to coalition cases, while affirming *Campos*’ unambiguous common-sense holding that, “if one part of the group cannot be expected to vote with the other part, the combination is not cohesive.” 876 F.2d 448, 453 (5th Cir. 1989) (quoting 840 F.2d at 1245). The simple truth that Asians cannot be expected to vote with Blacks is sufficient, by itself, to end the analysis of this case and grant summary judgment to Defendants.

Another vivid contrast highlighted by Spencer's Data Set is between the apparent pattern of cohesion among Black voters and the lack of a similar pattern of cohesion among Hispanic voters (standing alone) and among Asian voters (standing alone). At least for the elections presented in Spencer's table, Black support in most cases would appear to meet the 60% cohesion threshold adopted by this Court in *Smith v. Board of Supervisors*, 801 F. Supp. 1513, n.11 (E.D.Va. 1992)—which ironically was proposed by Dr. Allan Lichtman, one of Plaintiffs' experts in this case. Hispanic support for the same candidates runs the gamut, however, ranging from as low as 13% to as high as 79.9%. Moreover, Hispanic voter support levels are distributed fairly evenly between the two extremes, with six (6) cases above 50% and seven (7) cases below 50%. The extreme ranges, and scattered levels, of support also are observable in regard to Asian voters. One must necessarily conclude that in many of these races—some of them involving only two or three candidates—Hispanic voters and Asian voters must have strongly preferred a different candidate than the one preferred by Black voters. Spencer's omission of estimates for any other candidates saves Plaintiffs the embarrassment of these inconvenient facts—but only until one gives a moment's consideration as to what his presented data suggests about his omitted data.

Given that Spencer's Data Set suggests Hispanics and Asians are not cohesive even among their own groups, it is difficult to conceive of the standard Plaintiffs would have this Court adopt which would allow it to find cohesion among all three groups. Certainly, any such standard would be far lower than the 60% threshold their own expert (Lichtman) offered in *Smith*. Moreover, Plaintiffs implicitly ask this Court to find that, as a plaintiff adds more minority groups to a Section 2 claim, the standard for cohesion becomes more relaxed. That notion is entirely at odds with common sense, doesn't comport with Spencer's own standard that "each group has the most preferred candidate, and the most preferred candidate of each three groups is the same" (Ex. 6 at

109), ignores the Supreme Court's admonition in *Emison v. Growe*, and violates the standard adopted by the U.S. Circuit that has been most receptive to coalition claims. *See* 507 U.S. 25, 41 (1993); *Brewer v. Ham*, 876 F.2d 448, 454 (5th Cir. 1989).

It is little wonder, then, that Plaintiffs vigorously wish to disavow Spencer's Data Set. Plaintiffs state that it is "puzzling" that Defendants would acknowledge that Spencer's Data Set includes datapoints that are unreliable and then "proceed to use these same unreliable estimates to comment on candidate preferences." (ECF No. 118 at 37). It must first be noted that in presenting Table 1—without the slightest hint of irony—it was Spencer himself who first advanced conclusions based upon the Data Set.

Setting aside that bit of hypocrisy, however, the appropriate use of Spencer's Data Set does warrant discussion. Both parties agree that one cannot generate reliable estimates of Asian and Hispanic voter support in Virginia Beach because the attached confidence intervals (or standards of error) are simply too large. This undisputed truth does not mean, however, that Spencer's Data Set is of no value whatsoever. For one thing, some of the datapoints included therein are more reliable than others. Consider, for example, the point estimates for Hispanics and Asians with the lowest corresponding confidence intervals. (Ex. 6 at 45:3-4 (Spencer testified at his deposition that "the larger number of confidence interval means the less confidence.")).

For Asian voters, the most reliable datapoints are the point-estimates of support for Andrew Jackson in the 2010 at-large election and Rita Sweet-Bellitto for that same election. The standard errors for these datapoints, 5% and 6.4% respectively, are equal to or less than the standard error attached to Spencer's point estimate for Black support of Aaron Rouse in the 2018 at-large race, which Spencer believes is reliable using ER. (Ex. 6 at 13). For Hispanics, the least unreliable datapoints are those for candidate James Cabiness in the 2014 Rose Hall race and the 2010 Jackson

candidacy. These four point-estimates for Asian and Hispanic support—the most reliable of the Data Set—constitute strong evidence that these two minority groups are not cohesive with Black voters. Even when the corresponding confidence intervals are factored in, the distribution ranges for Hispanic and Asian support do not come close to overlapping the range of possible Black support.

Spencer's Data Set also possesses value for a second reason. Viewed as a whole, it confirms Defendants' contentions about the implications of the Black support and the All Minority support datapoints included in Spencer's Initial Report. Although each individual point estimate in Spencer's Data Set is not particularly accurate or reliable, the unmistakable pattern that emerges demonstrates the correctness of Defendants' two core contentions about what can be gleaned by applying mathematical averages to the All Minority data contained in Spencer's Initial Report: (1) Spencer's original data indicates that, in most elections he analyzed, Asian and Hispanic combined support must be markedly lower than Black support, and (2) it is likely that in each such instance, either Asian or Hispanic individual support is even lower than that combined percentage. Although no evidence is required to prove these mathematical truths, Spencer's Data Set confirms Defendants' logic.

Finally, the utility of Spencer's Data Set may be analogized to a smudged fingerprint in the context of a criminal case. Suppose that a small section of a fingerprint is clear, but is not sizable enough to produce the threshold number of "points in common" that forensic technicians require to make a definitive match. If the determinative inquiry is whether the latent print matches the defendant, it is true that the prosecution cannot properly use this fingerprint to meet its burden. It is simultaneously true, however, that such an imperfect print could nonetheless have some important probative value in such a case—such as if the clearly visible whorls and arches prove

wholly inconsistent with the defendant's fingerprint. This is, in essence, the role Spencer's Data Set—and, in equal measure, the data in his Initial Report—plays in this case. The data is unmistakably smudged, but it is clear enough to demonstrate that no cohesion exists.

b. Neither exogenous elections nor reconstituted election results prove cohesion.

Plaintiffs' last gasp at offering some type of statistical data supporting cohesion is to point to Spencer's data regarding exogenous federal elections and reconstituted election results using Plaintiffs' proposed illustrative districts. (ECF No. 118 at 18). This is a particularly feeble argument, and the cases Plaintiffs cite demonstrate why this data does not prove cohesion.

Plaintiffs cite one case from the Fourth Circuit to support their assertion that exogenous elections can help them satisfy their Prong 2 burden, *Cane v. Worcester County*, 840 F. Supp. 1081 (Dist. M.D 1994). Indeed, *Cane* represents the quintessential situation where courts consider exogenous elections to assist their inquiry. First, there was an insufficient number of endogenous elections: there were only three total endogenous elections involving the minority group at issue and in one of those, there was evidence that the minority candidate "did not attempt to win the election, making an analysis meaningless."

The court, therefore, had to look elsewhere to conduct its evaluation. Here, there are more than a dozen endogenous elections involving minority candidates.⁷ Second, both the endogenous and exogenous elections analyzed by the *Cane* court were partisan in nature. 840 F.Supp at 1088. Councilmanic elections in Virginia Beach are nonpartisan; the exogenous federal elections Spencer analyzes are partisan. This is a crucial qualitative difference. Finally, for both endogenous and exogenous elections considered by the *Cane* court, it was possible to estimate the

⁷ It is also worth noting that Spencer analyzed seventeen (17) endogenous elections between 2008 and 2018 in his Initial Report; yet, there were twenty-seven (27) competitive (i.e. including at least two candidates) endogenous elections during this same time period in Virginia Beach. Plaintiffs have not even attempted to analyze these remaining ten (10) endogenous elections.

level of support of the minority group in question—African Americans. Stated differently, the *Cane* court supplemented its analysis of only two endogenous elections with the relevant data point from numerous exogenous elections. To the extent Plaintiffs claim the data from endogenous elections is “unreliable” and in need of supplementation, that data is unreliable not because of the total number of elections analyzed (as in *Cane*), but because it is not possible to reliably isolate estimated voting support levels for Hispanic and Asian voters in Virginia Beach. The obvious flaw with Plaintiffs’ effort here is that Spencer’s data for exogenous elections also does not isolate estimated Asian and Hispanic voting support levels—only those for white and non-white voters. (Ex. 4 at 30).

In the best of cases, the value of exogenous elections is limited. *NAACP v. City of Thomasville*, 401 F. Supp. 2d 489, n.4 (M.D.N.C. 2005) (holding, “while black-white exogenous elections may have some limited evidentiary value,” election results informed by partisan voting patterns “add[] little to the court’s analysis.”) The present scenario is the worst of cases, however. The four cherry-picked federal elections offered by Plaintiffs do not provide evidence of cohesion between Black, Asian, and Hispanic voters and therefore cannot overcome Plaintiffs’ endogenous evidence that no cohesion exists.

Plaintiffs’ newfound reliance upon reconstituted elections to prove cohesion is even less efficacious. The first case Plaintiffs cite in support of their use of reconstituted elections is *Johnson v. Miller*; but the *Johnson* court did not use reconstituted elections to evaluate cohesion. See 864 F. Supp. 1354, 1391 (S.D. Ga. 1994). Another court opinion Plaintiffs cite noted “the court is well aware of the decreased probative value of reconstituted elections.” *Hall v. Louisiana*, 108 F. Supp. 3d 419, 436 (M.D. La. 2015).

Importantly, Spencer himself did not present his analysis of reconstituted elections as evidence of cohesion. Spencer's introduction to his *Analysis of Alternative Districts* explains, "I have been asked to evaluate the potential ameliorative effects of two possible voting districts." (Ex. 4 at 32). He further stated, "The question is whether minority voters in Virginia Beach will be more able to elect candidates of their choice" in the illustrative districts. (Ex. 4 at 32). Stated differently, this is an analysis of the efficacy of Plaintiffs' proposed remedy, not of cohesion.

Moreover, following a now familiar pattern, Spencer's ensuing analysis actually makes things worse for Plaintiffs. Spencer unequivocally states that minority preferred candidates will fare better in the two proposed districts, "because voting in these districts is less likely to be racially polarized" and because minority candidates "are more likely to benefit from cross-over support from white voters." (Ex. 4 at 32). Spencer elaborates on this point, stating that with two exceptions, "the election preferences of white and minority voters is [sic] statistically indistinguishable or not substantively significant for all other hypothetical elections in both proposed districts." (Ex. 4 at 33 (emphasis added)). Given their own expert's conclusion that whites and minority voter preferences are "indistinguishable" and the relatively low numbers of Asians and Hispanic voters in these two districts—19% combined and 11% combined, respectively—it boggles the mind that Plaintiffs contend "[i]f HBA voters do not vote together in elections, they would not be able to regularly elect candidates of choice in Plaintiffs' illustrative districts..." (ECF No. 118 at 21). Candidates of someone's choice would be elected in those districts, to be sure, but Spencer's reconstituted data provides no indication that those candidates would be the choice of either or both Hispanic and Asian voters.

c. Plaintiffs' weak offering of qualitative evidence is insufficient to create a triable issue

Plaintiffs correctly state that courts may consider qualitative evidence of cohesion. Plaintiffs efforts in this regard, however, are insufficient to prove cohesion for two reasons. The first is the dearth of evidence Plaintiffs can point to that supports their claim. The holding of *Campos*, which Plaintiffs cite, is that “plaintiffs must prove that the minorities so identified actually vote together.” 840 F.2d 1240, 1244 (5th Cir. 1988) (emphasis added). Plaintiffs evidence does no more than suggest that someone, somewhere, thinks of these groups vote together. That will not suffice to meet their evidentiary burden. The second reason that qualitative evidence does not help Plaintiffs meet their burden is that, although such evidence may complement or reinforce quantitative evidence, there is no precedent for any court allowing qualitative evidence to overcome Plaintiffs’ own quantitative evidence that demonstrates a lack of cohesion.

No member of the Hispanic or Asian community is a plaintiff in this case, and Plaintiffs proffer only paltry evidence to support their theory of cohesion among all three minority groups at issue. Plaintiffs’ assertion, for instance, that the City’s “Minority Business Council (MBC) works to support ‘minority business owners’ without limiting that support to any particular group” does nothing to prove cohesion amongst Black, Asian, and Hispanic voters. (ECF No. 118 at 24).

Plaintiffs likewise do not advance their claim of cohesion by simply pointing out that two councilmembers “speak about minorities in Virginia Beach as a group with group-specific needs and priorities.” (ECF No. 118 at 24). Plaintiffs cite *Bridgeport Coal. for Fair Representation v. City of Bridgeport*, 26 F.3d 271, 276 (2d Cir. 1994), as supporting their claim that “[o]ther courts have considered the impressions of elected officials...” (ECF No. 118 at 24). True enough, but the language of the *Bridgeport* opinion indicates that the elected officials in that case did much more than “speak about minorities . . . as a group.” The *Bridgeport* court explained that “the Coalition presented both testimonial and statistical evidence that African Americans and Hispanics

in Bridgeport are politically cohesive and that voting in the City is remarkably racially polarized.” 26 F.3d at 276. In addition to compelling statistical evidencing supporting the Bridgeport plaintiff’s claims, “Americo Santiago, a state representative from Bridgeport, testified, based on his observations of past city elections and personal contacts with minority citizens, that both the Latino and African American communities are politically cohesive.” *Id.* Plaintiffs have not identified a single elected official in Virginia Beach who will testify that Black, Asian, and Hispanic voters in Virginia Beach are politically cohesive.

The only specific instance Plaintiffs identify wherein “HBA communities have acted as a unified coalition in Virginia Beach” is Plaintiff Georgia Allen’s claim, set forth in her declaration, that in 2001 a group called “Community Coalition for a Better Virginia Beach,” advocated for single-member districts. Once again, the case Plaintiffs themselves cite to in support of their reliance on such evidence provides a stark contrast with the case bar. In *Arbor Hill Concerned Citizens Neighborhood Ass’n. v. County of Albany*, the Court summarized the qualitative evidence before it:

According to these witnesses, blacks and Hispanics have jointly participated in and supported various events and projects of interest to one or the other group, including festivals, Puerto Rican rights and youth sports. They also jointly publish a bilingual community newspaper. Anecdotal evidence has also been offered of past instances where blacks and Hispanics joined to support candidates preferred by one group or the other. Defendants have not rebutted or refuted this evidence nor offered any contradictory evidence.

2003 U.S. Dist. LEXIS 11386, *29-30 (N.D.N.Y. 2003) (citations omitted). This passage exemplifies what types of qualitative evidence actually support cohesiveness. The Plaintiffs have no such similar evidence.

The claims made by Plaintiff Allen in her declaration also must be considered in light of her deposition testimony. *See generally* Exhibit 10, Deposition Testimony of Georgia Allen

(attached hereto and incorporated by reference). Allen presided over the Virginia Beach Chapter of the NAACP for approximately ten years and is a former candidate for both Virginia Beach City Council and state delegate. Given her political and community involvement, one might suspect that she would have personal experience with other members of the alleged Black-Asian-Hispanic coalition. However, Allen testified to the following facts:

- As candidate for City Council, she could not recall receiving the endorsement of any Hispanic or Asian community groups (Ex. 10 at 90);
- She did not campaign at any Asian-American places of worship, though she did campaign at African American places of worship (Ex. 10 at 91-92);
- She did not campaign at Hispanic civic leagues, churches, or community groups (Ex. 10 at 93);
- There were no Asian or Hispanic members of her campaign team (Ex. 10 at 93-94);
- As a candidate for delegate, she did not receive any endorsements from the Asian or Hispanic community, though she believes she was the candidate-of-choice of the African American community (Ex. 10 at 94);
- The only Asian-community groups she could recall was “Fil-Am,” though she wasn’t sure that was the name of the group in question (Ex. 10 at 97);
- When asked, she could not identify any leaders of the Asian-American or Hispanic-American communities (Ex. 10 at 98); and
- The only Hispanic community group that she could recall was “Hispanic Dialogue,” though she could not be sure “if that’s in existence” (Ex. 10 at 98).

Plaintiffs cite the other Plaintiff, Latasha Holloway, as providing deposition testimony that “‘all black and brown individuals’ including Hispanic, Black, and Asian persons are affected by breakdowns resulting from a deficit of representation.” (Plaintiffs’ Ex. 19 at 25). But Ms.

Holloway also testified that she had not had any involvement with Asian or Hispanic American groups, (Plaintiffs’ Ex. 19 at 33), and that she was unaware of any support for this lawsuit from the Asian or Hispanic communities. (Plaintiffs’ Ex. 19 at 30). Neither Plaintiff’s testimony provides evidence of cohesion.

The Plaintiffs take poetic license in asserting that their qualitative evidence “bolsters Plaintiffs’ claims of minority cohesion.” (ECF No. 118 at 26). There simply is no evidence to “bolster”—as the quantitative evidence strongly indicates that cohesion does not exist. Furthermore, Plaintiffs fail to proffer one iota of qualitative evidence proving that Blacks, Asians, and Hispanics “actually vote together.” So while the Court may consider Plaintiffs proffer, the evidence offered can not serve as a basis for finding cohesion in spite of the quantitative evidence—produced by Plaintiffs—to the contrary.

IV. Plaintiffs’ Evidence Shows That Whites in Virginia Beach Do Not Vote Sufficiently as a Bloc Usually to Defeat the Preferred Candidates of the Alleged Minority Group

As Defendants contend in their Memorandum in Support, the lack of cohesion amongst Black, Hispanic, and Asian voters not only renders moot the *Gingles* Prong 3 inquiry, it makes it impossible to conduct such an inquiry in a meaningful way. To whatever degree the Court is willing, however, to undertake the Zen riddle of evaluating the success of the preferred candidates of a minority coalition that does not exist, the arguments set forth in Plaintiffs’ Response Brief only confirm that Plaintiffs cannot meet their Prong 3 burden.

a. Plaintiffs offer no evidence that the 2018 election represents a “special circumstance” that renders that election non-probative.

The 2018 election of two African Americans, Sabrina Wooten and Aaron Rouse, represents a huge challenge for the Plaintiffs, making it even more fanciful for them to assert that the White majority votes sufficiently as a bloc usually to defeat the preferred candidates of the alleged

minority group. But although Plaintiffs are correct in asserting that a “special circumstances” doctrine exists in case law, they fail to point to evidence that supports the conclusion that the doctrine is properly applied to the 2018 election.

Once again, a case cited by the Plaintiffs serves as the best argument as to why their assertion holds no currency. In *Collins v. City of Norfolk*, the United States Court of Appeals for the Fourth Circuit found that the 1984 election of a minority candidate, during the pendency of the lawsuit (in its current iteration), “was due to the special circumstances arising out of events associated with the pendency of this action.” 883 F.2d 1232, 1242 (1989). The *Collins* court found a causal connection between the lawsuit and this unusual election of a second Black councilman because the mayor not only had “[f]or the first time...supported a second black candidate,” but also publicly “suggested that this suit could be mooted” should that candidate prevail. *Id.* at 1241-42. The “unique” conduct of a group closely affiliated with the mayor also led to the court’s finding that circumstances surrounding the *Collins* suit caused the unusual election result. There was no question that the mayor and others knew about that lawsuit, which was filed more than a year before the 1984 Norfolk City Council election. *Collins v. City of Norfolk*, 2:83-cv-00526-MSD-TEM (filed Aug. 12, 1983).

The circumstances surrounding the 2018 Virginia Beach City Council election are not at all similar to those present in *Collins*. The election in question took place on November 6, 2018—the week before the Plaintiffs filed their Amended Complaint. At the time of the election, Plaintiff Holloway, acting *pro se*, had twice moved to stay the litigation, moved for leave to file an Amended Complaint, repeatedly requested appointment of counsel because she claimed she was suffering from a disability and required assistance of counsel to properly litigate this matter and Defendant City of Virginia Beach had filed a motion to dismiss the *pro se* Complaint pursuant to

Fed. R. Civ. P. 12(b)(6). (*See* ECF Nos. 2, 13, 14, 18, 24, 28, 33, and 41). Given the circumstances that existed on the date of the election, there is no reason to believe that this lawsuit had any impact whatsoever on the election results. In deposition questioning and in other discovery, Plaintiffs conducted an extensive fishing expedition designed to find facts that would support application of the special circumstances doctrine to this case. Plaintiffs came up with nothing on their hooks.

Plaintiffs' intimation of a grand conspiracy to elect minority members to City Council manages the special trick of being both entirely threadbare and deeply insulting. Plaintiffs produced no evidence that any Councilmembers, City leaders, or politically influential citizens knew much, if anything, of the suit, which existed only in an embryonic (and stalled) stage. Plaintiffs do not compellingly fill the yawning gaps in their evidence with references such as this: "Councilwoman [Rosemary] Wilson not only endorsed Ms. Wooten but also donated to her campaign." (ECF No. 118. at 30). Apparently, this is an accusation. If not, it is unclear how this fact has any bearing in this case. Plaintiffs offer more apparently sinister detail: Wilson apparently "introduced Ms. Wooten to many of her top donors and helped her solicit those donations, attended her events, and lent her other support and advice." (ECF No. at 30).

The evidence that the election of Mr. Rouse's election constituted special circumstances includes his three-year career as a professional football player and receiving endorsements from the Virginia Governor and U.S. Senator Mark Warner. (ECF No. at 30). Plaintiffs cite not one case that supports a finding that the circumstances surrounding the democratic election of either Councilmembers Rouse or Wooten constitute "special circumstances."

b. Even granting to Plaintiffs a host of generous assumptions, their expert's conclusions defeat Plaintiffs' ability to demonstrate their Prong 3 burden.

For obvious reasons, Plaintiffs wish to disavow Spencer's Table 1, even though their own expert produced it. As discussed in Defendants Memorandum in Support, Spencer admitted in

deposition that he could only support the identification of seven (7) candidates as being minority preferred—four (4) of whom won. To put it mildly, this is an inconvenient truth for Plaintiffs.

In response to the disaster of Table 1, Plaintiffs attempt to run back to the shelter of Spencer’s Initial Report. No sanctuary is to be found there, however. It must first be noted that Plaintiffs committed flagrant errors in their summary of the Initial Report’s findings. Plaintiffs claim that of 17 City Council elections analyzed, “In 10 of those elections, Spencer identified a minority-preferred candidate. Unsurprisingly, of the 10 candidates, only three won elections.” (ECF No. at 31). That is not even in the ballpark of Spencer’s actual findings. Spencer produced seven (7) charts labeled “All Probative Races” in his Initial Report. (Ex. 4 at 14, 16, 19, 21, 23, 27 and 29). These charts cover 7 election cycles that involved 17 seats. Including Spencer’s deposition testimony that he should have marked Ben Davenport as the All Minority preferred candidate in the 2014 at-large election, Spencer identifies 16 candidates as being All Minority preferred.⁸ Eight of these 16 candidates won election.⁹ That result is not hard to tally, and it may be that Plaintiffs momentarily forgot that the relevant inquiry is the success of minority-preferred candidates and not only of minority candidates.¹⁰ See, e.g., *Mallory v. Ohio*, 173 F.3d 377, 383 (6th Cir. 1999) (citing *Thornburg v. Gingles*, 478 U.S. 30, 51 (1986)).

Defendants make the following claims regarding to how Prong 3 is tallied: (1) The entire Prong 3 inquiry is an exercise in folly because of Plaintiffs’ failure to offer competent evidence of

⁸ Spencer indicated with checkmarks that both Jackson and Flores were minority candidates-of-choice for the 2008 Kempsville race—a single seat election. During his deposition testimony, when Spencer was asked, “Can you have more than one minority candidate of choice for a single seat election?” he answered, “No, you cannot.” (Ex. 6 at 105:4-6.) At most, this single-seat election can yield only one All Minority candidate of choice.

⁹ Spencer identified these 8 winning candidates as preferred by All Minority voters: Rouse (2018); Wooten (2018); Sessoms (2016); Davenport (2014); Henley (2014), Ross-Hammond (2012); Bellitto (2010); and Jones (2010).

¹⁰ See also Ex. 9 (Plaintiffs’ discovery responses identifying minority preferred candidates).

cohesion among Black, Asian, and Hispanic voters; (2) Setting aside the first assertion, Plaintiffs have not offered a defensible method of identifying minority-preferred candidates; (3) For any analysis of minority candidates of choice and probative elections, the probative period should be from 2011 (after the most recent redistricting) through the most recent election in 2018; and (4) Even ignoring (3), adopting Plaintiffs' preferred time span, the All Probative Races analysis in Spencer's Initial Report, reveals that 8 minority candidates of choice prevail in 16 opportunities, and using Table 1 of Spencer's Rebuttal Report, 4 minority candidates of choice prevail out of 7 opportunities (both as amended by Spencer's deposition testimony). Again, applying simple math, in neither analysis is the minority candidate of choice "usually" defeated, whether by white bloc voting or otherwise. Those "best case" tallies are grounds for summary judgment in Defendants' favor on Prong 3. *See Lewis v. Alamance Cty.*, 99 F.3d 600, 606 (4th Cir. 1996).

V. Plaintiffs' Fail in Their Attempt to Manufacture a "Battle of the Experts."

At numerous points in Plaintiffs' Brief in Support, they attempt to manufacture a "battle of the experts" by focusing on Defendants' experts. The motive behind this strategy is transparent, but Plaintiff's efforts to tarnish Defendants' experts is wholly irrelevant to Defendants' summary judgment motion, which is based solely on Plaintiffs' own evidence.

In presenting the undisputed fact and arguments upon which they rely for summary judgment, Defendants rely solely on the remarkably self-defeating evidence offered by Plaintiffs' own experts, and in particular: Spencer's 7 "All Probative Races" charts, found in his Initial Report; Spencer's Rebuttal Report Table 1 and its underlying Data Set; and the deposition testimony of Plaintiffs' experts Spencer and (to a lesser degree) Lichtman. Defendants contend that an objective analysis of this evidence, produced by the Plaintiffs alone, makes it abundantly

clear that Plaintiffs cannot meet their burden with regard to either or both *Gingles* Prongs 2 and 3. Defendants support this argument by relying upon simple math and irrefutable logic.

Defendants' case for summary judgment simply does not rely upon a single fact or opinion promulgated by Defendants' experts, and accordingly, Plaintiffs' reference to them in their Response Brief is at best a distraction. The Court has before it the facts it needs to render summary judgment in Defendants' favor.

CONCLUSION

WHEREFORE, for all the reasons set forth herein and in Defendants' Brief in Support, Defendants hereby renew their request that this Court grant the Defendants' motion for summary judgment and for such other relief as the Court deems appropriate.

Respectfully submitted,

CITY OF VIRGINIA BEACH, et al.,

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of November, 2019, I will electronically file the foregoing 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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**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-0069

Defendants' Memorandum of Law in Support of Motion for Summary Judgment

EXHIBIT NINE

Plaintiffs' Meet and Confer Letter Dated July 30, 2019



July 30, 2019

Via electronic mail

Dear Mr. Harris,

Thank you for your letter dated July 18, 2019 continuing the meet and confer process regarding Plaintiffs' responses to Defendants' propounded discovery. We supplement Plaintiffs' responses as follows:

I. Supplemental Responses to Interrogatories Nos. 1, 4, 5, 6, 8, 9, 10

INTERROGATORY NO. 1:

Identify all persons with knowledge of the facts, allegations, and claims set forth in your Amended Complaint, whether pertaining to any count or cause of action, issues of liability, injury, damages, or remedies. For each person identified in response to this Interrogatory, state the person's full name, address, telephone number(s), and a brief description of the subject matter of the information known by that person as explained in the instructions listed above. Any non- expert witness not identified in response to this interrogatory will be objected to at trial.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 1:

Plaintiffs incorporate their prior objections and responses to this interrogatory, served on June 13, 2019. Plaintiffs identify the following additional persons with knowledge of the facts, allegations, and set forth in their Amended Complaint:

Edna Hawkins-Hendrix, Telephone 757.717.7284; Gary McCollum; James Allen; Carl Wright, Telephone: 757.235.5596; John Bell, Telephone: 757.416.2490; Seko Varner, Telephone: 757.404.3743; and Elizabeth Mills, Telephone: 757.831.7362. Plaintiffs believe that said individuals are expected to have information related to Plaintiffs' claims including their experiences with political participation in Virginia Beach, their experiences of governmental responsiveness to the minority community in Virginia Beach, and their inability to elect their candidates of choice under the current at-large system.

INTERROGATORY 4:

Describe in detail and with specificity all facts, witnesses, documents, and evidence upon which you will rely to support your contention in Paragraph 56 of the Amended Complaint that "[b]ecause [Tanya] Bullock had so little cross-over support from white voters, she was defeated" in the 2010 City Council race.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 4:

Plaintiffs refer Defendants to page 26 of Dr. Spencer's report. In particular, he notes:

The 2010 election for the Princess Anne seat provides strong evidence of coalitional voting, minority vote cohesion, and oppositional white bloc voting. Tanya Bullock, a black female, was defeated despite overwhelming support among black and other minority voters (80%). White voters strongly preferred the incumbent Barbara Henley, a white female, by a margin of 2-to-1. The voting pattern in the right panel illustrates that as the minority population increases, support for Bullock substantially increases among all minority voters, while white voter support cuts strongly in the opposite direction.

Plaintiffs intend to rely upon Dr. Spencer's report (including all figures referring to this election), Dr. Spencer's testimony, and the underlying data Dr. Spencer produced with his report to support this contention. Plaintiffs note that discovery is ongoing and Plaintiffs reserve the right to supplement this response with any additional information identified at a later date.

INTERROGATORY 5:

Describe in detail and with specificity all facts, witnesses, documents, and evidence upon which you will rely to support your contentions in Paragraph 63 of the Amended Complaint that "in the 2008 at-large election between Harry Diezel . . . Andrew Jackson . . . and Jose Flores . . . Black voters did not support the incumbent, but split their votes between Jackson and Flores. Asian and Hispanic voters voted similarly."

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 5:

Plaintiffs refer Defendants to page 28 of Dr. Spencer's report. In particular, he notes:

The 2008 election for the Kempsville provides evidence of minority cohesion, and oppositional white bloc voting. The race featured three candidates: Harry Diezel (white male incumbent), Andrew Jackson (black challenger), and Jose Flores (black Hispanic challenger). Black voters did not support the white incumbent Diezel, but almost unanimously supported

Jackson or Flores. White voters, on the other hand, strongly supported Diezel. Jackson won 27% and Flores won 24% of the vote for a combined total of 51%.

Plaintiffs intend to rely upon Dr. Spencer's report (including all figures referring to this election), Dr. Spencer's testimony, and the underlying data Dr. Spencer produced with his report to support this contention. Plaintiffs note that discovery is ongoing and Plaintiffs reserve the right to supplement this response with any additional information identified at a later date.

INTERROGATORY 6:

Describe in detail and with specificity all facts, witnesses, documents, and evidence upon which you will rely to support your contention in Paragraph 70 of the Amended Complaint that "Minority Voters as a whole voted similarly to Black voters in these exogenous elections [reference in ,r,r 68 and 69 of the Amended Complaint]."

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 6:

Plaintiffs refer Defendants to pages 30-31 of Dr. Spencer's report. In particular, he notes:

Figure 12: Presidential election returns for precincts in Virginia Beach. Minority voters strongly preferred Obama over both John McCain and Mitt Romney, with an estimated 90% support. White voters strongly preferred McCain and Romney (65% support) over Obama (35% support). Overall, Virginia Beach went for McCain in 2008 (49.7% to 48.9%) and for Romney in 2012 (50.3% to 47.8%).

Figure 13: Precinct-level election returns for the February 2008 presidential primary. Virginia's primary elections are open to all voters, so election returns are not necessarily restricted to Democratic voters. All voters in Virginia Beach preferred Obama to Clinton (he captured 65% of the vote), but support for Obama was much stronger among minority voters. In short, even controlling for party label there is evidence of racially polarized voting in Virginia Beach.

Figure 14: The 2016 congressional election provides evidence of racial coalitional voting, minority cohesion, and oppositional white bloc voting. Minority voters strongly preferred Shaun Brown (black female) over Scott Taylor (white male). On the other hand white voters strongly supported Taylor over Brown. Despite being the candidate of choice for black and other minority voters in Virginia Beach, Brown earned just 36.6% of the city's overall votes compared to 63.3% for Taylor.

Plaintiffs intend to rely upon Dr. Spencer's report (including all figures referring to these elections), Dr. Spencer's testimony, and the underlying data Dr. Spencer produced with his report to support this contention. Plaintiffs note that discovery is ongoing and Plaintiffs reserve the right to supplement this response with any additional information identified at a later date.

INTERROGATORY NO. 8:

Identify each individual who you contend to be the Black community's candidate or candidates of choice in each Virginia Beach ("City") City Council Election from January 1, 2010, to the present, and describe in detail and with specificity all facts, witnesses, documents, and evidence upon which you will rely to support your contentions.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 8:

Plaintiffs incorporate their prior objections and responses to this interrogatory, served on June 13, 2019.

Dr. Spencer's expert report "Racially Polarized Voting in Virginia Beach" (submitted to Defendants on July 15, 2019) uses statistical analysis to demonstrate which Virginia Beach city council candidates were preferred by the black community. According to Dr. Spencer's report, the black community's candidate of choice in the 2010 at-large race was Jackson, in the Bayside race was Jones, and in the Princess Anne race was Bullock. In the 2011 special election, the candidate of choice for the Black community in the at-large race was Sherrod. In the 2012 election, the candidate of choice for the Black community in the Kempsville race was Ross-Hammond. In the 2014 election, the candidate of choice for the Black community in the at-large race was Davenport, in the Rose Hall race was Cabiness, and in the Princess Anne race was Henley. In the 2016 election, the candidate of choice for the Black community in the mayoral race was Sessoms, and in the Kempsville race was Ross-Hammond. In the 2018 election, the candidates of choice for the Black community in the at-large race were Rouse and White, and in the Centerville race was Wooten.

Plaintiffs note that discovery is ongoing and Plaintiffs reserve the right to supplement this response with any additional information identified at a later date.

INTERROGATORY NO. 9:

Identify each individual who you believe was the Asian community's candidate or candidates of choice in each City Council Election from January 1, 2010, to the present, and describe in detail and with specificity all facts, witnesses, documents, and evidence upon which you will rely to support your contentions.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 9:

Plaintiffs incorporate their prior objections and responses to this interrogatory, served on June 13, 2019.

Dr. Spencer's expert report "Racially Polarized Voting in Virginia Beach" (submitted to Defendants on July 15, 2019) uses statistical analysis to demonstrate which Virginia Beach city council candidates were preferred by the Asian, Black, and Hispanic communities. According to Dr. Spencer's report, the candidate of choice for the combined Asian, Black, and Hispanic communities in the 2010 at-large election was Jackson, in the Bayside race was Jones, and in the Princess Anne race was Bullock. In the 2011 special election, the candidate of choice for the combined Asian, Black, and Hispanic communities in the at-large race was Sherrod. In the 2012 election, the candidate of choice for the combined Asian, Black, and Hispanic communities in the Kempsville race was Ross-Hammond. In the 2014 election, the candidate of choice for combined Asian, Black, and Hispanic communities in the Rose Hall race was Cabiness, and in the Princess Anne race was Henley. In the 2016 election, the candidate of choice for the combined Asian, Black, and Hispanic communities in the mayoral race was Sessoms, and in the Kempsville race was Ross-Hammond. In the 2018 election, the candidates of choice for the Asian, Black, and Hispanic communities in the at-large race were Rouse and White, and in the Centerville race was Wooten.

Plaintiffs note that discovery is ongoing and Plaintiffs reserve the right to supplement this response with any additional information identified at a later date.

INTERROGATORY NO. 10:

Identify each individual who you believe were the Hispanic or Latino community's candidate or candidates of choice in each City Council Election from January 1, 2010, to the present, and describe in detail and with specificity all facts, witnesses, documents, and evidence upon which you will rely to support your contentions.

ANSWER:

Dr. Spencer's expert report "Racially Polarized Voting in Virginia Beach" (submitted to Defendants on July 15, 2019) uses statistical analysis to demonstrate which Virginia Beach city council candidates were preferred by the Asian, Black, and Hispanic communities. According to Dr. Spencer's report, the candidate of choice for the combined Asian, Black, and Hispanic communities in the 2010 at-large election was Jackson, in the Bayside race was Jones, and in the Princess Anne race was Bullock. In the 2011 special election, the candidate of choice for the combined Asian, Black, and Hispanic communities in the at-large race was Sherrod. In the 2012 election, the candidate of choice for the combined Asian, Black, and Hispanic communities in the Kempsville race was Ross-Hammond. In the 2014 election, the candidate of choice for the combined Asian, Black, and Hispanic communities in the Rose Hall race was Cabiness, and in the Princess Anne race was Henley. In the 2016 election, the candidate of choice for the combined Asian,

Black, and Hispanic communities in the mayoral race was Sessoms, and in the Kempsville race was Ross-Hammond. In the 2018 election, the candidates of choice for the Asian, Black, and Hispanic communities in the at-large race were Rouse and White, and in the Centerville race was Wooten.

Plaintiffs note that discovery is ongoing and Plaintiffs reserve the right to supplement this response with any additional information identified at a later date.

II. Supplemental Response to Request for Admission No. 1

REQUEST FOR ADMISSION NO. 1:

Admit that your proposed electoral map of Virginia Beach, as shown in Exhibit A to your Amended Complaint, does not comply with the requirement of Virginia Code § 24.2-307 that each voting precinct shall be wholly contained within any election district used for the election of one or more members of the governing body or school board for the City of Virginia Beach.

SUPPLEMENTAL RESPONSE TO REQUEST FOR ADMISSION. NO.1:

Denied as stated. Plaintiffs only admit that the current precincts as drawn are not wholly contained within the election districts in the proposed map in Exhibit A to the Amendment Complaint and the proposed map found in Tony Fairfax's expert report. Plaintiffs do not admit that the proposed map found in Exhibit A or the proposed map found in Tony Fairfax's expert report would violate Virginia Code § 24.2-307 if implemented because the precinct lines can lawfully be redrawn.

III. Attorney Client Privilege and Work-Product

Plaintiffs' counsel have identified one document that has been withheld pursuant to attorney-client privilege and attorney work product that pre-dates this litigation and therefore falls outside the scope of the category of documents previously identified. That document is a July 17, 2017 memo from Ruth Greenwood, an attorney in our office to Gary McCollum. The memo is a privileged attorney-client communication and includes attorney work product and therefore is withheld.

We believe the foregoing supplemental responses should satisfy the concerns outlined in your July 18 letter. Please let us know if that is not the case so that we can discuss further.

Best,

/s/ Danielle Lang
Campaign Legal Center
1101 14th St. NW Suite 400 Washington, DC
20005 202.856.7911
dlang@campaignlegalcenter.org

**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-0069

Defendants' Memorandum of Law in Support of Motion for Summary Judgment

EXHIBIT TEN

Deposition Transcript of Georgia F. Allen

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

LATASHA HOLLOWAY and GEORGIA ALLEN,

Plaintiffs,

CIVIL ACTION NO.
2:18-cv-00069

v.

CITY OF VIRGINIA BEACH, et al.,

Defendants.

DEPOSITION UPON ORAL EXAMINATION
OF GEORGIA F. ALLEN,
TAKEN ON BEHALF OF THE DEFENDANTS

Virginia Beach, Virginia

September 12, 2019

Appearances:

CAMPAIGN LEGAL CENTER

By: ANNABELLE HARLESS, ESQUIRE
CHRISTOPHER LAMAR, ESQUIRE
ERIN CHLOPAK, ESQUIRE
Counsel for the Plaintiffs

OFFICE OF THE VIRGINIA BEACH CITY ATTORNEY

By: CHRISTOPHER S. BOYNTON, ESQUIRE
GERALD L. HARRIS, ESQUIRE
Counsel for the Defendants

I N D E X

DEPONENT	EXAMINATION BY	PAGE
GEORGIA F. ALLEN	Mr. Harris	3

EXHIBITS

NO.	DESCRIPTION	PAGE
1	Google map	14
2	Virginia Beach, Virginia map	14
3	Virginia Beach, VA Illustrative 10 Districts Plan	19
4	Expert Report of Anthony E. Fairfax, Response to Peter Morrison's Report, 8/26/19	22

1 Deposition upon oral examination of
2 GEORGIA F. ALLEN, taken on behalf of the Defendants
3 before Juanita Harris Schar, CCR, RMR, CRR, a Notary
4 Public for the Commonwealth of Virginia at large,
5 commencing at 9:03 a.m. on September 12, 2019, at
6 the Office of the Virginia Beach City Attorney,
7 Building 1, 2401 Courthouse Drive, Virginia Beach,
8 Virginia; and this in accordance with the Federal
9 Rules of Civil Procedure.

10 - - - - -

11 GEORGIA F. ALLEN, affirmed and deposed on
12 behalf of the Defendants as follows:

13 EXAMINATION

14 BY MR. HARRIS:

15 Q. Good morning, Ms. Allen. My name is
16 Jerry Harris. I represent the City of Virginia
17 Beach and the other named defendants in the lawsuit
18 of Latasha Holloway and Georgia Allen as plaintiffs
19 versus City of Virginia Beach, et al., defendants,
20 in the United States District Court for the Eastern
21 District of Virginia, bearing Case No. 2:18-cv-69.

22 You are Georgia Allen, the plaintiff in
23 that case, ma'am?

24 A. Correct. Yes.

25 Q. And you are the plaintiff as to the

1 amended complaint in that case?

2 A. That is correct.

3 Q. All right. Ms. Allen, can I ask you --
4 is it Ms. Allen? I want to be polite.

5 A. It is Ms. Allen.

6 Q. Ms. Allen, have you been deposed before?

7 A. No.

8 Q. In that case, let me go over a few
9 things I like to call guidelines that will help our
10 time together to go more efficiently and hopefully
11 get to where we both need to go.

12 I'm going to do my best to ask my
13 questions completely so that you can understand
14 them, and then I will give you the opportunity to
15 answer your questions fully. The reason we like to
16 do that is because we have a court reporter here
17 who's taking down every question. So you can
18 imagine the physical transcript where I ask a
19 question and then you'll have an opportunity to
20 respond.

21 Also, as part of that, I'll ask you to
22 give your answers verbally because things like
23 uh-huh or uh-uh or head shakes don't always show up
24 well on a transcript.

25 If for any reason my question is

1 difficult to understand, if you don't understand
2 what I'm asking or it's otherwise confusing, please
3 ask me to clarify and I will certainly do so. I can
4 tell you my streak is 100 percent for asking a
5 confusing question in a deposition and,
6 unfortunately, I don't expect that streak to change
7 today. So please clarify or ask for clarification
8 if you need it.

9 With that being said, if you answer my
10 question, I'm going to assume you understood it.

11 Finally, I like to tell everybody, you
12 are under oath today. I will expect that your
13 answers were given truthfully to the best of your
14 ability with all the knowledge that you possess
15 today.

16 Do those things sound reasonable to you?

17 A. Yes.

18 Q. All right. Is there any reason you
19 can't answer my questions truthfully today to the
20 best of your ability?

21 A. No.

22 Q. Ms. Allen, will you state your full name
23 for the record, please?

24 A. Georgia -- you want my middle name?

25 Q. Yes, please.

1 A. Georgia Fay Allen.

2 Q. Before we go further, I also forgot the
3 most important guideline. If at any point you need
4 a break, let me know. I know -- we have water here
5 for you now, but if you need a comfort break, if we
6 go for an hour and you'd like to stand up and
7 stretch your legs, I'm perfectly happy to
8 accommodate you in that way. The only thing I would
9 ask is that we finish the question that we're on and
10 then we'll allow you to have a break. This is your
11 deposition. I don't want it to be any more
12 uncomfortable than it otherwise has to be as part of
13 this litigation process.

14 Can I ask you, ma'am, did you prepare
15 for this deposition today by reviewing any
16 documents?

17 MS. HARLESS: So I'm just going to
18 object to the extent you're calling for privileged
19 information. There may be -- anything that was
20 shared that is privileged with her by her attorneys,
21 I'm going to instruct her not to answer that
22 question.

23 BY MR. HARRIS:

24 Q. You can answer yes or no.

25 A. Yes.

1 Q. For any documents that you reviewed, did
2 you review any of them outside of the presence of
3 your attorney?

4 A. No.

5 Q. And in preparing for your deposition
6 today, did you speak with Mrs. Holloway?

7 A. Can you clarify?

8 MR. BOYNTON: Give the full name.

9 BY MR. HARRIS:

10 Q. Latasha Holloway. In preparing for
11 today's deposition, did you discuss the deposition
12 with Ms. Latasha Holloway?

13 A. No.

14 Q. Do you know Ms. Latasha Holloway?

15 A. Yes.

16 Q. Can you tell me how you know her?

17 A. I think that we originally met on a
18 campaign.

19 Q. Do you remember which campaign?

20 A. Let me think. Because I want to be
21 truthful to the best of my knowledge.

22 MS. HARLESS: Take your time.

23 A. The second congressional campaign.
24 There was an event at Dr. Francine's place and we
25 all met. She was just trying to educate us about

1 the second congressional district.

2 BY MR. HARRIS:

3 Q. Ms. Holloway was?

4 A. She was.

5 Q. I want to clarify. Ms. Holloway was an
6 attendee at that event?

7 A. We were both attendees.

8 Q. That was related to the second
9 congressional campaign in what year?

10 A. There was an election last year, right?
11 Was last year an election year or two years ago?

12 Q. Let me ask it a different way. Do you
13 remember the candidates in the campaign?

14 A. I believe it was Scott Taylor, was one
15 of the candidates, and I believe Shaun was one of
16 the candidates. Shaun Brown. So there were a
17 number of candidates.

18 Q. My recollection is that would have been
19 2016. Does that sound about right?

20 A. Probably.

21 Q. Did you have any other interactions with
22 Ms. Holloway since that campaign event and prior to
23 your involvement as a plaintiff in this lawsuit?

24 A. I think this falls in the privilege.

25 MS. HARLESS: He said prior to your

1 involvement in this lawsuit.

2 A. No. No.

3 BY MR. HARRIS:

4 Q. So if I understand your testimony today,
5 the only other time you've met -- the only time you
6 would have met Ms. Holloway prior to your
7 involvement in this lawsuit would have been that
8 2016 campaign event?

9 A. That is the time that we met, yes.

10 Q. Ms. Allen, how long have you lived in
11 the City of Virginia Beach?

12 A. Total time -- it's kind of sporadic
13 because I was here and I moved and then I came back,
14 but I originally came here in 1954.

15 Q. How long were you here in that -- you
16 called it sporadic so let's break it up. 1954 until
17 when in Virginia Beach?

18 A. '71.

19 Q. And then where did you move?

20 A. New York.

21 Q. How long were you in New York?

22 A. Three years.

23 Q. Did you return to Virginia Beach after
24 New York?

25 A. Yes.

1 Q. So that would put you in about 1974?

2 A. Correct.

3 Q. And from 1974 until when were you in
4 Virginia Beach again?

5 A. I want to say till around 1985 I
6 relocated to the Washington, DC, Metro area.

7 Q. How long were you in the DC Metro area?

8 A. Till 1988 then I returned back to
9 Virginia Beach.

10 Q. How long did you stay in Virginia Beach
11 from 1988 until the next point where you may have
12 moved?

13 A. Then in 1993, I lived in Belgium from
14 '93 to '94.

15 Q. Did you return from Belgium to Virginia
16 Beach?

17 A. Then I returned back to Virginia Beach.
18 And I've been here ever since.

19 Q. So I would have that as a continuous
20 residency in Virginia Beach from 1994 until present
21 day?

22 A. Presently. I think I've covered it.

23 Q. Let me focus your attention on the most
24 recent time frame, 1994 to 2019. Have you lived in
25 a single residence during that time or have you

1 moved throughout the City of Virginia Beach?

2 A. I've lived in other homes. Lived in
3 the -- lived in rental properties, one off of
4 Holland Road for a minute. Uh-huh.

5 Q. From that time frame, 1994 to 2019, how
6 many different neighborhoods would you say you lived
7 in in Virginia Beach?

8 A. Probably three.

9 Q. Can you tell me the names of those
10 neighborhoods, please?

11 A. I want to say Holland -- Holland --
12 where it says Thomas Jefferson, I believe. I think
13 one of the streets is like Thomas Jefferson. I
14 think it's all of the people that wrote the
15 Constitution, is on there or something.

16 Then I lived in Redwing -- yeah, Redwing
17 area for a little while. And then I lived in
18 Ashbrook. Then I moved into my home which I live in
19 now, in 2003. I moved in, bought my home and moved
20 there.

21 Q. I heard you say three neighborhoods, but
22 then I think we named four places. So I want to
23 clarify. You had mentioned the Holland address?

24 A. Uh-huh.

25 Q. The Redwing neighborhood?

1 A. Area.

2 Q. Or area.

3 A. Uh-huh.

4 Q. Ashbrook?

5 A. Ashbrook. I believe it's Ashbrook,
6 which is right there on the Boulevard near --
7 near -- across from Princess Anne High School.

8 Q. And then in 2003 you moved into your
9 current address.

10 A. Yes.

11 Q. And you've lived there continuously
12 since?

13 A. Since 2003.

14 Q. What is that address?

15 A. 4649 Merrimac, M-E-R-R-I-M-A-C, Lane.
16 The ZIP is 23455.

17 Q. Do you know which City Council district
18 that's in?

19 A. Council district was Kempsville, but I
20 believe they moved me back into Bayside district.

21 Q. Can you give me a general idea where
22 4649 Merrimac Lane is in the City of Virginia Beach?

23 A. It's off of Witchduck Road between the
24 Aragona section and Independence Boulevard. So it's
25 called Bayside Villas, is the name of the

1 development.

2 Q. Ms. Allen, you're registered to vote
3 here in the City of Virginia Beach?

4 A. Yes.

5 Q. As a plaintiff in this case, have you
6 had an opportunity to review the amended complaint
7 that was filed in federal court?

8 MS. HARLESS: You have to answer.

9 A. Okay. I don't...

10 The -- the short amended request?

11 BY MR. HARRIS:

12 Q. I'm referring to the amended complaint
13 that was filed --

14 A. Let me see.

15 Q. -- in federal court.

16 MS. HARLESS: Do you have a copy you
17 could show her?

18 A. Do you have a copy?

19 BY MR. HARRIS:

20 Q. I'll let you flip through that. I'm not
21 going to mark the amended complaint as an exhibit to
22 the deposition.

23 MR. BOYNTON: There's no need to copy it
24 12 times for future purposes.

25 A. I did review this. I just wanted to

1 make sure that it is the same document.

2 BY MR. HARRIS:

3 Q. So you're at least generally familiar
4 with this filing with the court?

5 A. Yes.

6 Q. As part of this filing, there was a
7 reference to an exhibit, what has been referred to
8 as an illustrative district.

9 MR. HARRIS: If I can get these marked 1
10 and 2.

11 (Allen Exhibit Nos. 1 & 2 were marked
12 for identification.)

13 MS. HARLESS: Do you have other copies
14 of that?

15 MR. HARRIS: I don't.

16 MR. BOYNTON: SO you can let her and
17 counsel review them as long as they want to before
18 we proceed.

19 MS. HARLESS: Take as much time as you
20 need to look at that.

21 BY MR. HARRIS:

22 Q. Ms. Allen, let's start with what's been
23 marked as Exhibit No. 1.

24 A. Okay.

25 Q. I will offer to you that this is a map

1 that I printed off of Google using the address 4649
2 Merrimac Lane. Google produced that pin that's
3 marked in red on the sort of right half of this
4 document. Do you recognize that right pin as being
5 approximately where 4649 Merrimac Lane is?

6 MS. HARLESS: To the best of your
7 knowledge.

8 A. To the best of my knowledge, this is
9 Jericho Road in this (indicating). To the best of
10 my knowledge.

11 BY MR. HARRIS:

12 Q. Can you say the name of that road again,
13 please?

14 A. This is Jericho Road right here
15 (indicating).

16 Q. It also appears that the road that runs
17 most closely to the red pin is Witchduck Road?

18 A. That is correct.

19 Q. All right. You know your address to be
20 east of Witchduck Road?

21 MS. HARLESS: Objection, that -- form.

22 A. East and west...

23 MR. BOYNTON: Rephrase it.

24 BY MR. HARRIS:

25 Q. I'll rephrase the question. If you're

1 not familiar with east and west as on the exhibit as
2 you're looking at it, you would agree with me that
3 the road closest to the red pin is Witchduck Road?

4 A. That is correct.

5 Q. And the pin is to the right of Witchduck
6 Road on the map?

7 A. That is correct.

8 Q. I'm now going to show you Exhibit No. 2,
9 which I will offer to you was Appendix A to the
10 amended complaint that you said that you had at
11 least been generally familiar with.

12 There are two red stars on the top left
13 of that exhibit. Can you identify for me which of
14 those two red stars is your address?

15 A. Okay. Clarify, please. You're asking
16 me to tell you that that's -- one of those stars is
17 my address? Is that what you're asking me?

18 Q. I'm asking you to tell me whether you
19 believe that one of those red stars is your address
20 of 4649 Merrimac Lane.

21 MS. HARLESS: Objection. Calls for
22 speculation.

23 BY MR. HARRIS:

24 Q. You can answer.

25 A. I can't say that's my address. I can

1 say the red star is close to my address. But I
2 can't say that's my address.

3 MR. BOYNTON: Have her mark which star
4 is closest.

5 BY MR. HARRIS:

6 Q. Ms. Allen, I'm going to ask you to use
7 my blue pen and circle the star that you believe is
8 closest to your address.

9 MS. HARLESS: I'm going to object to
10 this because she just said she can't say for sure
11 that's her address, but she can do it. I'm just
12 putting my objection on the record.

13 A. (Draws.)

14 BY MR. HARRIS:

15 Q. Now, Ms. Allen, if I could just ask you,
16 would you initial on just the bottom left corner of
17 that exhibit in your handwriting?

18 MS. HARLESS: (Moved head up and down.)

19 A. (Complies.)

20 BY MR. HARRIS:

21 Q. Thank you.

22 For purposes of the record, it looks
23 like you put a circle with a line over the red star
24 closest to Aragona Boulevard?

25 A. That is correct.

1 Q. Ms. Allen, the plaintiffs have disclosed
2 an expert in this case by the name of Anthony
3 Fairfax. Mr. Fairfax, I will tell you, produced two
4 reports in this case, an initial report and a
5 rebuttal report. Do you know if you've had an
6 opportunity to see those reports?

7 A. I don't recall.

8 Q. If I showed you a copy of one of those
9 two reports, would that help refresh your
10 recollection if you've seen it?

11 A. I can't say for sure.

12 Q. All right. I'm going to ask you to just
13 look at this document and see if that refreshes your
14 recollection.

15 MS. HARLESS: Before you feel you have
16 to read the whole thing, I think his question was
17 just whether you think you've seen it before. So if
18 you feel like you can answer that.

19 A. I don't recall. I do not recall. I'm
20 trying to.

21 I don't recall.

22 BY MR. HARRIS:

23 Q. As a follow-up to that "I don't recall,"
24 there is a distinction in my mind between, I can't
25 recall whether I've seen it before, which would

1 leave open the possibility that you may have seen
2 it, or, I have not seen that.

3 When you say, "I can't recall" are you
4 leaving open the possibility you may have seen that
5 document before?

6 A. I may have seen that document before.

7 Q. And, ma'am, I'm not trying to catch you
8 up. I'm just trying to identify your familiarity
9 with the document.

10 And there's another expert report that
11 was also filed by Anthony Fairfax. It is even
12 longer than the response, and as Ms. Harless
13 correctly pointed out, my question is only whether
14 you've seen this document before.

15 MS. HARLESS: I'm going to say for the
16 record that the plaintiff had never been sent
17 either -- by counsel either of these documents.

18 MR. HARRIS: Okay.

19 A. So I stand -- I don't recall.

20 (Allen Exhibit No. 3 was marked for
21 identification.)

22 BY MR. HARRIS:

23 Q. Ms. Allen, I understand you've never
24 seen, or you indicated you can't recall having ever
25 seen Mr. Fairfax's report. I will offer to you this

1 was a map that was produced as part of that report.
2 Similar to my questions relating to Exhibit 1 and 2,
3 are you able to identify where your address on
4 Merrimac Lane is or approximately is on that map?

5 A. No.

6 MS. HARLESS: I'm going to object
7 because the plaintiff has stated she's never seen
8 that map before, so...

9 MR. HARRIS: Are you instructing her not
10 to answer?

11 MS. HARLESS: No. I'm putting my
12 objection on the record.

13 A. Without streets, I can't.

14 BY MR. HARRIS:

15 Q. You can't say for sure whether your
16 address is within that red shaded area?

17 A. I'm a street person so looking at lines,
18 I cannot.

19 MR. BOYNTON: Can she confirm if this is
20 Witchduck Road?

21 BY MR. HARRIS:

22 Q. You lived in Virginia Beach since, if I
23 recall, 1994 to present --

24 A. (Moved head up and down.)

25 Q. -- continuously. Certainly, you're

1 familiar with interstate 264?

2 A. That's correct.

3 Q. And if I offered to you that this
4 intersection here in the center of the map is the
5 intersection of Virginia Beach Boulevard and
6 Independence Boulevard, does that assist you in
7 locating where Merrimac Lane may be on this map of
8 Virginia Beach?

9 MS. HARLESS: Objection. Calls for
10 speculation.

11 A. Where is that?

12 BY MR. HARRIS:

13 Q. I'm offering to you that this
14 intersection of the two yellow roads just north or
15 just above 264 is the intersection of Virginia Beach
16 Boulevard and Independence Boulevard. With that
17 information, are you able to identify where Merrimac
18 Lane is on this map of Virginia Beach?

19 MS. HARLESS: Objection, form.

20 A. I cannot.

21 BY MR. HARRIS:

22 Q. So is it your testimony today you cannot
23 identify Merrimac Lane as having -- or being within
24 this shaded red area --

25 MS. HARLESS: Objection.

1 BY MR. HARRIS:

2 Q. -- on this map?

3 MS. HARLESS: Objection, form,
4 misleading.

5 BY MR. HARRIS:

6 Q. Ms. Allen, can you identify Merrimac
7 Lane as being inside this red shaded area on the
8 map?

9 A. Without streets, no.

10 (Allen Exhibit No. 4 was marked for
11 identification.)

12 BY MR. HARRIS:

13 Q. Ms. Allen, I'm now referring to Exhibit
14 No. 4, which is the Expert Report of Anthony E.
15 Fairfax, Response to Peter Morrison's Report. This
16 is the document that you had an opportunity to
17 review briefly just moments ago.

18 On Exhibit 4, I'm going to turn your
19 attention --

20 MS. HARLESS: Hold on. Ms. Allen, did
21 you get a chance to look at that as thoroughly as
22 you'd like to look at it before you're asked
23 questions about it? If you'd like time to look at
24 it, you can have time to look at it.

25 A. Okay.

1 MS. HARLESS: She's never seen this
2 document before so...

3 MR. BOYNTON: Give her an opportunity to
4 review it.

5 BY MR. HARRIS:

6 Q. Do you need more time to look at it?

7 A. I would need more time to review it.

8 Q. All right. To assist you in your
9 review, I will offer to you that the pages that are
10 paper clipped are the pages where I'm going to draw
11 your attention.

12 MS. HARLESS: Do you have additional
13 copies of this?

14 MR. HARRIS: Of your expert's rebuttal
15 report? Yes.

16 MS. HARLESS: That you're asking about
17 in this deposition?

18 MR. HARRIS: I tell you what. Let's
19 take a five-minute break. I'll produce copies. How
20 many copies of the rebuttal report do we need?

21 MS. HARLESS: At least one.

22 MS. CHLOPAK: We can share.

23 MS. HARLESS: We can share. I mean we
24 just need -- I need to be able to look at a copy.

25 MR. HARRIS: We'll go off the record.

1 I'll let you hold on to Exhibit 4 if that's okay.

2 (Recess)

3 BY MR. HARRIS:

4 Q. Ms. Allen, we took a brief break so that
5 we could make copies of the Exhibit No. 4 that you
6 were reviewing. Your counsel and I now have
7 complete copies of that Exhibit No. 4. And you have
8 turned to the first paper clip that I have placed on
9 Exhibit No. 4, which is page 6.

10 MS. HARLESS: Can I just note, her copy
11 of Exhibit 4 does not have the appendix. I just
12 want to note that. The copy you gave me has the
13 appendix. Hers doesn't. That's fine. I just want
14 to put on the record it's the copy without the
15 appendix.

16 BY MR. HARRIS:

17 Q. On Exhibit 4, the copy of the rebuttal
18 report of Mr. Fairfax, on page 6, without the
19 appendix, is where you're currently turned, which is
20 where I do want you to turn your attention.

21 Before we took a break I was asking you
22 if you have an ability to identify the Merrimac Lane
23 address you've provided in this deposition on
24 Exhibit No. 3. I'm going to ask you that same
25 question for the map that's contained in Exhibit

1 No. 4 on page 6. It's titled: Virginia Beach
2 Illustrative Plan Alt 1, Districts 1 and 2. Are you
3 able to identify your Merrimac Lane address on that
4 map?

5 A. I am not.

6 Q. Are you --

7 A. No.

8 Q. -- able to identify your Merrimac Lane
9 address on that map as being in the red shaded area?

10 A. No.

11 Q. Are you able to identify on that map
12 your Merrimac Lane address as being in the blue
13 shaded area?

14 A. No. I cannot.

15 Q. If you would turn to page 7. There's
16 another map that's titled, Illustrative Plan Alt 2,
17 Districts 1 and 2. Are you able to identify your
18 Merrimac Lane address on that map on page 7?

19 A. Clarification.

20 Q. On page 7, the map that I've just
21 referenced, are you able to identify your Merrimac
22 Lane address on that map?

23 A. No. I'm not able to.

24 Q. Are you able to identify your Merrimac
25 Lane address on that map as being contained within

1 the red shaded area?

2 A. No.

3 Q. Are you able to identify Merrimac Lane
4 as having -- being contained within that blue shaded
5 area?

6 A. No. I cannot.

7 Q. I'm going to ask you to turn to the next
8 page. There's another map on page 8. On page 8
9 that map is referenced as Illustrative Plan Alt 3,
10 Districts 1 and 2. On this map are you able to
11 identify your Merrimac Lane address?

12 A. No. I cannot.

13 Q. Are you able to identify Merrimac Lane
14 as being contained within the red shaded area on
15 that map?

16 A. No.

17 MS. HARLESS: Objection, asked and
18 answered.

19 A. Uh-huh.

20 BY MR. HARRIS:

21 Q. You can answer the question.

22 A. No, I cannot.

23 Q. Are you able to identify Merrimac Lane
24 as being contained within the blue shaded area?

25 MS. HARLESS: Objection, asked and

1 answered.

2 A. No, I cannot.

3 BY MR. HARRIS:

4 Q. You're moving yourself to page 9,
5 telegraphing my next question. That map references
6 Illustrative Plan Alt 4 on page 9 of this report as
7 Exhibit No. 4. Can you identify your home address
8 on Merrimac Lane on that map?

9 A. No.

10 Q. Can you identify Merrimac Lane as being
11 contained within the red shaded area on that map?

12 MS. HARLESS: Objection, asked and
13 answered.

14 MR. BOYNTON: No.

15 MS. HARLESS: She just said she can't
16 identify her address anywhere on the map.

17 MR. BOYNTON: Well, she can be specific
18 about inside or outside the colors, too.

19 BY MR. HARRIS:

20 Q. I'm asking if you can identify Merrimac
21 Lane generally on the red shaded area in that map.

22 MS. HARLESS: Objection, asked and
23 answered.

24 You can answer.

25

1 BY MR. HARRIS:

2 Q. You can answer the question.

3 A. No, I cannot.

4 Q. If you would turn the page one more
5 time.

6 On page 10 there's a map referenced as
7 Illustrative Plan Alt 5. On this map are you able
8 to identify your home address on Merrimac Lane?

9 A. No. I cannot.

10 Q. On this map can you identify Merrimac
11 Lane within the red shaded area?

12 MS. HARLESS: Objection, asked and
13 answered.

14 A. No, I cannot.

15 BY MR. HARRIS:

16 Q. Based on what I've just shown you in
17 Exhibits Nos. 3 and 4, specifically Exhibit No. 4's
18 paper clipped area, that is all the maps that we've
19 talked about --

20 MS. HARLESS: Is that pages 6 through
21 10?

22 MR. HARRIS: Pages 6 through 10, yes,
23 ma'am.

24 MS. HARLESS: Of Exhibit 4.

25

1 BY MR. HARRIS:

2 Q. -- can you identify on any of these maps
3 whether you actually live in the red shaded area?

4 MS. HARLESS: Objection, asked and
5 answered.

6 A. No.

7 BY MR. HARRIS:

8 Q. Ms. Allen, what do you do for a living?

9 A. I'm actually semi-retired. Okay? So
10 occasionally I work with OneAmerica, which trades as
11 Anchor Financial Services.

12 Q. Being that you're semi-retired, does
13 that mean you work in a part-time capacity with that
14 group?

15 A. No, I work when I feel like it. You
16 know, so, you know, maybe twice a year.

17 Q. Prior to retiring or semi-retiring, what
18 did you do for a living?

19 A. I was in the financial services
20 industry.

21 Q. I want to reference your most recent
22 time frame in Virginia Beach, 1994 to 2019. Did you
23 work in the financial services industry in Virginia
24 Beach for that entire time frame?

25 A. No. I did not.

1 Q. Can you talk to me about what your
2 employment history was during that time frame 1994
3 to 2019 in Virginia Beach?

4 A. I was in the cellphone industry for that
5 period of time.

6 Q. From 1994 to 2019?

7 A. Not 2019. Till 2011, I believe. 2010,
8 2011. Uh-huh.

9 Q. Would it have been in 2010 or '11 that
10 you moved to the financial services industry then?

11 A. Correct.

12 Q. And you worked in the financial services
13 industry up until, to use your phrase, you
14 semi-retired?

15 A. Until 2016.

16 Q. Let's go back to the time frame from
17 1994 until 2011 where you said you worked in the
18 cellphone industry.

19 A. Uh-huh.

20 Q. Who were your specific employers during
21 that time frame?

22 A. It changed names a number of times. So
23 it started out 360 Communications, then AllTel.
24 Then Verizon.

25 Q. Did you physically work in Virginia

1 Beach?

2 A. That is correct. Yes.

3 Q. These weren't offices in Norfolk,
4 Portsmouth, Newport News?

5 A. No.

6 Q. Do you recall -- well, let me ask you
7 this. Was it the same office even though the names
8 changed, or did you move offices as the names
9 changed?

10 A. We only moved offices once. We were at
11 One Columbus Center. One Columbus Center,
12 initially, under 360 Communications. And then we
13 were at 240 Clearfield Avenue under AllTel, Verizon.

14 Q. I want to move your attention to 2016
15 when you made the switch to the financial services
16 industry. Who was your specific employer at that
17 time?

18 A. I initially started working with First
19 Command.

20 Q. Do they maintain offices here in
21 Virginia Beach?

22 A. In Virginia Beach. Lynnhaven Parkway.

23 Q. Did you stay with First Command or did
24 you leave that employment and go to another
25 financial services job?

1 A. I left and got courted to go to another
2 job.

3 Q. Which job was that, ma'am?

4 A. Mass Mutual.

5 Q. Did they maintain an office in Virginia
6 Beach where you worked?

7 A. Yes.

8 Q. Where was that?

9 A. Town Center.

10 Q. Approximately how long were you employed
11 there?

12 A. About a year.

13 Q. If I'm keeping up with my timeline, that
14 would be approximately 2015 to 2016?

15 A. I didn't bring the dates.

16 Q. Any reason to believe that approximation
17 of 2015 to 2016 is incorrect?

18 A. I don't recall.

19 Q. During the same time, 1994 to 2019, for
20 which you've now described your employment history,
21 I understand you were also the president of the
22 NAACP during that time frame at some point?

23 A. From 2001 I became president.

24 Q. How long was your tenure?

25 A. Ten years. Ten years. Approximately

1 ten years.

2 Q. So from 2001 to 2011 approximately?

3 A. Approximately.

4 Q. And I should have clarified this. When
5 I said the N-A-A-C-P, or N-double A-C-P, you were
6 president of a particular branch?

7 A. Virginia Beach.

8 Q. I understand that to be an elected
9 position?

10 A. That is correct. Yes.

11 Q. Prior to 2001 do you know who the
12 Virginia Beach branch president was?

13 A. Sandra Smith-Jones.

14 Q. After 2011 who was the president after
15 you were?

16 A. Carl Wright.

17 Q. C-A-R-L?

18 A. That is correct.

19 Q. W-R-I-G-H-T?

20 A. That is correct.

21 Q. Is he the current president of the --

22 A. No.

23 Q. Who is the current president?

24 A. Dr. Karen Hills Pruden. P-R-U-D-E-N.

25 Q. Is Hills Pruden hyphenated? If you

1 know.

2 A. I don't recall.

3 Q. Was there a president between Mr. Carl
4 Wright and Dr. Karen Hills Pruden?

5 A. Gerald Daniels.

6 Q. Any other presidents that you're aware
7 of between 2011 and present that we haven't already
8 named?

9 A. No.

10 Q. I assume prior to 2001 when you became
11 president you were still involved in the NAACP?

12 A. That is correct.

13 Q. Did you undertake advocacy on their
14 behalf on issues in Virginia Beach?

15 A. I worked with the youth during that
16 period of time.

17 Q. What time frame would you put on that
18 period?

19 A. I have to check.

20 MS. HARLESS: No. You don't --

21 BY MR. HARRIS:

22 Q. I'm asking you just to the extent you
23 recall as you sit here today.

24 A. I don't recall.

25 MS. HARLESS: And to the best of your

1 knowledge.

2 A. To the best of my knowledge.

3 I would say 1989, 1990.

4 BY MR. HARRIS:

5 Q. In the time in which you were the
6 president from 2001 through 2011 did you know the
7 NAACP to endorse City Council candidates for
8 Virginia Beach?

9 A. No.

10 Q. Were there ever any formal endorsements
11 that you're aware of during your time as
12 President --

13 A. Not --

14 Q. -- of the NAACP?

15 A. Not that I'm aware.

16 MR. HARRIS: Let me -- let me finish the
17 question.

18 MS. HARLESS: Make sure you let him
19 finish.

20 BY MR. HARRIS:

21 Q. I don't want you to answer the wrong
22 question.

23 A. I'm sorry. Go ahead.

24 Q. So during your time as the President of
25 the NAACP, which we've identified as approximately

1 2001 through 2011, did you know the NAACP to endorse
2 any candidate in any election?

3 A. Not to my knowledge.

4 Q. During your time as president from 2001
5 to 2011 did you know the NAACP chapter in Virginia
6 Beach to engage in any advocacy of City Council
7 action?

8 MS. HARLESS: Objection to form. You
9 can answer.

10 A. Not to my knowledge. That I can recall.

11 BY MR. HARRIS:

12 Q. As President of the NAACP, do you ever
13 recall being involved in pushing for a referendum to
14 change to a ward system in Virginia Beach?

15 A. Yes. I spoke before City Council.

16 Q. When you spoke before City Council did
17 you do so or announce yourself as the President of
18 the NAACP, or did you speak as Ms. Georgia Allen in
19 your personal capacity, I'll say?

20 A. To the best of my knowledge, I spoke as
21 Georgia Allen.

22 Q. Do you recall when you spoke before City
23 Council referencing a referendum to change to ward
24 districts?

25 A. To the best of my knowledge, I believe

1 it was around 2001.

2 Q. Are you aware that a referendum was in
3 fact placed on the ballot in Virginia Beach
4 referencing a change to a ward system?

5 MS. HARLESS: Objection to form.

6 BY MR. HARRIS:

7 Q. You can answer.

8 A. I don't recall.

9 MS. HARLESS: Are you asking for a
10 specific year or just --

11 BY MR. HARRIS:

12 Q. I'm asking you if you are aware that a
13 referendum was on the ballot in the City of Virginia
14 Beach regarding a change to a ward system from the
15 current at-large system.

16 A. I don't recall.

17 Q. Do you mean you don't recall it being on
18 the ballot or you can't recall whether it occurred
19 at all?

20 A. I can't recall either.

21 Q. Would it be fair to say then that you
22 weren't involved in any advocacy beyond 2001's
23 statement to City Council for change to a ward
24 system?

25 MS. HARLESS: Objection to form.

1 Mischaracterizes the testimony.

2 A. Can you clarify your question, please?

3 BY MR. HARRIS:

4 Q. Yes, ma'am. You've referenced a time in
5 which you spoke to City Council in approximately
6 2001 relating to a change from the current at-large
7 system to a ward system. Do you recall that
8 testimony?

9 A. Yes. I recall speaking to City Council
10 around the 2001 time frame. But I'm still confused
11 by your question.

12 Q. Let's go with in 2001 when you spoke to
13 City Council, were you advocating for a change from
14 the at-large system to a ward system at that time?

15 A. Okay. In 2001 I recall speaking before
16 Council to have a change in the formulation of the
17 way the districts are drawn. Now...

18 Q. In your mind, is that different than a
19 request for a referendum to change from at large to
20 ward?

21 A. That is, in my mind, different.

22 Q. So your discussion in 2001 before
23 Council, if I understand your testimony, was related
24 to redistricting or redrawing boundary lines within
25 the City of Virginia Beach?

1 A. I believe that is correct.

2 Q. Moving away from your 2001 statements
3 before Council, as you sit here today, do you have
4 an independent recollection of being involved in
5 advocacy for a change from the current at-large
6 system to a ward system in the City of Virginia
7 Beach?

8 A. Clarify that 'cause -- 'cause you're
9 confusing me.

10 Q. Let me state it this way. The City of
11 Virginia Beach has had two referendums on the ballot
12 in reference to a change from the at-large system to
13 the ward system. I'm wondering whether you had any
14 involvement in advocating either for or against
15 those referendums.

16 A. I cannot say specifically 'cause I'm
17 not -- I don't see the items so I can't specifically
18 say at this time.

19 Q. What items didn't you see?

20 A. What you just discussed. You said the
21 City had two.

22 Q. Two referendums on the ballot. Until I
23 told you that, you were unaware that two referendums
24 were on the ballot regarding at large versus ward
25 systems?

1 MS. HARLESS: Objection to form.

2 Mischaracterizes the testimony.

3 A. I can't recall that -- to that detail
4 specifically.

5 BY MR. HARRIS:

6 Q. Let me ask another clarifying question,
7 Ms. Allen. When I use the phrases "at large" and
8 "ward" system, let's define those terms. What do
9 you understand an at-large system to be?

10 A. At large means you run in the whole,
11 entire city.

12 Q. And a ward would be what?

13 A. You run in a specific district.

14 Q. And when I asked you about your
15 understanding of whether there was a ward -- or a
16 referendum to move to wards in the City of Virginia
17 Beach, those are the definitions that you were using
18 in your mind to answer that question?

19 A. That is correct.

20 Q. Ms. Allen, let me set aside the
21 reference to referendums. In your personal capacity
22 or in your official capacity as President of the
23 NAACP or as a member of the NAACP, have you been
24 involved in advocacy in the City of Virginia Beach
25 for a change from at large to ward districts?

1 MS. HARLESS: Objection, asked and
2 answered.

3 BY MR. HARRIS:

4 Q. You're looking at me as though you want
5 me to rephrase my question.

6 A. Please.

7 Q. Okay. During your time in Virginia
8 Beach, which we've defined most recently as 1994
9 till present, have you been involved in advocacy for
10 a ward system in Virginia Beach?

11 A. I'm concerned of how you're phrasing
12 that. I'm unclear.

13 Q. Tell me what your concern is.

14 A. I answered your question.

15 Q. Respectfully, ma'am, I don't believe
16 that you have, and I'm asking you, what is your
17 concern about my question? And I see you're reading
18 my notes here. I don't have the question written
19 out, but my question, again, is, in your most recent
20 tenure in Virginia Beach, 1994 to present, have you
21 been involved for advocating a change -- excuse me,
22 advocating for a ward system in Virginia Beach?

23 MS. HARLESS: Objection, asked and
24 answered. If you're asking besides what she already
25 testified to?

1 MR. BOYNTON: It's a different question.

2 MR. HARRIS: We're not going to do
3 coaching or speaking objections.

4 BY MR. HARRIS:

5 Q. So you can answer the question or ask me
6 to rephrase it.

7 A. Rephrase it.

8 Q. Have you been a proponent or an advocate
9 for ward systems in Virginia Beach?

10 A. I have never spoken for a ward system in
11 Virginia Beach. Read my -- read my testimony. I
12 mean read my -- my comment to the City.

13 Q. I'm not referring only to comments to
14 the City. I'm saying in a more general, broad
15 sense, have you been an advocate or proponent for a
16 ward system in Virginia Beach?

17 A. I have been a proponent of districts in
18 Virginia Beach.

19 Q. Tell me what you mean by that.

20 A. People run in specific districts.

21 Q. As a proponent of districts, as you've
22 defined it, can you tell me about some of the
23 advocacy that you've been involved in?

24 A. Primarily speaking before City Council.
25 I believe I had worked with the team to draw up new

1 districts.

2 Q. Approximately when was that?

3 A. I believe it was around 2001.

4 Q. Do you know the name Carolyn Lincoln?

5 A. Yes.

6 Q. How do you know Carolyn Lincoln?

7 A. Everybody knows Carolyn Lincoln.

8 Q. I'm asking how you know Carolyn Lincoln.

9 A. She's a person that lives in the City of
10 Virginia Beach and I've seen her speak before
11 Council.

12 Q. Are you aware that she was a plaintiff
13 in a lawsuit filed against the City of Virginia
14 Beach regarding its at-large voting system?

15 A. I am.

16 Q. Were you involved in that lawsuit?

17 A. No. Didn't know her at the time.

18 Q. So you wouldn't have provided deposition
19 or other advice to counsel in those types of cases?

20 A. I can't say I knew Carolyn Lincoln till
21 maybe -- I don't even know when I met her.

22 Q. That lawsuit was in 1997. Do you recall
23 hearing about that lawsuit?

24 A. Yes.

25 Q. Tell me what you recall hearing about

1 it.

2 A. I heard she sued the City.

3 Q. Did you know it to be a claim of a
4 violation of the Voting Rights Act?

5 A. I believe so. What is it, 1997?

6 Q. You mentioned you were involved in
7 drawing or assisting -- perhaps -- let me rephrase
8 that. You mentioned that you may have been involved
9 in drawing proposed districts around 2001. Is that
10 a correct summary of your testimony?

11 A. No.

12 Q. When you mentioned drawing districts,
13 tell me what --

14 MR. BOYNTON: Advocating.

15 BY MR. HARRIS:

16 Q. Advocated for it. What was your
17 involvement in these proposed districts?

18 A. At the time we were looking to have more
19 representation, or fairer representation. And so at
20 the time, as the president, I looked for someone who
21 could assist us because that's my -- not my
22 expertise in drawing lines.

23 Q. Did you eventually find someone who
24 could assist you?

25 A. Dr. Wilson.

1 Q. That's Dr. Rudolph Wilson of Norfolk
2 State?

3 A. That is correct.

4 Q. Was he hired to draw new districts?

5 A. He was a volunteer.

6 Q. Was he able to produce the districts
7 back to you as the President of the NAACP?

8 MS. HARLESS: Objection to form.

9 A. I would think that he did. All of this
10 took place so long ago. My land, I feel like I've
11 gone through 50 years.

12 BY MR. HARRIS:

13 Q. Do you recall -- is it Dr. Wilson or --

14 A. Dr. Rudolph Wilson?

15 Q. Dr. Rudolph Wilson, do you recall him
16 producing district maps?

17 A. We did have district maps, yes.

18 Q. Do you recall what was done with those
19 district maps?

20 A. Can you clarify what you're asking
21 there?

22 Q. You indicated that Dr. Rudolph Wilson
23 produced district maps. I'm wondering, after he
24 produced them, what happens next?

25 A. I'm still trying to get some

1 clarification. Do you mean did we file them away?

2 Q. What were Dr. Rudolph Wilson's maps used
3 for?

4 A. We presented them to the City probably.
5 But it's been so long ago.

6 Q. So you're not sure whether you submitted
7 them to the City?

8 A. I cannot recall specifically what was
9 done.

10 Q. Do you recall there being a lawsuit
11 threatened in that same time frame related to the
12 districts that Dr. Rudolph Wilson prepared?

13 A. I don't recall a threat of a lawsuit,
14 no.

15 Q. There was a census conducted in 2010.
16 As a result of that census, there was a
17 redistricting done in the City of Virginia Beach.
18 Did you participate or advocate for certain
19 districts in that time frame? Around 2010.

20 A. To be honest, I really don't recall
21 2010.

22 Q. Do you know the name Andrew Jackson?

23 A. Yes.

24 Q. Why do you know the name Andrew Jackson?

25 A. He was a member of the NAACP at a

1 particular time.

2 Q. Which time was that?

3 A. I don't recall dates.

4 Q. Was it while you were president?

5 A. It was during the period of time I was
6 president, yes.

7 Q. Do you know if he presented any proposed
8 districts as a result of the 2010 census?

9 A. I don't recall. To the best of my
10 recollection, I cannot remember that.

11 Q. Other than the 2001 moment that we
12 talked about where you spoke to Council, do you
13 recall any other times where you've addressed City
14 Council relating to voting rights or voting
15 districts?

16 A. I don't recall.

17 Q. I was going to move to another topic
18 area, but I know you had a meeting with your
19 attorneys briefly. Would it help you to have a
20 five-minute break?

21 MS. HARLESS: Want a break?

22 THE DEPONENT: Yes.

23 MS. HARLESS: Yeah, let's take a break.

24 (Recess)
25

1 BY MR. HARRIS:

2 Q. Ms. Allen, I want to change topics a
3 little bit. We've been talking about some of the
4 redistricting and voting rights issues. I want to
5 talk more broadly about the points of advocacy for
6 the NAACP while you were the president. Can you
7 tell me a little bit about what the priorities were
8 of the NAACP in Virginia Beach while you were
9 president?

10 A. Youth was a priority.

11 Q. What types of things for the youth?

12 A. Making sure that they got involved in
13 the Youth Council and the ACT-SO program.

14 Q. Can you tell me about that? I'm
15 unfamiliar with those.

16 A. Okay. The Youth Council is for students
17 that are teenagers, you know, so from we say 12
18 until 18. And so it's kind of like a parallel
19 division to the adult branch and it's more or less a
20 leadership-type program that we have for the youth.

21 And then the ACT-SO program is the Afro
22 Cultural, Technological, Scientific Olympics, which
23 focuses on identifying our students who have talent
24 in the science, technology, et cetera. And we --
25 the gentleman -- he's passed away now -- that put

1 that program together and funded it, he endowed it,
2 he wanted young African American youth to focus more
3 on education and to be recognized for focusing on
4 education because it was so much emphasis on
5 entertainment and sports. And so he wanted an
6 Olympics of the mind and so that's why, you know,
7 our skills were to focus our young people on their
8 talents and skill sets that weren't necessarily in
9 the area of sports.

10 Q. I'm sorry. I may have missed it. Who
11 was the individual that endowed those Olympics?

12 A. His name was Vernon Jarrett, and he was
13 out of Chicago, I do believe. And he endowed it to
14 the national association to be put out throughout
15 the whole, entire nation. And so we wanted to see
16 our kids focus on that.

17 What's interesting is Pharrell came out
18 of the Virginia Beach NAACP.

19 Q. So when you talk about that program,
20 were there any metrics or measures for success in
21 that program for these young adults?

22 A. They competed, yes. They competed, but
23 I didn't handle the program per se. We had a whole
24 group that handled the program. I just mainly, you
25 know, encouraged the kids that were in my city to

1 get involved because we did it by area.

2 Q. And your area, if I understand the
3 branch president, is specific to the physical
4 boundaries of Virginia Beach?

5 A. Of Virginia Beach. Correct.

6 Q. Now, of course, you likely cooperate
7 with some of the other local chapters; is that
8 right?

9 A. That is correct.

10 Q. So during your time as president do you
11 recall cooperating with other local chapters of the
12 NAACP?

13 A. For the youth's sake, absolutely.
14 Absolutely. We had areas.

15 Q. Why was it so important to you to have
16 that --

17 A. Relationship?

18 Q. -- relationship with the other chapters
19 and have the youth have that opportunity?

20 A. Because you want your kids to be
21 successful.

22 Q. In addition to any youth programming
23 that you've already described, what were some of the
24 other priority advocacy points for you as President
25 of the NAACP?

1 A. Economics was a big issue as well.

2 Q. Can you tell me what you mean by that?

3 A. Economics in the City of Virginia Beach,
4 I recall when I became president -- when I became
5 president, I don't know if you remember but there
6 was a park down on the beach and it was a big fight
7 between building the park and building that hotel.
8 That -- what's the name of that, Hilton?

9 Q. At the 31st Street Hilton?

10 A. At the 31st Street Hilton. There was a
11 huge fight about that, and there was also a huge
12 fight about putting up a convention center. And so
13 my economic development chair at the time, we
14 discussed this issue of a fight amongst the people
15 in the east -- what is that, North End? East end of
16 Virginia Beach and all of that stuff. And we didn't
17 hear of any contracts coming to African Americans or
18 other people of color so at the time we sent a
19 message -- not a message but we sent a letter to the
20 City of Virginia Beach to get the information with
21 regards to how they spend their money and what the
22 contracts look like.

23 And at that time when we got the
24 information back, we noticed when we looked down the
25 list that the City of Virginia Beach had identified

1 a \$25 ticket to a Freedom Fund banquet as a contract
2 with the African American community that was on
3 there, and I believe the Urban League ticket was on
4 there as well. And that kind of was very disturbing
5 to see such a small amount of money being identified
6 as a contract with a whole, entire community. And
7 so at that point we looked at how can we ensure that
8 the City of Virginia Beach is more economically just
9 with the size of the population of the African
10 American community. So \$25 did not sound like a
11 favorable and a sincere way of dealing with a whole,
12 entire community.

13 And so at that point in time our
14 economic development team looked at ways that we
15 could ensure that the City looked at their
16 contracts, they looked at their subcontractors, and
17 we began to identify what was being done with
18 regards to the various communities.

19 Q. What types of things were done, if
20 anything?

21 A. Well, initially, with regards to the
22 convention center, they brought in a gentleman by
23 the name of Mr. George Parker, and I believe the
24 company was called Techcon at the time. I haven't
25 spoken with him in years, but they brought him in

1 as, I want to say it was project manager. Keep in
2 mind, this has been a long time ago.

3 Q. Do you remember about when? Sorry. I
4 hate to keep asking you dates like that.

5 A. Oh, maybe my second year. 2002 time
6 period.

7 Q. So early on in your time?

8 A. Early on, yeah. Early on. And so once
9 they received the letter with regards to our
10 concerns, they then met with us and we -- actually,
11 we met with another person that has died, Jim
12 Ricketts, who was at the time the head of the
13 convention center, because we said, okay, let's --
14 let's start with ensuring that there is fairness in
15 this convention center. You're asking the taxpayers
16 to contribute X amount of dollars.

17 And keep in mind, I'm trying to remember
18 a lot of this because I haven't had to think about
19 it. So my economic development chair, he did most
20 of the work. Okay?

21 Q. Who was that?

22 A. That was Mr. Bruce Williams. I don't
23 want to get confused with Bruce Smith. Bruce
24 Williams was my economic development chair. And so
25 we looked at, I want to say three -- two or three

1 areas. I know two specific. The third one I can't
2 recall. But one was the new convention center that
3 they were putting up, that there would be equity in
4 terms of contracting through either the general
5 contractor or the subcontractors.

6 The second thing was the hiring
7 practices within the City of Virginia Beach. At the
8 time that I came into office, I want to say Mr. Dan
9 Stone, who was head of -- and he has also passed
10 away. We've lost a lot of people. Dan Stone was
11 the head of the Department of Social Services. It
12 was still called Social Services at the time. It
13 was not HHS, which I believe is what it is now. He
14 was there. And then I went to a Fagan Stackhouse.

15 And again, this is 20 plus years ago so
16 I want to say that they were the only two African
17 Americans in the whole entire city with all the
18 departments that we have and the number of employees
19 that we have in the whole entire city in a
20 directorship.

21 Q. Did you raise that concern?

22 A. Absolutely.

23 Q. Who did you raise it to?

24 A. We -- we brought it before City Council,
25 I do believe. And again, this is over 20 plus years

1 ago.

2 Q. Do you remember what, if anything, came
3 of that?

4 A. Like I shared, Mr. George Parker became
5 the -- I want to say like a project -- kind of like
6 a project director. I can't say specifically, but
7 he looked at identifying potential African American
8 contractors that -- or subcontractors that could
9 support the convention center because that was like
10 one of the biggest projects the City of Virginia
11 Beach had had in a tremendous amount of years. You
12 know.

13 And then they built the Town Center, was
14 the next huge project. I want to say it was the
15 Town Center because the -- the -- the hotel, I want
16 to say that was like a public-private partnership.
17 It wasn't the same as the convention center in the
18 building of the Town Center. That was different.
19 And don't ask me how because that is not my level of
20 expertise, so I'm just letting you know right now.

21 Q. But generally speaking, after having
22 raised those concerns, did you believe there to be
23 at least some progress made by the City of Virginia
24 Beach in those areas?

25 A. There has been some progress. In terms

1 of their hiring, you know, there was some additional
2 persons in different departments that became -- that
3 were hired. And in terms of contracting, the
4 contracts, we saw an increase. I can't recall what
5 that increase was. I can't recall if it was ten
6 percent, 7 percent, 3 percent. I cannot recall.
7 But I do know that there were some inroads made
8 and...

9 Q. Did that -- I'll call it a priority.
10 Did that priority of economic development and then
11 the disparity between contracts for --

12 A. Majority firms.

13 Q. -- majority firms versus small, women-
14 owned, and minority-owned businesses, did that
15 continue as a priority throughout your presidency?

16 A. Yes. You know this is an all-volunteer
17 group, right?

18 Q. I do now.

19 A. NAACP. Okay. It is an all-volunteer
20 group, okay. So just be clear on that. That can be
21 a priority, but you still have to have the time to
22 get all those different things done. And, of
23 course, only a certain amount of people are actually
24 voted into office. The other people are membership-
25 based so, therefore, they can choose to work or not

1 work. And so because it is a membership-based, it
2 can still be a priority but you still have to have
3 the arms, legs, hands to help you get those things
4 and achieve those things.

5 Q. Yes, ma'am. If I understand you,
6 sometimes man or woman power can be an issue despite
7 maybe a membership roll that has a large number of
8 people on it?

9 A. Absolutely.

10 Q. Let me -- continuing this conversation
11 of the economic development and the disparity in
12 contracting, I understand there came another time in
13 which this issue was raised maybe not by the NAACP
14 but maybe by the African American community more
15 generally, and you used the name already today.
16 Bruce Smith, I understand, may have been a proponent
17 of that study. Are you familiar when I use the
18 phrase "disparity study" what that was?

19 A. Yes. I am familiar with that.

20 Q. Did you participate or were you involved
21 in the lead-up to the disparity study?

22 A. When you say participate, what are you
23 trying to get to?

24 Q. I'm asking because you had mentioned
25 your good work related to the convention center and

1 Town Center. And I'm wondering if because of that,
2 perhaps, or because of your involvement with the
3 NAACP, they asked you to help in some way to
4 advocate for this disparity study? Or maybe you
5 just volunteered to help.

6 A. I'm trying to remember. I believe I may
7 have spoke before City Council. I can't be
8 100 percent sure, but I believe I did speak once
9 before City Council regarding the disparity study.

10 Q. From your perspective, what was the
11 purpose of the disparity study?

12 A. Well, the legal per se -- and I can't
13 say verbatim what the legal aspects, but a disparity
14 study allows you to be able to hold accountable any
15 group, organization, or whatever, once it's done.
16 And so the reason behind it is accountability.

17 Q. I understand that there was a March for
18 Equality associated with the disparity study. Did
19 you participate in the March for Equality?

20 A. When you say participate, what is it
21 you're trying to inquire about?

22 Q. Were you there?

23 A. Did I attend?

24 Q. Did you attend?

25 A. I did attend.

1 Q. Did you have a formal role or did you
2 attend as Ms. Georgia Allen?

3 A. I spoke at one of them.

4 Q. Was there more than one March for
5 Equality?

6 A. That's disparity because we've got to
7 keep those two different, don't we?

8 Q. You said you spoke at one of them. I
9 was referring specifically to the March for
10 Equality, and I may be mistaken that there's -- was
11 there more than one March for Equality?

12 A. Equality has a lot of different
13 meanings.

14 Q. Let me back up then. When I use the
15 term the "March for Equality," are you familiar with
16 that term? A march that occurred here in Virginia
17 Beach?

18 A. I don't recall it being called March for
19 Equality. That's first and foremost. I don't
20 recall it being called March for Equality because
21 that is -- has a different terminology, if I recall
22 correctly.

23 Q. Okay. Do you remember a march at the
24 oceanfront related to the disparity study?

25 A. Absolutely.

1 Q. What would you call that?

2 A. That was the march for the disparity
3 study, and I believe it was -- the ministers had a
4 terminology for it, but it hadn't -- it didn't say
5 equality.

6 Q. Well, then for clarity's sake, I'll say
7 the march for the disparity study and then we can
8 both know we're talking about the same thing. I
9 understand you attended the march for the disparity
10 study?

11 A. That is correct.

12 Q. And you mentioned you may have spoken at
13 the march for the disparity study?

14 A. That is correct.

15 Q. Can you tell me where that happened or
16 what you said?

17 A. I can't tell you per se what I said, but
18 at the time I was not the President of NAACP. But I
19 was asked by the ministers who was heading that if I
20 would speak on behalf of the community.

21 Q. I'm going to stop guessing about names
22 because I've messed those up a few times today. So
23 can you tell me the name of the ministers group or
24 conference that you're referring to?

25 A. It is called the Virginia Beach

1 International -- wait a minute. Not
2 international -- Interdenominational Ministers
3 Conference.

4 Q. Okay. And they were the group
5 responsible for hosting the march for the disparity
6 study?

7 A. That is correct.

8 Q. I understand Bruce Smith was there as
9 well?

10 A. That is correct.

11 Q. Did you know that Bruce Smith addressed
12 a letter to City Council requesting a disparity
13 study?

14 A. I believe so, but I can't -- I can't say
15 per se because years have passed.

16 Q. And in fact, a disparity study was done
17 following the march for the disparity study and
18 following Bruce Smith's letter?

19 A. That is correct. I believe so.

20 Q. Do you know anything about the results
21 of that disparity study?

22 A. I believe something came out with
23 regards to findings. Details of that, I cannot say.

24 Q. Do you recall whether there was an
25 aspirational goal set as a result of the disparity

1 study?

2 A. I'm not 100 percent so I don't want to
3 say and get it wrong.

4 Q. So we've talked about some of the
5 priorities of the --

6 A. Yes.

7 Q. -- NAACP and we've referenced this
8 economic development and then this disparity between
9 contracting for minority-owned businesses and the
10 other majority developers. You also mentioned the
11 youth. I'm interested to know if there's any other
12 priorities you can recall you had as President of
13 the NAACP.

14 A. Hiring practices. Disparity in hiring
15 practices.

16 Q. Here in the City of Virginia Beach?

17 A. In the City of Virginia Beach.

18 Q. I heard you reference a little bit of
19 that with the convention center. Is that right?

20 A. Convention center was more of an
21 economic practice of contracting. That's --
22 Virginia Beach -- the convention center was a
23 contracting issue. There were little or no African
24 American contracts.

25 Hiring deals with the operational piece

1 of the City.

2 Q. Can you tell me what your concerns about
3 hiring were?

4 A. The police department and fire
5 department had some issues with their hiring
6 practices.

7 Q. Were there any other departments that
8 you can identify?

9 A. Those were the two that we -- what do
10 you call it? Drilled down on.

11 Q. So let's take those in order if we can.
12 Tell me what about the police department's hiring
13 practices or overall minority composition concerned
14 you.

15 A. It was terrible. They had very few
16 African American police officers, very few women
17 police officers. And -- and their testing, I do
18 believe the Justice Department came in with regards
19 to their testing and the testing was determined --
20 I'm trying to say it the way -- how the Justice
21 Department said. But I'm sure you have that. I
22 can't.

23 Q. When -- about when was that?

24 A. Maybe 2009. Was Meyera still alive
25 then?

1 Q. I can't -- frankly can't say, but if you
2 can't recall, that's okay to say you can't recall.

3 A. Okay. I can't recall.

4 Q. With regard to the police department --
5 and I've heard you express a couple of concerns.
6 What other concerns did either you personally or the
7 NAACP have about the hiring practices of the police
8 department?

9 A. The hiring practices were very poor in
10 terms of being a diverse police department. The
11 other thing was the promotional -- promotion was
12 very, very poor. In terms of the African American
13 community and other people of color.

14 Q. So did you -- are you aware whether
15 these concerns were communicated to the police
16 department or the City of Virginia Beach?

17 A. At the time Jake Jaycox was the chief of
18 police, and we did speak with him with regards to
19 that. As an organization and individually, people
20 spoke with him with regards to concerns.

21 Q. Do you know if anything ever came of
22 that, those conversations with the chief?

23 A. We got our first deputy chief that was
24 African American, a Mr. John Bell. I do know that
25 happened, and I want to say there was a lieutenant,

1 a black lieutenant promoted from sergeant to
2 lieutenant. Outside of that -- because I don't know
3 the hierarchy that well of the police department so
4 it would really be hard, difficult for me to tell
5 you per se how many changes took place, but I do
6 know for the first time in the history of Virginia
7 Beach there was a black deputy chief in John Bell.

8 Q. What about for the recruitment practices
9 that the City of Virginia Beach or the Virginia
10 Beach Police Department had? Did it change after
11 you all had expressed your concerns?

12 A. I believe that they have worked with a
13 couple of ministers and the churches have been open
14 to -- what is that? The police academy but it's
15 not. It's the senior -- what is it? The citizen
16 police academy. I do believe that they have built
17 some relationships with a couple of our ministers.

18 Q. And do you know the Virginia Beach
19 Police Department at present day to continue to
20 recruit in predominantly African American
21 communities?

22 A. Since I'm not actively involved in all
23 of that, I really can't say. I can't say what
24 they've done since then. Or what they're doing
25 currently.

1 Q. Anything else that you would -- any
2 other changes you can identify that you would
3 attribute to the concerns that you raised to the
4 police chief?

5 A. I can't think of anything right now. I
6 can't recall.

7 Q. So let's talk about the fire department.
8 What were the concerns that were expressed relating
9 to the fire department?

10 A. The same.

11 Q. So I don't want to put words in your
12 mouth.

13 A. Oh, I'm sorry.

14 Q. But what I've heard is the promotion
15 within the department and then also generally the
16 recruiting practices of these departments, the
17 police department and the fire department. Those
18 are the same concerns you had with the fire
19 department?

20 A. Same concerns; recruitment, promotion.

21 Q. I heard you say that there was some
22 action taken in response to your concerns in the
23 police department. Do you recall any action being
24 taken in response in the fire department?

25 A. I do not recall anything with the fire

1 department.

2 Q. You had mentioned John Bell being
3 promoted in the police department. Is there anybody
4 in the fire department you can identify as having
5 been promoted?

6 A. I don't know a black fire person. You
7 know, there may be some, but I don't know any.

8 Q. And when we talk about these hiring
9 practices within the fire department and the police
10 department, those are the two departments you
11 initially identified when we started this portion of
12 the conversation?

13 A. (Moved head up and down.)

14 Q. Do you have any other departments that
15 you can think of that you may have raised at that
16 time beyond those two?

17 A. I can't recall. Wait a minute. Hold
18 on. Let me look around.

19 This is a big city. Okay? It's a huge
20 city.

21 Judges. Okay. That always came up.
22 The bench. The bench was very, very limited in
23 terms of African Americans, women, and so that was
24 an issue as well.

25 Q. Let's talk time frame again. Are we

1 talking about during your term as President of
2 NAACP?

3 A. Actually, that judge issue was before I
4 became President of the NAACP. If I recall
5 correctly. I do believe that Mr. Lewis, Judge
6 Lewis, was the first African American on the bench,
7 and I want to say he probably sat there as the lone
8 African American for 20 years maybe. I'm not sure
9 so don't -- I'm just giving you -- I can't be
10 100 percent sure. Okay?

11 Q. So when you were President of the NAACP
12 did you continue to raise that concern regarding the
13 demographics of the bench?

14 A. I would say we pushed to have more
15 inclusive for the judges. For the bench. Yes.

16 Q. Who did you push?

17 A. I'm trying to remember.

18 This is -- this is tough because I have
19 to think way back. That's -- and I'm trying to
20 recall, and I'll be honest with you...

21 I'm going to be honest with you, it is
22 so long ago, I cannot recall. I cannot recall.

23 Q. During your term as the NAACP President,
24 referencing this lack of minority representation in
25 management positions, did you ever express concern

1 to the City Manager, Jim Spore, about that?

2 A. I can't recall specifically. Perhaps.

3 Q. We've talked about a couple different
4 priorities that were yours as President of the
5 NAACP, and I don't want to move away from that until
6 you let me know what you consider all of the
7 priorities to have been that were most important.
8 So other than what we've talked about already, were
9 there other priorities you identified as president
10 to act upon?

11 A. To be honest with you, I'm sure if I
12 went back and looked through some notes I probably
13 would find some, but right now off the top of my
14 head, I remember those being the three top
15 priorities.

16 Q. Do you maintain those notes still?

17 A. (Indicating.)

18 Q. Somewhere?

19 A. Given the number of people that have
20 gone through, I can't say.

21 Q. Were those notes kept formally by the
22 NAACP or were those personal notes to you?

23 A. The minutes were kept by the NAACP
24 formally, but we've been through so many changes, I
25 can't say where those minutes are after all these

1 years.

2 Q. Ms. Allen, I want to ask you now about
3 your volunteer service for the City of Virginia
4 Beach. I understand that you've volunteered in a
5 lot of different capacities for the City of Virginia
6 Beach. Would you agree with that statement?

7 A. Quite a few. Quite a few areas.

8 Q. All right. Can you tell me what you
9 would identify as your representative volunteer
10 experience for Virginia Beach?

11 A. Served on the Human Rights Commission.

12 Q. Let's talk about the Human Rights
13 Commission. Do you know the origin of the Human
14 Rights Commission?

15 A. Mr. E. George Minns, former President of
16 NAACP, felt that the City of Virginia Beach needed a
17 commission that would look at the human rights of
18 all of its citizens and if anybody was being
19 unfairly mistreated or what have you. That's to the
20 best of my ability to recall.

21 Q. Okay. Do you remember about when it was
22 first formed?

23 A. No.

24 Q. But you do know that it still exists
25 today?

1 A. It does.

2 Q. And what was your term on the Human
3 Rights Commission?

4 A. I think it was a four-year term. I
5 think. And I served four years. I think I served
6 one term with them.

7 Q. Do you recall what the top issues or top
8 priorities were when you served on the Human Rights
9 Commission?

10 A. I'll be honest, I cannot remember the
11 top priorities of the Human Rights Commission at
12 that time.

13 Q. You also served on the Vision 2040; is
14 that correct?

15 A. Committee, yes.

16 Q. Tell me a little bit about what you
17 remember about being on that committee.

18 A. The Vision 2040 committee was to look
19 out to the year 2040 to identify what we felt like
20 the City should look like in the year 2040, what are
21 some of the things that we should have in place.
22 And so we were strictly vision. We were not
23 implementation. We were not, you know -- we were
24 simply, you know, come up with a vision for the City
25 and share that vision with the City Council. And we

1 had to report back to them once a year to our
2 progress and where we were in terms of the vision.
3 And ultimately, we came up with a more defined
4 vision and I want to say four bold steps and...

5 Q. And you were on the committee that was
6 responsible for actually producing the report?

7 A. The vision -- well, it was all of us.
8 It was all of us. We actually put together a vision
9 for the City and then the chairperson presented the
10 report to the Council.

11 Q. Who was the chairperson?

12 A. At the time it was Gary McCollum and the
13 Malbon guy. What's the Malbon guy's first name? So
14 many Malbons in the city.

15 He owns the oil. I think he owns the
16 oil or something like that. Off of Cleveland
17 Street.

18 Q. They served as co-chairs?

19 A. Yes. Chair and co-chairs. Co-chairs.

20 Q. Do you know how that committee Vision
21 2020 was put together?

22 A. At the time Mayor Sessoms called, I
23 believe he called two of them and laid out what he
24 thought he wanted, and then from there I want to say
25 he -- Mayor Sessoms had a name of several people

1 representing different industries or communities.
2 So he had someone from the healthcare industry I
3 want to say on the committee, someone from the
4 environmental area on the committee when we -- when
5 we got started. And then he wanted someone within
6 the community so someone from the civil rights
7 organization, which ultimately would have been me.
8 Business owners, he had a couple of business owners
9 on the committee.

10 I'm trying to remember.

11 Oh, and different -- different, other
12 communities, like we had someone from the Asian
13 community to serve on the committee. And -- oh,
14 education. He had someone representing -- let's say
15 higher education was on the committee. So it was
16 kind of a real diverse committee of, you know,
17 bringing various entities so that we could look out
18 to the year 2040 and try to identify how we could
19 make the city better and so...

20 Q. Did the Mayor ask you personally to
21 serve on that committee?

22 A. I want to say the Malbon guy or -- it
23 may have been Ed Hamm, E.L. Hamm & Associates. I
24 want to say Mr. Hamm may have contacted me. Or
25 contacted Gary and Malbon to have them contact me.

1 I don't recall specifically who -- who -- who picked
2 up the phone and called me directly, but I want to
3 say the conversation was had by several people and
4 they decided to bring me in there.

5 Q. Did you feel proud of the work that you
6 did on the Vision 2040 committee?

7 A. I loved the Vision 2040 committee.

8 Q. You believe it was a worthwhile
9 initiative for the City of Virginia Beach?

10 A. I do, but I believe there's plenty of
11 work to be done.

12 Q. What other boards or committees have you
13 served on for the City of Virginia Beach?

14 A. Well, I'm actually continuing on the
15 Vision 2040 but it's now become VTAC (phonetic),
16 which is from -- oh, from -- to action. It's from a
17 Vision to Action committee, is basically what it is.
18 So we're actually looking at the bold steps compared
19 to what the City is -- City departments are doing
20 and seeing if the things that the City departments
21 are doing is lining up with the bold steps that we
22 had, which, of course, would help us reach our goal
23 of -- one of the things I pushed for is to have a
24 younger group of people on the committee because
25 when it started, I think the average age of the

1 people that were on the committee was like 50. And
2 we weren't going to be here in 2040.

3 MR. BOYNTON: We made it.

4 A. I just -- I don't mean any harm, but
5 when I looked at the committee and I looked around
6 the room, I said, I think it might be a good idea
7 for us to bring the younger people and put them on
8 this committee because they will probably be here.
9 We may not be.

10 BY MR. HARRIS:

11 Q. Has that been done?

12 A. We do have younger people in there now.
13 Thank God.

14 Q. And this Vision to Action, the call to
15 action is informed by your committee's work on the
16 initial --

17 A. On the initial vision. Correct.

18 Q. Any other participation on boards or
19 committees that you can recall?

20 A. Not for the City.

21 Q. Have you been recognized for your
22 efforts as a volunteer by recognition, awards,
23 resolutions, or otherwise?

24 A. The only certificate that I can think of
25 is election. I've been a volunteer working on an

1 election committee for a number of years and after a
2 certain period of time they give you like a little
3 certificate. And I'm trying to remember if it was a
4 pin or something. I can't remember. But I'm an
5 election official so...

6 Q. Tell me a little bit about that election
7 committee.

8 A. Well, it's actually the Registrar's
9 Office, they ask for members of the community to
10 work precincts, you know, as an official, not as --
11 not as someone that's working on the campaign. And
12 so I do that. I work as an official to -- on
13 Election Day. So we have to be trained pretty much
14 every year.

15 Q. How long have you been doing that?

16 A. It's been over five years because I got
17 a certificate.

18 Q. You said you worked for the last five
19 years. I would assume that includes the 2018
20 election? Here in Virginia Beach. Am I right about
21 that?

22 A. The primaries, the elections, and
23 everything.

24 Q. Well, I want to talk first about the
25 2018 election.

1 A. Correct.

2 Q. You worked on that Election Day?

3 A. I worked on Election Day, correct.

4 Q. When you work as an election committee
5 member are you assigned to a --

6 A. Official.

7 Q. Official. Sorry. So that's a good
8 point. I want to use your language so we're
9 speaking the same here. Election committee official
10 or election official?

11 A. Election official.

12 Q. As an election official, are you
13 assigned to a particular precinct or do you have
14 different responsibilities throughout the day?

15 A. Election officials are assigned to one
16 precinct.

17 Q. On 2018 Election Day do you recall which
18 precinct you worked in?

19 A. Aragona.

20 Q. The Aragona precinct, is that your
21 precinct?

22 A. That is correct.

23 Q. How long were you there at the Aragona
24 precinct on Election Day?

25 A. We have to be there from 5 o'clock in

1 the morning until the precinct closed, and we're not
2 allowed to leave.

3 Q. So, basically, before the polls even
4 open and until the polls close, you were there at
5 the Aragona precinct?

6 A. That is correct.

7 Q. Are you inside the precinct or are you
8 outside the precinct?

9 A. It depends.

10 Q. The "precinct" is a bad word to use
11 there. The voting place. The polling --

12 A. The polling place.

13 Q. What is it in Aragona? Is it a school,
14 a church?

15 A. A church. A school.

16 Q. What school is that?

17 A. Bayside 6th grade campus.

18 Q. So now I'm picturing -- when I say "at
19 the precinct," I mean physically inside the precinct
20 where the voting is taking place. Are you in that
21 room?

22 A. That is correct.

23 Q. Do you -- other than personal relief for
24 the restroom, do you have to stay in that room the
25 whole time?

1 A. Are you familiar with an election
2 precinct?

3 Q. In general terms, but I'd like you to
4 describe it for me so I don't have any
5 misunderstanding.

6 A. Okay. Any precinct you walk in, there's
7 a welcome table. So someone has to sit there. Then
8 you go into the precinct itself. And you have to
9 check in. There is a check-in table. Once you
10 receive your little card, you then have to move over
11 to another table which is where you receive your
12 ballot. So there's a ballot table. Then there are
13 the machines where you vote at. Okay? And then
14 there's the final machine where you insert your card
15 to show that you've actually registered your ballot.
16 Okay? There's someone that has to be there and then
17 there's the chief that sits back at a table to kind
18 of monitor what's taking place.

19 So in any precinct, the chief tells us
20 where our assignments are. So any given Election
21 Day, you can be in any one of those different areas.
22 You can be at the beginning to welcome people into
23 the precinct itself, okay. To the first table where
24 you have to show -- where the voter has to show
25 their ID and present their ID. And you literally

1 have to check them in and make sure they are in fact
2 who they say they are. And then you pass them their
3 little card in order for them to be able to get an
4 actual ballot.

5 So any of those tables you could be at.
6 Or you could be standing at the area where the
7 person actually puts their ballot into a machine.
8 It prints out that the ballot was accepted and they
9 in fact voted.

10 So that's the way a voting precinct is
11 set up.

12 Q. And you as an official in that precinct,
13 what would your responsibility have been in that
14 line of responsibilities?

15 A. Actually, I forgot to tell you, at the
16 beginning you have to take all the signs and put
17 them outside so we actually are responsible for
18 making sure that any voter knows -- there's a notice
19 that says: Voting starts here.

20 I mean so if you want me to tell you, we
21 have to put signs at the beginning of the area
22 beside the road to let them know that this is a
23 polling precinct. So that we show them the area.
24 We also have to have an area set aside for our
25 handicapped or our seniors so we have to make sure

1 that all of those things are in place at a voting
2 precinct.

3 Q. Do you also have any responsibility to
4 ensure that no improper campaigning is happening too
5 close to the precinct?

6 A. That is correct. That's any one of the
7 election officials are responsible for making sure
8 that the voting precinct is properly manned, and
9 it's also that everybody stays within the
10 guidelines, the official guidelines of what is set
11 up. So we could be outside at any point in time.
12 We could be inside. But we have to be in our
13 positions and doing our jobs.

14 Q. Thank you for that explanation.
15 And I want to ask you specifically now
16 about the 2018 Election Day.

17 A. Uh-huh.

18 Q. While you were working as an official at
19 that Aragona polling place, did you observe any
20 overt or subtle racial appeals happening on that
21 day?

22 A. No.

23 When you say "overt or subtle racial
24 appeals," share with me what you're trying to get
25 to. I'm sorry. I said no too quickly.

1 Q. I'm asking you whether you observed as
2 an election official any overt racial appeals; that
3 is specific references to the race of a candidate.

4 A. I don't recall anybody doing that.

5 Q. What about something -- what I mean
6 subtle is something less sort of specific. Anything
7 that struck you as perhaps a racial appeal on that
8 day?

9 A. Okay. On that particular day, of all
10 the people that came through, I did have one
11 gentleman that -- but he was the voter who said some
12 off-color remarks to me. He made a number of
13 off-color remarks. Don't ask me what he said.
14 'Cause one, I don't recall, you know, specifically
15 what he said, but I do recall being very
16 uncomfortable. But that was the voter. But in
17 terms of anybody else, I don't recall.

18 Now, when you say subtle, are you
19 talking about anybody in particular?

20 Q. No. I'm saying generally speaking, did
21 you see overt comments as to race of individuals,
22 candidates, or maybe not so direct but insinuating
23 that race is somehow a factor in what they're going
24 to do when they go inside to the polling place?

25 A. No.

1 Q. You had indicated that there is a
2 portion of the day where you may have actually stood
3 outside to either monitor the flow of traffic or
4 make sure people aren't campaigning in an improper
5 way.

6 A. (Moved head up and down.)

7 Q. Did you ever hear any overt racial
8 appeals from a campaign official related to any
9 official candidate?

10 A. I recall there were one or two incidents
11 and I'm trying to -- I'm trying to remember exactly.

12 And these were people who were
13 volunteers for -- for candidates.

14 There was an incident with -- someone
15 kind of screamed at me. And I think they were
16 working on a -- on a campaign. But it's
17 interesting. You move those things out of your
18 mind. You know.

19 Q. Do you remember what campaign they were
20 volunteering for?

21 A. What is so interesting is how you live
22 in a world -- and this is tough. You live in a
23 world where you experience racism and you experience
24 discrimination, little by little, without even
25 thinking about it, you begin to kind of build up a

1 way to -- I don't know how to put this.

2 This is tough.

3 I'm sorry. It's really, really hard.

4 Because when you live in a world that you constantly
5 deal with racism in one form or another or people
6 mistreating you in one form or another -- I hadn't
7 thought about what had happened until you brought it
8 to my attention and there were, I want to say either
9 two or three incidents that particular campaign.
10 And now I have to go back and try to remember the
11 specifics. But it wasn't pleasant.

12 One was a campaign, I do remember. One
13 particular -- two particular were individuals who
14 came to vote. And they were both a little bit not
15 pleasant. And I -- and I can't recall the
16 specifics, but I do recall that it was unpleasant.
17 And I'm sorry, but I -- I...

18 Q. Let me try and clarify the question.
19 Because I truly want to understand but I need to
20 follow up. And maybe it will be more appropriate to
21 ask specifically about campaign volunteers. So I
22 heard you say that two individuals that came and
23 were completely inappropriate and they left you with
24 this sentiment that you've expressed to us today.

25 A. Uh-huh.

1 Q. But that leaves the potentially one that
2 may have been associated with a campaign, and I want
3 to understand better what happened there. Can you
4 tell me any more about that?

5 A. This was an unusual campaign in that
6 there were so many ballots and so you had to tell
7 people if you wanted a Democrat ballot or a
8 Republican ballot. It's now starting to come back.

9 And so that kind of created a bit of an
10 issue because one group didn't want candidates' --
11 didn't want candidates' signage to be there because
12 they were focused on the fact they had their
13 candidate in mind they were voting for.

14 Wait a minute. I'm getting the two
15 campaigns confused.

16 MR. BOYNTON: Yeah, I was trying to help
17 him with that.

18 A. I am. I had a primary that came up,
19 too. That's where I had my issue. My -- my -- my
20 issue was my primary campaign.

21 BY MR. HARRIS:

22 Q. So let's just be very clear about this.

23 A. I do apologize.

24 Q. That's okay. It's important to clarify.
25 On Election Day in 2018 is not the event

1 you're referring to as to a campaign --

2 A. No. I don't recall any problem. I
3 don't -- again, there's so much happening all the
4 time. I can't -- I can't recall any issues in the
5 2018 campaign. I think everybody just came in and
6 voted and went. I'm sorry. It was the primary.

7 Q. That's okay. To the extent you
8 remember, help me understand what happened at that
9 primary with that individual that was associated
10 with the campaign. If you remember the campaign,
11 I'd like to know who it was, but you tell me what
12 you can recall.

13 A. It's one of those situations where you
14 kind of -- just kind of move it. Just kind of move
15 it. And it will probably come back later. I don't
16 know if it's going to come back while I'm sitting
17 here today. If it does, I'll be happy to share, but
18 right now it is one of those things where you kind
19 of move it because you've got to live life. So when
20 people are ugly to you, you have to kind of...

21 So I can't recall. I'm sorry. I can't.
22 I can't remember specifics.

23 Q. We were talking about your civic
24 involvement in the City of Virginia Beach.

25 A. Uh-huh.

1 Q. You mentioned a few committees and we
2 talked about your work as an election official.

3 A. Uh-huh.

4 Q. I'm wondering if there's any other
5 volunteer civic service you can recall for the City
6 of Virginia Beach?

7 A. Does the USO count? In the City of
8 Virginia Beach. I have -- I have volunteered a
9 number of times to help with the USO. Our military.
10 They are Virginia Beach residents. But you know, in
11 terms of the City of Virginia Beach per se, I cannot
12 recall off the top of my head.

13 Q. All right. So outside of Virginia
14 Beach, you mentioned the USO. We've talked about
15 the NAACP. I understand that you've been affiliated
16 with the AAPAC, is that right, the African American
17 Political Action Committee?

18 A. No.

19 Q. No?

20 A. No.

21 Q. What about the Democratic Party of
22 Virginia Beach?

23 A. I have been a member of the Democratic
24 Party of Virginia Beach.

25 Q. Do you have any affiliation with the

1 Conscious Community E letter?

2 A. I'm not familiar with that. I don't
3 think I'm familiar with that. I don't recall.

4 Q. What about the African American Cultural
5 Center?

6 A. Yes.

7 Q. Tell me a little bit about the African
8 American Cultural Center.

9 A. I'm part of the historical part. I
10 volunteer to work on a subcommittee, and basically
11 we're looking at all the original black communities
12 that were once thriving communities in the City of
13 Virginia Beach. We try to identify some of the
14 seniors who are, you know, multigenerational, can
15 share with us, you know, their photos, their
16 paraphernalia of what they have from living here and
17 from their various communities. So, for instance,
18 Seatack. Seatack had one of the first all-volunteer
19 fire departments. And so we try to capture, you
20 know, what knowledge is still here.

21 And so primarily I'm more -- work more
22 in terms of trying to assist them in gathering
23 information of persons, especially those who have
24 like generations and generations and generations of
25 family members from the city.

1 Q. Is that done in any sort of partnership
2 with the City of Virginia Beach?

3 A. That would be the actual African
4 American Cultural Center board of directors. I'm
5 not a board of director member so I'm not involved
6 in that at all.

7 Q. But do you understand that the board of
8 directors works in cooperation with the City of
9 Virginia Beach?

10 A. It's my understanding that that is the
11 case.

12 Q. Do you know any --

13 A. To a certain extent. I don't know.

14 Q. I'm sorry. I interrupted you there.

15 A. Uh-huh.

16 Q. Do you know anything about the funding
17 of the African American Community Center?

18 A. Mr. Williams is the president, is my
19 understanding. He's doing a funding, or whatever
20 you call it, piece to reach out to get funds. And
21 all the different ways that he's doing that, I'm not
22 familiar with because that is not my -- not what I
23 do.

24 Q. Ms. Allen, I understand you ran for City
25 Council in 2008.

1 A. That is correct.

2 Q. Based on your prior testimony, it
3 appears you were the President of the NAACP at that
4 time?

5 A. That is correct.

6 Q. Did you receive any sort of formal
7 endorsement from the NAACP?

8 A. Absolutely no.

9 Q. Did you receive any formal endorsements
10 from civic or activist groups?

11 A. I can't recall.

12 Q. Do you recall being endorsed by any
13 Hispanic groups?

14 A. I don't recall.

15 Q. Do you recall being endorsed by any
16 specific Hispanic community leaders?

17 A. I don't recall.

18 Q. Do you recall any sort of formal
19 endorsement from the Asian community?

20 A. No. I don't recall.

21 Q. During that election did you believe
22 yourself to be the African American preferred
23 candidate?

24 A. Yes.

25 Q. What led you to -- what leads you to

1 believe that?

2 A. The work in the community and my
3 affiliation with the faith-based community. I'm the
4 daughter of a minister. Of a pastor.

5 Q. Is your relationship with the
6 faith-based community a predominantly African
7 American church?

8 A. That is correct.

9 Q. Specifically, you say the faith-based
10 community. Are you referring to a single church?

11 A. I'm referring to the African American
12 churches.

13 Q. And you mentioned your father was a
14 pastor?

15 A. Yes. He was a pastor here in Virginia
16 Beach.

17 Q. Where was that?

18 A. That was at Asbury Methodist Church. It
19 was during segregation so we were not United
20 Methodists at the time.

21 Q. Was Asbury Methodist one of the churches
22 that supported your candidacy?

23 A. The churches don't support candidacy
24 because they're nonpartisan.

25 Q. Fair point. Did you understand the

1 parishioners or the people that attended Asbury
2 Methodist to be people that supported your
3 candidacy?

4 A. Did I have a relationship with
5 parishioners? What are you asking?

6 Q. You had mentioned that you understood or
7 -- correct me if I'm wrong, but I understood your
8 testimony to be that the members of the faith-based
9 community, predominantly African American, supported
10 you.

11 A. (Moved head up and down.)

12 Q. I'm trying to figure out how you -- how
13 you came to know that or how you came to conclude
14 that was the case.

15 A. Because people that go to church, I also
16 grew up with. So I knew people from the high
17 schools who just happened also to be members of
18 churches. And those -- so people that I grew up
19 with during segregation were now adults and they
20 also attended church. And so I use "faith-based"
21 because of that.

22 Q. Do you recall campaigning at any
23 predominantly Asian American places of worship or
24 other community centers?

25 A. No.

1 Q. Do you recall campaigning at any
2 predominantly Hispanic churches?

3 A. No.

4 Q. Do you recall campaigning at any
5 Hispanic civic leagues or other community groups?

6 A. I don't recall that, no.

7 Q. Did you have a campaign team, so to
8 speak, or a campaign manager?

9 A. I had a small team.

10 Q. How many people were on that team?

11 A. No more than five.

12 Q. What was the demographic make-up of your
13 campaign team?

14 A. Female, male.

15 Q. How many white members of your campaign
16 team were there?

17 A. In 2008?

18 Q. Yes, ma'am.

19 A. On the team itself, I don't recall any
20 on the team itself.

21 Q. Were any of those five people on the
22 team Asian?

23 A. I don't recall that being the case.

24 Q. Were any of the five people on that team
25 Hispanic?

1 A. Don't recall that being the case.

2 Q. You were also a candidate for delegate?

3 A. That is correct.

4 Q. When was that?

5 A. 2005.

6 Q. Also in the time frame you were

7 President of the NAACP?

8 A. That is correct. But I stepped down
9 temporarily.

10 Q. Tell me what that means.

11 A. That means you set aside your presidency
12 and allow your vice-president to step up.

13 Q. While you were in...

14 A. Campaign mode. Correct.

15 Q. I want to talk specifically about your
16 candidacy for delegate.

17 A. Uh-huh.

18 Q. Did you receive any formal endorsements
19 from Hispanic civic groups or Hispanic civic
20 leaders?

21 A. I don't recall.

22 Q. Did you receive any endorsements from
23 Asian civic groups or Asian community leaders?

24 A. Don't recall that.

25 Q. Did you also have a campaign team for

1 your candidacy for delegate?

2 A. I did.

3 Q. Was it different than the five people
4 that you had for City Council?

5 A. Yes.

6 Q. About how many people would you put on
7 your team for your delegate candidacy?

8 A. I would say probably about seven.

9 Q. Of those seven, how many were white?

10 A. Two. Three.

11 Q. Of those seven, how many were Hispanic?

12 MR. BOYNTON: She's still thinking.

13 BY MR. HARRIS:

14 Q. Oh, I'm sorry. I didn't mean...

15 A. That's a little vague with campaigning
16 because you get support from people who are not
17 necessarily on the team who work on projects. So
18 that's kind of a little vague.

19 Q. Well, I want to ask you specifically
20 about your core team. You had mentioned that you
21 said it was about seven people.

22 A. Uh-huh.

23 Q. Specifically, of those seven people, how
24 many were white?

25 A. Two.

1 Q. Of those seven people, how many were
2 Asian?

3 A. One. Asian, does that include Peru?

4 Q. I would not include --

5 A. Perusian (phonetic)? People from Peru?
6 I don't know.

7 Q. Other than the person from Peru, anyone
8 else you would identify as Asian?

9 A. I don't recall.

10 Q. Of the seven people you've identified as
11 being on your candidate -- or your campaign team,
12 how many were Hispanic?

13 A. Don't recall any.

14 Q. Are you familiar with any of the Asian
15 American civil rights groups here in Virginia Beach?

16 MS. HARLESS: Objection to form.

17 A. Yeah.

18 MS. HARLESS: You can answer.

19 A. Yeah, verify what...

20 BY MR. HARRIS:

21 Q. What I want to ask you about is, are you
22 aware of any predominantly Asian civil rights groups
23 here in the City of Virginia Beach?

24 MS. HARLESS: Objection to form.

25

1 BY MR. HARRIS:

2 Q. You can answer.

3 A. Okay. I don't know for sure if they're
4 civil rights or not. It's kind of vague.

5 Q. What about more generally, are you aware
6 of any Asian American civic organizations in the
7 City of Virginia Beach?

8 A. Can you clarify?

9 Q. I'm referencing civic organizations that
10 would be made up of predominantly Asian Americans
11 for whatever their civic purpose is.

12 A. Do you have any additional information
13 that you can share with regards to these Asian or --
14 groups?

15 Q. Ms. Allen, I'm just asking you if you
16 can identify from your own memory as you sit here
17 today any Asian American community groups here in
18 Virginia Beach.

19 A. I would say there are Asian American
20 community groups in Virginia Beach. Yes.

21 Q. Do you know the names of any of them?

22 A. I'm not 100 percent sure. I know
23 there's something called Fil-Am, F-I-L-dash-A-M, I
24 think, but I don't know if that's the name of the
25 group.

1 Q. Can you identify any Asian American
2 community leaders in Virginia Beach?

3 A. Not currently. Asian American, not
4 currently.

5 Q. Are you aware of any Hispanic American
6 civic organizations in Virginia Beach?

7 A. I've heard of the Hispanic Dialogue. I
8 don't know if that's in existence.

9 Q. Any others?

10 A. Hispanic Dialogue is the only one I'm
11 familiar with.

12 Q. Can you identify any Hispanic community
13 leaders?

14 A. Currently, I'm not sure.

15 Q. In anticipation of this lawsuit did you
16 reach out to any Hispanic individuals?

17 A. I did not personally reach out to
18 anybody.

19 Q. Did you personally reach out to any
20 Asian American individuals?

21 A. No, I did not.

22 Q. Has anyone of -- any Asian or Hispanic
23 individuals approached you expressing support for
24 this lawsuit?

25 A. I've spoken with Shewling Wong, who

1 called me up with regards to campaigning. She's
2 Shewling Moy now.

3 Q. When was that conversation?

4 A. She called me last week because she was
5 getting ready to go out of town.

6 Q. What was the substance of your
7 conversation?

8 A. We didn't get into detail, but she did
9 mention that she had spoken with the attorneys
10 regarding this lawsuit. And so we did not detail
11 anything.

12 Q. I need to ask a point of clarification.
13 I'm not asking about the substance of any
14 conversation with any attorneys. Is it your
15 testimony that Ms. Moy told you she had had a
16 conversation with the attorneys, specifically the
17 attorneys for Campaign Legal Center, or other
18 attorneys?

19 A. I don't know if she identified the
20 attorney. I can't say. But I do know that she
21 called me and she said that she had spoken with the
22 attorneys with regard to the lawsuit. But I cannot
23 say that she said specific attorneys.

24 Q. What else do you remember about the
25 substance of that conversation?

1 A. Basically, she was calling because of
2 campaigning and she was going to be out of town and
3 there were some candidates out there that she liked.
4 And so sometimes she calls me about that. So she
5 called me up with regards to campaigning. But not
6 with regard to the lawsuit. But she did mention it
7 that she had spoken with attorneys.

8 Q. Did you ask her to speak to the
9 attorneys about the lawsuit?

10 A. No.

11 Q. Did any members of the Hispanic
12 community express support for the lawsuit to you
13 personally?

14 A. I have not spoken with anyone from the
15 Hispanic community. That I can recall. No, I don't
16 recall speaking to anyone from the Hispanic
17 community.

18 Q. I want to go back to our discussion
19 specifically of 2018 Election Day. You understand
20 Aaron Rouse was a candidate for City Council on that
21 day?

22 A. Correct.

23 Q. Are you aware that Aaron Rouse received
24 the highest number of votes of any at-large
25 candidate in the history of Virginia Beach?

1 A. No.

2 Q. Does that surprise you?

3 A. Nothing surprises me in Virginia Beach.

4 Q. Tell me what you know about Aaron Rouse.

5 A. Not a lot. I know he was a former
6 football player and I think he was recognized by the
7 Seatack Civic League as a young man that came out of
8 that community. And I believe he was -- I
9 believe -- I can't remember if he was recognized as
10 a youth out of the -- out of the civic league. And
11 so I know they were pretty good about doing that as
12 their kids grow up and stuff.

13 Q. Did he participate in the youth program
14 that you were part of?

15 A. I never heard of Aaron Rouse until, I
16 think last year.

17 Q. Did you do anything to support or oppose
18 Aaron Rouse's candidacy?

19 A. Not really. That I can recall. I don't
20 recall doing anything in particular. But also keep
21 in mind, I'm an election official, I'm also actively
22 involved in civil rights, so...

23 Q. Any reason to believe he wasn't a
24 qualified and capable candidate for City Council?
25 That you're aware of.

1 A. I don't know anything in particular
2 about Aaron Rouse other than what he said, that he's
3 an ex-football player. That's generally what I know
4 about him.

5 Q. Did you know if he was the African
6 American preferred candidate in the African American
7 community?

8 MS. HARLESS: Objection to form.

9 A. This is a large community. I cannot say
10 that. I have no way of -- of knowing that. Where
11 there's 80 some thousand people.

12 BY MR. HARRIS:

13 Q. You mentioned the phrase "large
14 community." Would you also describe Virginia Beach
15 as a largely integrated community?

16 MS. HARLESS: Objection to form.

17 BY MR. HARRIS:

18 Q. You can answer.

19 A. You're trying to ask me how would I
20 describe Virginia Beach? What are you asking me?

21 Q. I'm asking you if you would describe
22 Virginia Beach as a largely integrated community.

23 MS. HARLESS: Objection to form.

24 A. I would say there are areas that are
25 integrated.

1 BY MR. HARRIS:

2 Q. Well, by converse, that would mean that
3 there are areas that are not integrated.

4 A. (Moved head up and down.)

5 Q. So let's talk about the areas that you
6 may think are not integrated. Can you give me some
7 examples of those areas?

8 A. I would say Burton Station.

9 Q. Where else?

10 A. New Light.

11 Q. Any others you can think of?

12 A. Queen City.

13 Q. Which other ones?

14 A. Off the top of my head, those are the
15 three that come to mind.

16 Q. Where is Burton Station located in the
17 City of Virginia Beach?

18 A. By the outlet mall, the Norfolk --
19 Norfolk outlet mall.

20 Q. That's off Northampton Boulevard?

21 A. Northampton Boulevard.

22 Q. If I understand my geography, that's
23 near the border of Norfolk and Virginia Beach?

24 A. That is correct.

25 Q. Thank you. What about New Light?

1 A. New Light is off of Indian River Road.
2 Near Centerville or near CBN.

3 Q. What about Queen City?

4 A. Off Providence Road near College Park.

5 Q. So I've heard those three, and you said
6 you couldn't recall any others past that. Any
7 others you can recall now after...?

8 A. Well, I'm sure I can ride through some
9 neighborhoods that are probably -- that I would say
10 have three African Americans in the whole, entire
11 city of maybe 5,000 houses. You know, I'm sure I
12 can do that throughout the whole, entire city all
13 around. Can I name those neighborhoods off the top
14 of my head? No. But I've been past them.

15 Q. Speaking again about the 2018 election,
16 are you familiar with the candidate Sabrina Wooten?

17 A. Yes, I am.

18 Q. How are you familiar with Sabrina
19 Wooten?

20 A. She was a candidate for office.

21 Q. Do you know her personally?

22 A. No.

23 Q. Have you ever met her?

24 A. Yes.

25 Q. Do you recall when that was?

1 A. I can't say when I originally met her.
2 I can say that at different events people are there,
3 and I'm sure, based upon the fact that I'm at
4 events, that I've bumped into her at one of the
5 events.

6 And then later on she gave me a call and
7 asked me if I would talk with her. And I did. And
8 I met with her at the Williams Farm Recreational
9 Center.

10 Q. Can you tell me when that happened and
11 what the substance of that conversation was?

12 A. I can tell you approximately it was
13 probably at least six to eight weeks before the
14 election that I probably sat down with her, and she
15 wanted to introduce herself to me. And as a common
16 courtesy, I generally will talk with candidates on
17 both sides of the fence, and, you know, of all
18 different persuasions. So that's just part of what
19 I do as the president, as a former President of
20 NAACP and as a community leader. I do talk to
21 people.

22 So her conversation was just kind of to
23 introduce herself to me, know who she is, what she's
24 done in the past. And so I did listen.

25 Q. Was she seeking your support in her

1 efforts to get elected?

2 A. Generally speaking, when people sit down
3 with me, they want me to say I'm going to support
4 them. Generally speaking, when people sit down with
5 me, I listen.

6 Q. Did you offer any --

7 A. The --

8 Q. I'm sorry. I interrupted you. Go ahead
9 and finish.

10 A. Well, that's -- that's pretty much it.
11 They want me to support them and I want to listen.
12 I am willing to listen. Go ahead.

13 Q. Did you offer any sort of formal
14 endorsement of Sabrina Wooten?

15 A. No. No. I don't endorse candidates.
16 Again, as an election official and as a person in a
17 nonpartisan association, even though I'm not the
18 president, I try to be neutral as best I can. Even
19 though this is a nonpartisan election. You are
20 aware of that, right?

21 Q. You understand that Sabrina Wooten and
22 Aaron Rouse both currently sit on our Council?

23 A. Absolutely.

24 Q. Would you agree with me that African
25 American candidates have had more success since 2012

1 to present than in any prior point in Virginia Beach
2 history?

3 A. I don't know that per se. Because I
4 haven't looked at the data. So I can't say that
5 they have had more success because I have not looked
6 at the data. So the question is not a question that
7 I could answer yea or nay.

8 Q. Well, you've lived in Virginia Beach at
9 least since 1994 till now. So would you agree that
10 African American candidates from 2010 to present
11 have had more success than, say, 1994 to 2000?

12 MS. HARLESS: Objection, asked and
13 answered.

14 A. Again, since I have not reviewed the
15 data -- and yes, I've lived here all my life, but I
16 have not reviewed the data in terms of, you know,
17 the number -- the amount of success for African
18 American candidates, so I cannot answer that
19 question, you know. I can't...

20 BY MR. HARRIS:

21 Q. You would agree with me that at least
22 for 2018, both African American candidates on the
23 ballot were elected?

24 MS. HARLESS: Objection to form.
25

1 BY MR. HARRIS:

2 Q. You can answer.

3 A. Sabrina and Aaron were elected to
4 office.

5 Q. And there were no other minority
6 candidates at the time? In their races?

7 A. (Indicating.)

8 MR. HARRIS: Let me suggest another
9 break. We've been going for a little while. I can
10 reorganize and try to wrap this up.

11 MS. HARLESS: Sure.

12 (Recess)

13 BY MR. HARRIS:

14 Q. Ms. Allen, I want to ask you briefly
15 about your affiliation that you mentioned with the
16 Democratic party. Have you been a speaker at their
17 events before?

18 A. A speaker?

19 Q. A presenter?

20 A. No.

21 Q. What about for the Progressive Democrats
22 of America? Have you been a speaker or presenter
23 for them?

24 A. No. Not that I recall.

25 Q. Are you aware that the -- well, I should

1 say are you aware that Dave Hansen was -- resigned
2 as City Manager recently?

3 A. Yes.

4 Q. Did you express support for his
5 resignation or his termination?

6 A. Clarify support.

7 Q. Were you in favor of it? Of him
8 resigning or being terminated?

9 A. I can't say one way or another. I
10 didn't send any letters to ask him to resign. I can
11 say I did not do any formal requests.

12 Q. Are you aware that letters were sent in
13 requesting that he be terminated or fired?

14 A. Let me think about that for a moment.

15 I don't recall sending anything to ask
16 him to resign. That I can remember.

17 I think according to the newspaper. I
18 think that's how I found out.

19 Q. When you read the newspaper article
20 about Dave Hansen potentially being fired or
21 terminated, did you read the claims of or the
22 concerns of those people who were calling for his
23 termination?

24 A. I probably did, but I don't recall any
25 of the statements.

1 Q. Do you ever recall seeing a letter from
2 the Interdenominational Ministers Conference in
3 reference to Dave Hansen in August of 2019?

4 A. I recall being aware that there was a
5 letter from the ministers. I don't recall seeing
6 it.

7 Q. I assume you're familiar with the
8 Something in the Water festival?

9 A. I am.

10 Q. Would you consider that event a success
11 for the City of Virginia Beach?

12 MS. HARLESS: Objection to form.

13 BY MR. HARRIS:

14 Q. You can answer.

15 A. As far as I know, based upon the
16 feedback only. I didn't attend.

17 Q. There's a candidate by the name of
18 Furman. Do you know that individual?

19 A. Yes. I've met him.

20 Q. When did you have the opportunity to
21 meet Mr. Furman?

22 A. I'm thinking at least seven years ago.
23 Not 100 percent, but somewhere around that time
24 frame maybe.

25 Q. Was he campaigning for City Council at

1 that time?

2 A. I believe he was. Or I believe he
3 introduced himself.

4 Q. Do you recall whether he reached out to
5 you or not?

6 A. He didn't reach out to me. He just told
7 us who he was.

8 Q. Where was that?

9 A. He stopped by the NAACP office.

10 Q. In your estimate, that was approximately
11 2012?

12 A. I can't say. I said I believe it was
13 approximately seven years ago. Somewhere in that
14 time frame.

15 Q. Did you understand Mr. Furman to be the
16 African American preferred candidate at that time?

17 MS. HARLESS: Objection to form.

18 A. Mr. Furman was new so I can't say
19 whether he was preferred or not preferred. He was
20 an option.

21 BY MR. HARRIS:

22 Q. Are you aware that Mr. Furman has run
23 several times for City Council in Virginia Beach?

24 A. I am aware that he's run more than once.
25 Several, I can't say. But more than once.

1 Q. Tell me what you know about Mr. Furman's
2 candidacies.

3 A. That he gets the amount of signatures he
4 needs and he put his name on the ballot.

5 Q. Did you ever express support for Mr.
6 Furman as a candidate?

7 A. I have not.

8 Q. Do you know of any other members of the
9 African American community who may have expressed
10 support for Mr. Furman and his candidacies?

11 A. I don't recall anybody saying anything
12 to me in particular.

13 Q. Do you know if Mr. Furman is born and
14 raised in Virginia Beach, so to speak?

15 A. When he introduced himself, he said he
16 was from South Carolina, I do believe, and had
17 relocated here.

18 Q. Do you recall him mentioning anything
19 else about himself or otherwise during that meeting?

20 A. Outside of being married and I want to
21 say he may have been a military veteran. Outside of
22 those two items, I don't know anything about Mr.
23 Furman.

24 Q. Do you recall participating in preparing
25 discovery responses in this case?

1 MS. HARLESS: Objection to the extent
2 that you're asking for information that's covered by
3 the attorney-client privilege.

4 You can answer yes or no.

5 A. Participate in discovery?

6 BY MR. HARRIS:

7 Q. Yes, ma'am. In responding to the City
8 of Virginia Beach's request for production of
9 documents and also interrogatories, or written
10 questions.

11 A. Okay. I'm confused.

12 Q. You would have signed an affirmation
13 page at the end of it that said everything included
14 therein was true and accurate to the best of your
15 ability. Do you recall signing that?

16 A. Interrogatory.

17 Q. And request for production of documents.

18 MR. BOYNTON: Why don't you put it in
19 front of her.

20 MS. HARLESS: Also, there are multiple
21 requests.

22 MR. HARRIS: Well, she would be --
23 ideally, she would have been involved in all of
24 them.

25 MS. HARLESS: But you asked about one.

1 So to the extent that it's just unclear what you're
2 talking about...

3 BY MR. HARRIS:

4 Q. All right. I'm going to show you a
5 document and ask you if you recognize that document.

6 MR. BOYNTON: Read into the record what
7 the document is.

8 MS. HARLESS: Do you want to -- do you
9 want this copy back?

10 BY MR. HARRIS:

11 Q. It's -- I'm really just asking whether
12 you participated in the preparation of discovery
13 responses in this case generally.

14 MS. HARLESS: And she doesn't understand
15 the question so she's reviewing the document.

16 A. Can I speak to my attorney?

17 BY MR. HARRIS:

18 Q. No, I need you to answer the question.

19 A. Normally, I wouldn't, but in this case,
20 I think I have the right to speak to my attorney.

21 MS. HARLESS: So what's the question,
22 the pending question?

23 MR. HARRIS: The pending question is
24 whether she participated in preparing discovery
25 responses. The document that's in front of her,

1 whether she participated in the preparation of that
2 document.

3 MR. BOYNTON: Read into the record what
4 the document is.

5 MR. HARRIS: For the record, the front
6 of the document, as entitled, is: Plaintiff Georgia
7 Allen's Responses to Defendant City of Virginia
8 Beach's First Set of Interrogatories.

9 MS. HARLESS: I think there's two
10 documents there.

11 MR. HARRIS: Well, let's just pull the
12 second document off of it and we'll stay on my first
13 question.

14 Go ahead.

15 MR. BOYNTON: Go ahead.

16 A. Okay. Okay. To the best of my
17 understanding, I read all of these interrogatories
18 and verified with my attorneys.

19 BY MR. HARRIS:

20 Q. Okay. That's my only question. All
21 right.

22 As part of the discovery process, you
23 were asked to produce names of individuals who might
24 have information about the support for your claims.
25 I'm going to read you a few of those names and ask

1 you if you recognize that name, and if you recognize
2 the name, ask you to tell me what you believe their
3 knowledge of your claims are.

4 The first person you identified was
5 Louisa Strayhorn. Who is that individual?

6 A. Louisa Strayhorn is a former City
7 Councilwoman, and so she would have full knowledge
8 of -- and not only as a Councilwoman but a former
9 School Board member, okay, so she would have full
10 knowledge of any issues with regard to City of
11 Virginia Beach practices.

12 Q. John L. Perry.

13 A. Mr. Perry is a former member of the City
14 Council, the first African American ever elected to
15 City Council in the City of Virginia Beach.

16 Q. And you would expect him to have
17 knowledge about what?

18 A. Mr. Perry is dead.

19 Q. Ron Villanueva.

20 A. Former City Council member.

21 Q. What would you expect him to have
22 knowledge that --

23 A. As a former City Council member, he
24 would be fully aware of any concerns with regards to
25 practices of the City -- of the City of Virginia

1 Beach with regards to any issues. I'm trying to
2 think of the word.

3 Q. Did you believe Mr. Villanueva to be the
4 preferred minority candidate when he ran in 2002?

5 MS. HARLESS: Objection to form.
6 Objection to the extent you're calling for a legal
7 conclusion.

8 A. I have no idea.

9 BY MR. HARRIS:

10 Q. All right.

11 A. I have...

12 Q. Prescott Sherrod.

13 A. Give me the question again.

14 Q. I'm asking you to identify who Mr.
15 Prescott Sherrod is.

16 A. Mr. Sherrod I believe served as a City
17 Council member when there was a vacant seat, and he
18 may have been appointed.

19 Q. What knowledge would you expect him to
20 have related to this lawsuit?

21 A. I would say based upon, you know,
22 sitting on City Council, anybody that would sit on
23 City Council I would say would have some knowledge
24 as to the inner workings of the City.

25 Q. Another name that was provided -- and I

1 apologize, I may mess this up -- Beatriz Amberman?

2 A. Beatriz Amberman.

3 Q. That's spelled B-E-A-T-R-I-Z?

4 A. That is correct. As far as I know,
5 that's correct.

6 Q. A-M-B-E-R-M-A-N.

7 A. Correct.

8 Q. Can you tell me about Ms. Amberman?

9 A. She's from the Latino community and she
10 served in the capacity as a leader at one point in
11 time. I'm not sure what her capacity is today.

12 Q. Do you know her to be affiliated with
13 any civic group or other association?

14 A. The only thing that I know is that there
15 was a Hispanic Dialogue back in the day and she was
16 quite active in the Hispanic Dialogue.

17 Q. Have you spoken specifically with Ms.
18 Amberman about this lawsuit?

19 A. No, I have not.

20 Q. The next name was Alicia Bobulinski?

21 A. Correct.

22 Q. Are you familiar with that name?

23 A. Yes.

24 Q. I'll just spell it for the record. If
25 you think I spelled it wrong, will you tell me?

1 A. I won't even know if you spelled it
2 wrong, it's been so long since I've seen her name.

3 Q. A-L-I-C-I-A?

4 A. That I know is correct. Alicia. I do
5 know that part.

6 Q. Thank you.

7 B-O-B-U-L-I-N-S-K-I.

8 A. I believe that's correct. Can't be a
9 hundred percent.

10 Q. When's the last time you had contact
11 with Ms. Bobulinski?

12 A. It's been several years. I can't recall
13 the last time. I'm trying to remember.

14 Q. Would it be fair to say then you haven't
15 had any specific conversations with her about this
16 lawsuit?

17 A. I have not.

18 Q. Let me ask you, do you recall when you
19 first heard about this lawsuit?

20 A. I'll be honest with you, I cannot
21 recall. I'll be very frank. So much happens in my
22 life, I cannot recall. I'm going to be honest.

23 Q. I'm not asking you about any
24 conversations you may have had with your attorneys,
25 but I'm interested to know how you became involved

1 in this lawsuit.

2 A. I became involved when there were issues
3 going on with regards to Ms. Holloway's children.
4 That's when I became involved.

5 I was not the President of the NAACP at
6 the time. I was a private citizen, and I heard her
7 story a number of times with regard to what was
8 happening to her personally and her children, and as
9 I gathered more information with regards to this
10 young lady, ultimately, based upon what she had gone
11 through and things that I had experienced growing up
12 here in the city as well as serving in the capacity
13 of civil rights, I ultimately decided to sign on.

14 Q. Are you participating in Ms. Holloway's
15 lawsuit against the City of Virginia Beach in any
16 way?

17 MS. HARLESS: Objection to form.

18 BY MR. HARRIS:

19 Q. Are you aware that Ms. Holloway has
20 filed a lawsuit against the City of Virginia Beach
21 public school system?

22 A. I am -- I -- let me see. I'm not
23 familiar with it. I've heard -- I want to say I've
24 heard of it. I am not familiar with it.

25 Q. Do you remember when you first heard

1 about Ms. Holloway's situation that caused you to
2 want to be involved in this lawsuit?

3 A. This has been something that's been
4 going on for some time. I cannot recall
5 specifically if it's been two years or not, but I
6 would say a minimum of two years of something going
7 on. And that's my guesstimate.

8 Q. But certainly not before the point in
9 which the incident with Ms. Holloway's young child
10 occurred; is that right?

11 A. Now, that I can't say. I cannot say
12 that.

13 Q. Another name that was produced was Dr.
14 Veronica Coleman. Are you familiar with that name?

15 A. Dr. Coleman, yes. She's a minister.

16 Q. Here in Virginia Beach?

17 A. Yes.

18 Q. Do you know which church she's
19 associated with?

20 A. New Jerusalem Ministries.

21 Q. What knowledge do you expect her to have
22 about this lawsuit?

23 A. She's a former candidate. In the City
24 of Virginia Beach.

25 Q. Is she an African American woman?

1 A. She is.

2 Q. Andrew Jackson is another name that was
3 provided. You're familiar with that name?

4 A. I am.

5 Q. What would you expect Mr. Jackson to
6 have knowledge about in this lawsuit?

7 A. Mr. Jackson is a two-times candidate for
8 City Council in the -- I do believe twice in the
9 City of Virginia Beach. And so he would have a
10 direct impact. There would have been direct impact
11 to him in running for office.

12 Q. Shewling Moy is a name we've talked
13 about a little bit today already. You identified
14 her as an Asian American; is that correct?

15 A. Chinese Asian. Chinese American. Yeah.

16 Q. You referenced one phone call already.
17 Have you had any other discussions with Ms. Moy
18 beyond the phone call you already discussed?

19 A. We attended the -- I think we both
20 attended the disparity study. I believe. I
21 believe. I can't...

22 The report that they had over here.
23 What was it, at the Gido -- Di -- Didos -- Zidos,
24 Zeiders, whatever. What is that?

25 MR. BOYNTON: Zeiders American Theater?

1 I can be useful once a day.

2 A. Yes. I believe -- I do believe she was
3 in attendance there and I do believe we conversated
4 there.

5 BY MR. HARRIS:

6 Q. We've made reference to this name
7 already today once. Gary McCollum is another name
8 produced. Are you familiar with Mr. McCollum?

9 A. Yes.

10 Q. What knowledge would you expect Mr.
11 McCollum to have regarding this lawsuit?

12 A. He is a former candidate here in the
13 City of Virginia Beach. He ran for State Senate.
14 So he would have some knowledge with regards to the
15 make-up and his experience.

16 Q. Have you had any conversations with Mr.
17 McCollum about this lawsuit specifically?

18 A. We have not.

19 Q. Elizabeth Mills was another name you
20 provided. Can you tell me who that is?

21 A. The name I've heard. I do believe I've
22 heard. But I cannot recall the relationship. It
23 may have been somebody that I knew awhile back and
24 it's been awhile, so...

25 Q. Just a couple more. I promise.

1 Jose Flores was a name we were provided.

2 A. Okay. Okay. That's Reverend Joe. We
3 call him Reverend Joe. And he ran as well for City
4 Council. Unfortunately, he passed away, I would say
5 within the last few months.

6 Q. Ma'am, I assure you this is a standard
7 question I ask everyone that I depose, but have you
8 ever been convicted of a crime involving lying,
9 cheating, or stealing?

10 A. No. I'm the daughter of a minister.

11 Q. That's right. You told me that.

12 MR. BOYNTON: That would not sit well, I
13 would imagine.

14 THE DEPONENT: No.

15 MR. HARRIS: All right. Ms. Allen,
16 that's all the questions I have. I thank you for
17 your patience with me today and your participation
18 in this deposition.

19 MS. HARLESS: No questions from me.

20 (Signature not waived.)

21 (The deposition was concluded at
22 12:48 p.m.)

23

24

25

CERTIFICATE OF DEPONENT

COMMONWEALTH OF VIRGINIA

CITY OF _____

Before me, this day, personally appeared Georgia F. Allen, who, duly affirming, states that the foregoing transcript of this deposition, taken in the matter, on the date and at the place set out on the title page hereof, constitutes a true and complete transcript of said deposition.

Georgia F. Allen

SUBSCRIBED and SWORN to before me this _____ day of _____, 2019, in the jurisdiction aforesaid.

My Commission Expires

Notary Public

1 COMMONWEALTH OF VIRGINIA at large, to wit:

2 I, Juanita Harris Schar, CCR, RMR, CRR,
3 a Notary Public for the Commonwealth of Virginia at
4 large, of qualification in the Circuit Court of the
5 City of Virginia Beach, Virginia, and whose
6 commission expires April 30, 2022, do hereby certify
7 that the within named deponent, GEORGIA F. ALLEN,
8 appeared before me at Virginia Beach, Virginia, as
9 hereinbefore set forth, and after first duly
10 affirming before me, was thereupon examined upon her
11 affirmation by counsel for the respective parties;
12 that such examination was recorded in Stenotype by
13 me and reduced to computer printout under my
14 direction; and that the foregoing constitutes a
15 true, accurate, and complete transcript of such
16 examination to the best of my ability.

17 I further certify that I am not related
18 to nor otherwise associated with any counsel or
19 party to this proceeding, nor otherwise interested
20 in the event thereof.

21 Given under my hand and notarial seal
22 this 16th day of September, 2019, at Virginia Beach,
23 Virginia.

24 -----
25 Notary Public

Certified Court Reporter No. 0313085

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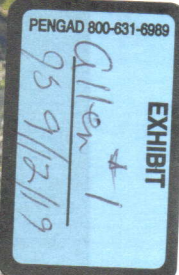
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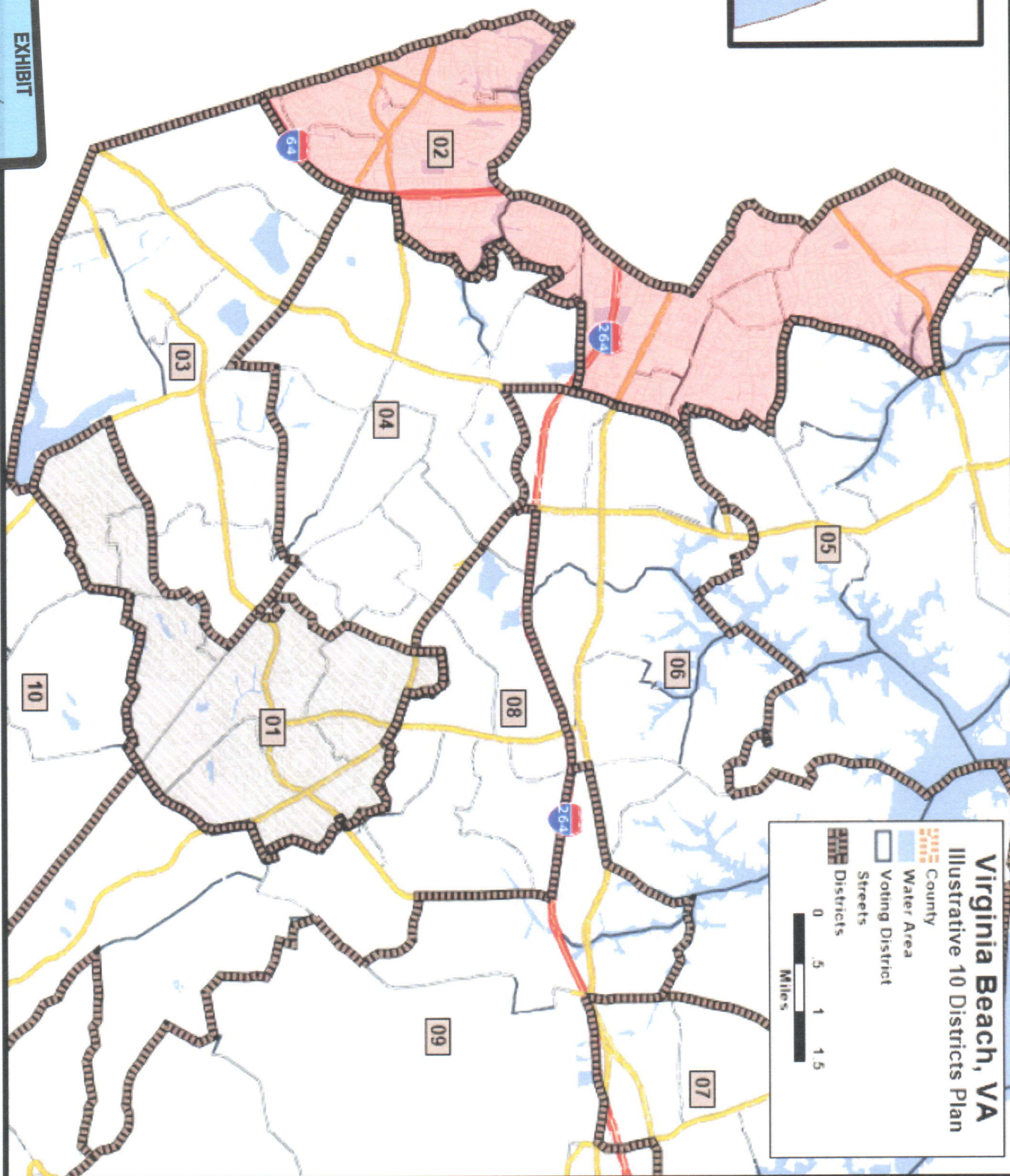
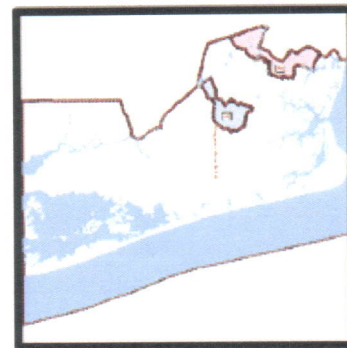
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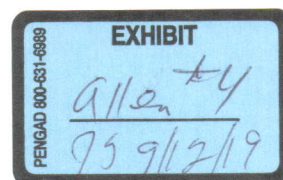
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Expert Report of Anthony E. Fairfax
Response to Peter Morrison's Report

Anthony E. Fairfax
16 Castle Haven Road
Hampton, VA 23666
August 26, 2019



I. Introduction

I have been retained by counsel representing the Plaintiffs in this lawsuit (*Holloway, et al v City of Virginia Beach et al*) to determine whether it is possible to draw an Illustrative Plan with one or more majority Latino (Hispanic), Black, and Asian (“HBA”) combined districts in the City of Virginia Beach, VA. In addition, I was also asked to review past and recent demographics pertaining to the city.

This additional report serves as a response to Dr. Peter A. Morrison’s report (dated August 12, 2019) which evaluated my initial July 15th report expert report.

My qualifications can be found in my prior expert report and I am being compensated at a rate of \$180 per hour.

II. Background

The City of Virginia Beach, VA currently has an eleven-member City Council structure. Three (3) Council members and the Mayor serve “at large” with no district residency requirement. The other seven (7) council members are required to live in the district that they represent. However, all city council members are elected at large and not within the district that they represent.

On July 15, 2019 I submitted an expert report for this case that presented my finding that the minority population in the city of Virginia Beach, Virginia was sufficiently large and geographically compact to constitute two majority Hispanic, Black, and Asian (“HBA”) combined districts. On August 12, 2019, Dr. Peter A. Morrison submitted his evaluation of my initial expert report.

III. Summary of Dr. Morrison’s Findings and Response

The report of Dr. Morrison outlines several disagreements with my initial report. The first is that he claims the Illustrative Plan’s majority minority districts’ Total HBA Citizen Voting Age Populations (“CVAP”) do not constitute a majority. Using an Iterative Proportional Fitting (IPF) technique, he calculates the CVAP of the two districts as 49.9% (District 1) and 49.6% (District 2) versus my calculations of 50.03% for District 1 and 50.04% for District 2. The second disagreement centers around alleged inconsistencies in the census block data reflecting the CVAP values. Finally, his last disagreement with my initial report lies with the use of Hispanic, Black and Asian populations combined. He states that this presumes that political cohesiveness exists between Hispanics, Blacks, and Asians. I address each of Dr. Morrison’s claims below.

Dr. Morrison’s three claims pertaining to my initial report are incorrect, and do not change my conclusions in this case. First, several illustrative plan districts that significantly exceed a majority (50%) of CVAP can be drawn, and the initial Illustrative Plan was shown to further exceed 50% CVAP when the addition of the Black and White combined race category data is included (51.11% and 51.08% for District 1 and 2, respectively).¹ Several alternative plans were found to exceed 50% by almost 6% (55.7%) for District 1 and almost 3% (52.7%) for District 2.

¹ The Black and White race category includes those persons who select both Black (or African American) and White race categories on the census survey form.

A single majority HBA district was also developed that exceeded 50% by more than 8% (58.9%). These alternative plans clearly verify that at least one majority HBA CVAP district can be developed and developed to eliminate any "point" estimate issues.

Dr. Morrison's claim of inconsistent data is inaccurate and irrelevant. If districts were made up of a few census blocks, Dr. Morrison's point might carry more weight. However, the Illustrative Plan's districts and alternative plans' districts are made up of hundreds of census blocks, which diminishes the census block data variations to virtually nil. The change in final district's HBA CVAP percentages were found to be extremely small and, in most cases, significant only to the third decimal place.

Finally, Dr. Morrison's claim that I presume cohesiveness among Hispanic, Black, and Asian voters was simple to address, since considering it is not part of the *Gingles* first prong precondition, and thus is not analyzed in this report. Also, the data indicates that the Hispanic, Black, and Asian populations tend to reside in the same communities. This analysis was shown in my initial expert report, is unrebutted by Dr. Morrison, and is reiterated in this response report.

Despite Dr. Morrison's claims, the HBA population in Virginia Beach is sufficiently large and geographically compact to constitute a majority in two single-member districts that would likely be able to elect their candidates of choice.

Although Dr. Morrison may prefer the IFP method for disaggregation, the Maptitude method of disaggregation that I used is also a commonly used and reliable technique that produces accurate results. Further, when black and white combined data is considered, Districts 1 and 2 in the Illustrative Plan have even higher CVAP percentages.

In addition to the Illustrative Plan that I included in my initial report, it is possible to draw a number of additional alternative plans with two majority HBA CVAP districts. When analyzing all of the plans using total population, VAP, and CVAP, there are only two instances where the HBA percentage are below 50% (Both of these instances are using 2010 VAP data that were surveyed years ago (the Illustrative Plan and Alternative 4 plan)).

It is also possible to draw plans with at least one HBA majority CVAP district, which is still more than contained in the current City Council plan (which has zero). It is also possible to draw a majority Hispanic and Black CVAP district.

Dr. Morrison's conclusion about the inconsistent disaggregation of data at the census block level is meritless in practice. The Illustrative Plan's districts consist of hundreds of census blocks, which diminishes any variation from the disaggregation process, and the differences are minute with no practical impact on my results or conclusions.

IV. Response to Dr. Morrison's Claim Regarding CVAP of Districts 1 and 2 in Illustrative Plan

Dr. Morrison's claim that the Illustrative Plan's Districts 1 and 2 do not have a majority HBA CVAP relies on his use of an alternative disaggregation method, Iterative Proportional Fitting ("IPF"), that he alleges results in CVAP values of 49.99% for District 1 and 49.96% for District 2. He also argues that the majority HBA CVAP percentages of 50.03% (District 1) and 50.04% (District 2) that I report are "point estimates" and "razor-thin."

First, it is important to note that assuming that Dr. Morrison's IPF disaggregation process is correct, it only yields a difference of .04% for District 1 and .08% for District 2.² These amounts on their face are extremely negligible, especially when considering that two different techniques were used. Dr. Morrison's calculated amounts also clearly round to 50%. Further, the Maptitude disaggregation process that I utilized is a commonly used and accepted method in the field, and it provides accurate estimates.³ However, even if Dr. Morrison calculated his estimates correctly and even if his preferred method for disaggregation were accepted, his point is also ultimately irrelevant, because it is possible to produce a number of additional alternative plans with two majority HBA CVAP districts with higher percentages.

In addition, the initial Illustrative Plan's HBA CVAP percentages for District 1 and District 2 are higher when considering the Black and White combined race categories, as presented on page 21 and Appendix D of my initial report, and Table 1 below. District 1 increases to 51.11% while District 2 increases to 51.08% (see Table 1). Given the small differences (.04% and .08%) in the two disaggregation processes, if Dr. Morrison added the Black and White race categories using the IPF techniques, his calculations should yield similar outcomes to the ones that I obtained. Consequently, adding Black and White race categories, Districts 1 and 2 clearly exceed 50% majority-minority HBA CVAP.

Table 1 – Illustrative Plan - HBA & HBA plus B/W using CVAP (2013-17 ACS)			
District	CVAP 13-17ACS	HBA CVAP 13-17ACS	HBA CVAP plus Black/White 13-17ACS
1	29761	14888	15210
2	32804	16415	16755
District	% CVAP 13-17ACS	% HBA CVAP 13-17ACS	% HBA CVAP plus Black/White 13-17ACS
1	29761	50.03%	51.11%
2	32804	50.04%	51.08%

Source: U.S. Census Bureau 2013-2017 5 Year ACS Block Group data, Maptitude for Redistricting Illustrative Plan
Note: 13-17ACS - 2013-2017 5-Year ACS; Black/White included Black and White combined race persons

² Even this amount may be explained due to Dr. Morrison apparently using Total Population as the weighted census block to block group ratio instead of Voting Age Population (VAP) as I used, which is not an apples-to-apples comparison. For the analysis I present here, VAP is the more accurate weighted ratio to use since it is closer to the true citizen voting age population.

³ Further discussion of Maptitude's disaggregation techniques is included in the section of my report below addressing Dr. Morrison's claim regarding alleged inconsistent census block values (see Section V).

Second, as I mentioned above, the Illustrative Plan is not the only possible way to draw two single-member majority HBA CVAP districts for the city of Virginia Beach, VA. As stated in the conclusions of my initial report, the Illustrative Plan is only demonstrative and a number of other configurations that result in two majority HBA CVAP districts can be drawn. I include three additional plans with two majority HBA-CVAP districts below.

For instance, with only minor changes to the districts, an alternative plan (Alternative 1) can be created with an HBA CVAP percentage of 51.50% for District 1 and 51.63% for District 2 (see Table 2 and Figure 1).⁴

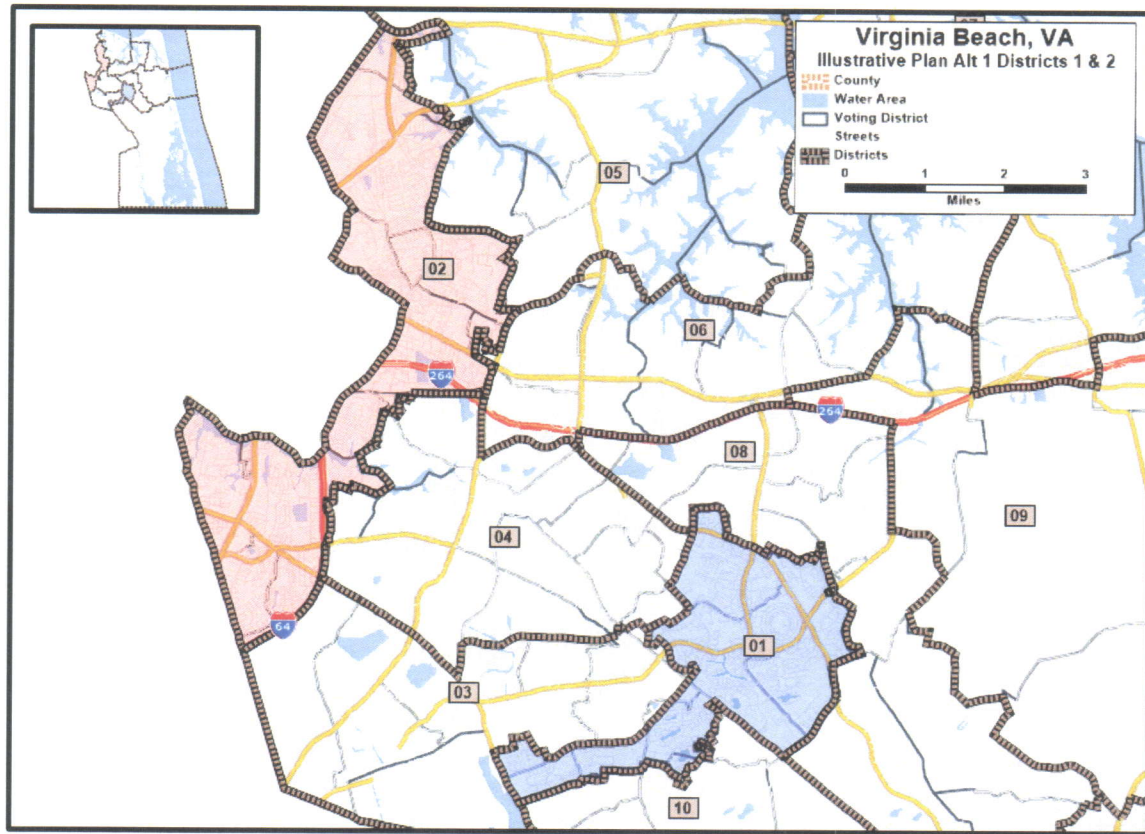
In addition to containing a majority of single race alone HBA CVAP, the HBA CVAP% including persons that identify as *both* Black and White in Districts 1 and 2 in the Alternative 1 plan yields percentages of 52.64% and 52.62% HBACVAP, respectively (see Appendix A).

Table 2 – Illustrative Alternative 1 Plan - Major Race/Ethnicity using CVAP (2013-17 ACS)							
District	CVAP 13-17ACS	Dev	HCVAP 13-17ACS	WCVAP 13-17ACS	BCVAP 13-17ACS	ACVAP 13-17ACS	HBACVAP 13-17ACS
1	28300	-2091	2119	12609	9056	3407	14575
2	32634	-1822	2346	15004	13141	1387	16851
District	% CVAP 13-17ACS	% Dev	% HCVAP 13-17ACS	% WCVAP 13-17ACS	% BCVAP 13-17ACS	% ACVAP 13-17ACS	% HBACVAP 13-17ACS
1	28300	-4.77%	7.49%	44.55%	32.00%	12.04%	51.50%
2	32634	-4.16%	7.19%	45.98%	40.27%	4.25%	51.64%

Note: 13-17ACS - 2013-2017 5-Year ACS

Source: U.S. Census Bureau 2013-2017 5 Year ACS Block Group data, Maptitude for Redistricting Illustrative Plan

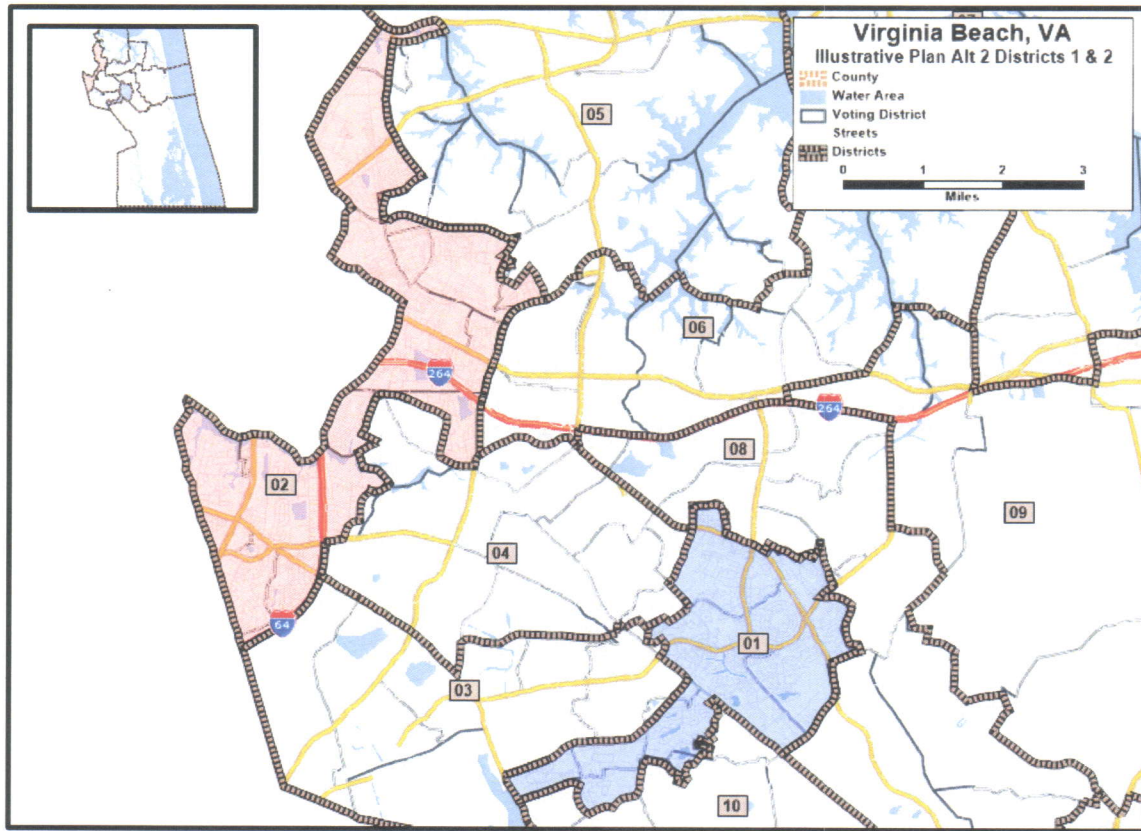
⁴ As with the initial Illustrative Plan, the alternative plan's HBA CVAP totals were summed prior to disaggregation, thus minimizing the potential disaggregation error from three (Hispanic, Black, and Asian CVAP summed together) to one HBA CVAP total. This technique minimizes the disaggregation error associated with the totals, specifically when the total is the focal point (as with a majority minority determination). Thus, the disaggregated totals for Hispanic, Black and Asian combined may not add to the HBA CVAP totals. The Total Pop HBA using the 2013-2017 was calculated by summing the three fields together (See Appendix A).



Source: Illustrative Alternative 1 Plan for Virginia Beach, VA using Maptitude for Redistricting

Figure 1 – Virginia Beach Illustrative Alternative 1 Plan with Two Majority HBA CVAP Districts with slight changes

It is also possible to draw a second alternative plan (Alternative 2) with two single-member majority HBA CVAP districts, using census block groups only (see Figure 2). Alternative 2 has a HBA CVAP of 51.04% for District 1 and 51.07% for District 2, respectively (increased to 52.15% for District 1 and 52.12% District 2 when Black and White combined data is considered). This plan will be discussed further in Section V.



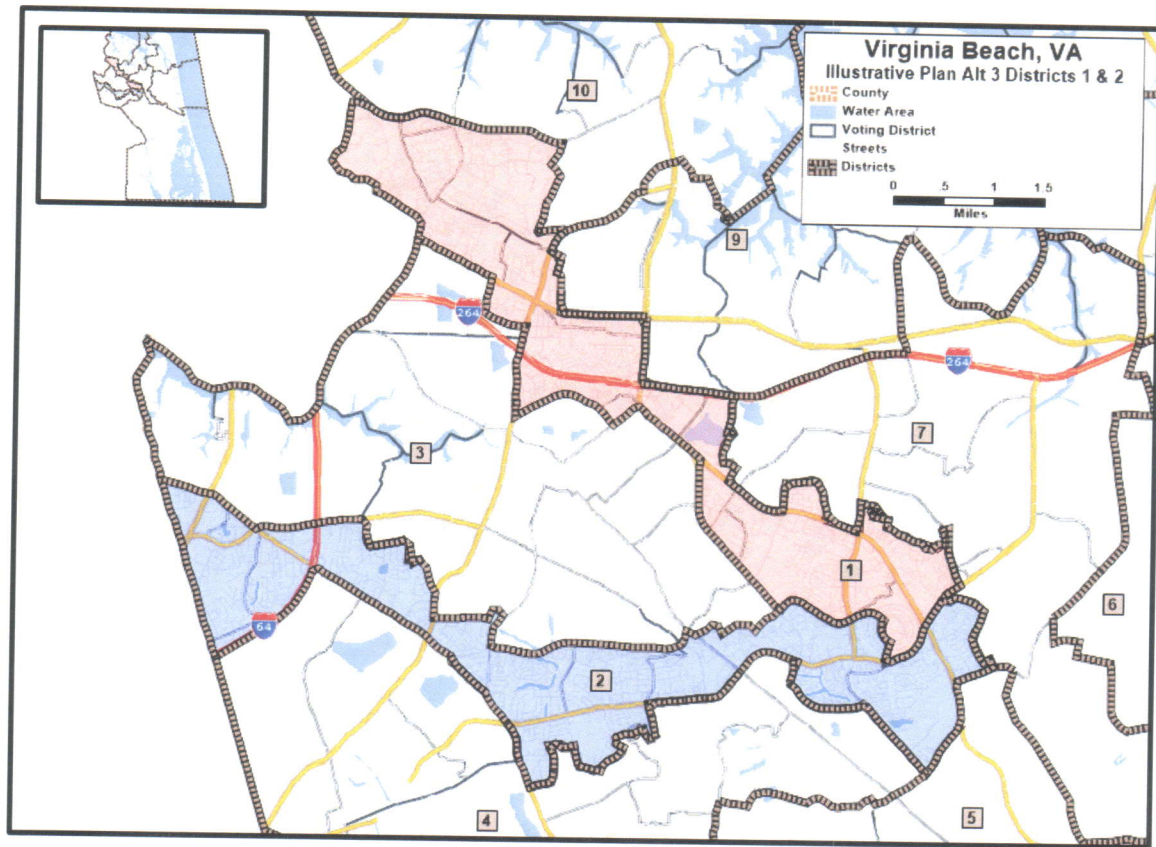
Source: Illustrative Alternative 2 Plan for Virginia Beach, VA using Maptitude for Redistricting

Figure 2 – Virginia Beach Illustrative Alternative 2 Plan with Two Majority HBA CVAP Districts using Block Groups Only

A third alternative plan (Alternative 3) includes two districts with HBA majority CVAP percentages and encompass different geographic locations than the initial Illustrative Plan (see Figure 3). The total HBA CVAP percentages in Alternative 3 are 54.47% for District 1 and 51.92% for District 2. When the Black and White combined data is considered, the percentages increase to 55.72% for District 1 and 52.75% for District 2.

Alternative 3 also reveals that a Majority Hispanic, Black, and Asian combined district using the 2010 Voting Age Population (VAP) data could have been developed. The HBA VAP in 2010 would have been the likely dataset that would have been used if the city of Virginia Beach chose to develop a majority HBA VAP district during the 2010 redistricting cycle.⁵ District 1's VAP in 2010 is 54.05% and District 2 is 51.32% using 2010 VAP census data (see Appendix A).

⁵ The CVAP data that would have also been available during the 2010 redistricting cycle would have been the 2005-2009 5-Year ACS. This dataset would most likely have been too old to use (since its midpoint is 2007) and thus reliance on 2010 VAP would have been more likely.



Source: Illustrative Alternative 3 Plan for Virginia Beach, VA using Maptitude for Redistricting

Figure 3 – Virginia Beach Illustrative Alternative 3 Plan with Two Majority HBA CVAP Districts in different geographic locations

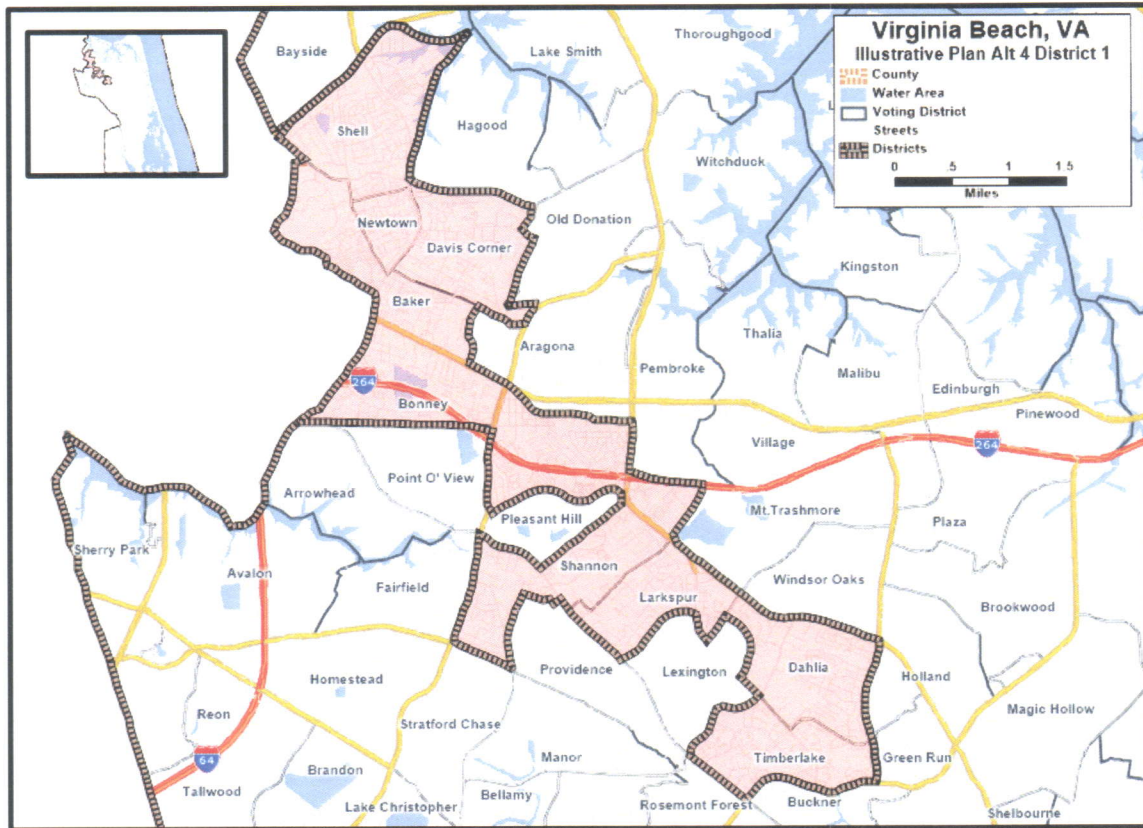
Further, given that it is possible to draw multiple plans with two majority HBA combined CVAP districts, it is also possible to draw a plan that at the very least contains one majority HBA CVAP district. The current City Council plan has zero majority HBA combined CVAP districts (see Appendix D in my initial report). Nothing in Dr. Morrison's report disputes this point. The first *Gingles* precondition reads:

"The minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district."⁶

⁶ *Thornburg v. Gingles*, 478 U.S. 30 (1986)

Therefore, as long as at least *one* majority HBA combined CVAP district can be drawn, the first *Gingles* precondition would be satisfied. It is possible to draw several plans with one HBA combined CVAP district, and I include an example, Alternative 4, below.

Alternative 4 (Figure 4) includes a single member district with an HBA CVAP percentage of 50.58% (51.46% with the addition of Black and White combined data). This Majority HBA CVAP district did not split any Voting Tabulation Districts (VTDs).⁷

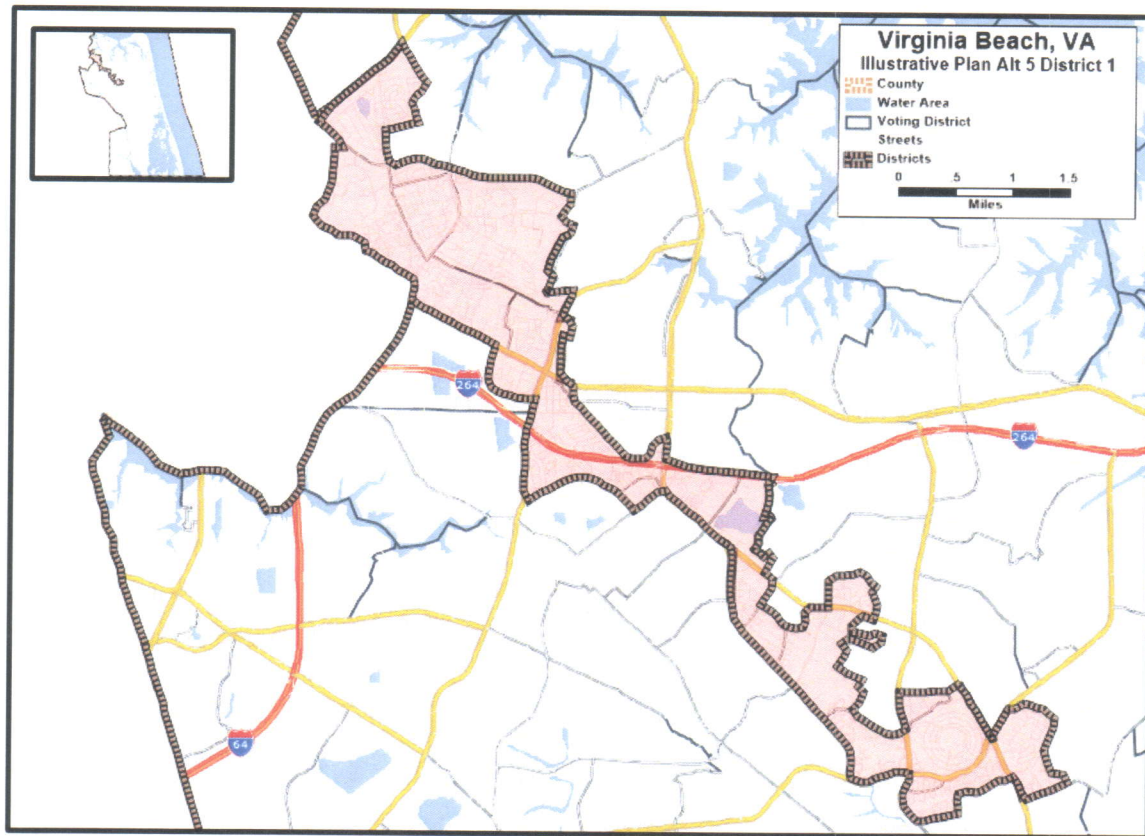


Source: Illustrative Alternative 4 Plan for Virginia Beach, VA using Maptitude for Redistricting

Figure 4 – Virginia Beach Illustrative Alternative 4 Plan with a Majority HBA CVAP District w/No Split VTDs

⁷ Voting Tabulation Districts are generated by the Census Bureau and commonly used synonymously as precincts during the redistricting process. VTDs follow census block boundaries while precincts may not.

In addition, although the focus of the analysis was to draw majority Hispanic, Black and Asian combined districts, another plan alternative was generated that verifies that, at a minimum, a majority Hispanic and Black CVAP district can be drawn (see Figure 5). Alternative 5 shows a majority district with a Hispanic and Black CVAP of 51.04%. When Black and White combined data is considered, the district's CVAP increases to 52.17%.⁸



Source: Illustrative Alternative 5 Plan for Virginia Beach, VA using Maptitude for Redistricting

Figure 5 – Virginia Beach Illustrative Alternative 5 Plan with a Majority Hispanic and Black CVAP District

Finally, the analysis that I performed utilized 2013-2017 5-Year ACS as the most recent data to determine district HBA CVAP percentages. These data as well as the 2010 decennial data provide numbers that occur in the past and not current demographics. Comparing the 2013-2017 5-Year ACS with the 2008-2012 5-Year ACS, the city of Virginia Beach increased 1.55% in its HBA CVAP percentage. The one-year 2017 ACS data for the city shows that there was an additional 1.75% increase in HBA CVAP percentage. Given that the HBA CVAP population in

⁸ Alternative Plan 5 has a HBA CVAP percentage of 57.75% (58.89% with the addition of Black and White race combined data).

Virginia Beach has grown considerably over the past two decades and continues to increase, the illustrative and alternative plans' current HBA CVAP percentages for the majority-minority districts are ultimately likely to be higher than the values shown in this report's analysis.

V. Response to Dr. Morrison's Claim of Inconsistent Disaggregated Data

Dr. Morrison claims that the disaggregated census block data used to generate the total Hispanic, Black and Asian combined CVAP is "untrustworthy." This claim is meritless. Dr. Morrison points to examples where the block level data shows instances where the CVAP is exceeded by the combined values of Hispanic, Black, and Asian CVAP populations. However, the CVAP may exceed the combined values of Hispanic, Black, and Asian CVAP populations at the census block level and still be trustworthy data at the district and other geographic levels.

If we were interested in analyzing a district the size of a single census block or a small number of census blocks, it is possible that errors in the disaggregation process may be worth considering. However, that is not the case here. Each city council district in the illustrative plans consists of *hundreds* of census blocks, not a handful that would amplify the disaggregation error.

In order to demonstrate why the CVAP data totals occasionally have census blocks that are exceeded by the combined values of Hispanic, Black, and Asian CVAP populations, I will explain the Maptitude for Redistricting ("Maptitude") disaggregation process.⁹

The Maptitude software includes a process that disaggregates a population value of a larger geographic area to a lower sub geographic area.¹⁰ This disaggregation is necessary when drawing a redistricting plan in order to assess the CVAP populations within the district. In this particular case, Maptitude was used to disaggregate CVAP data from the block group level to the census block level. Census blocks are the building blocks of districts.

The following is a simple example to calculate CVAP for a census block. If the VAP of a census block group contains 1,000 people and a census block contained within the block group contains 100 people, Maptitude would use 10% or multiply by .1 to determine the CVAP at the block level. Thus, if 500 persons was the CVAP for the block group, 50 would be the estimated CVAP for the census block.

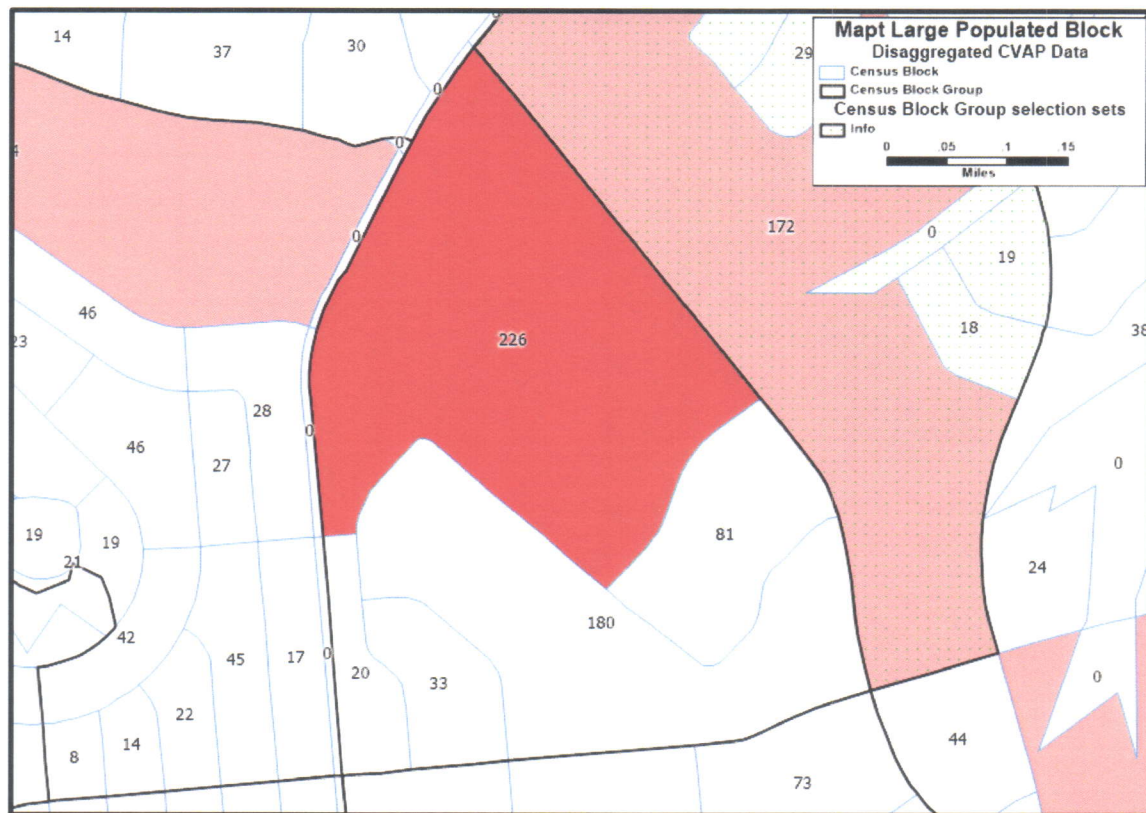
This straightforward example provides the first step in Maptitude's disaggregation process. However, there are many instances when the estimate for the census block equals an integer (a positive whole number) plus a fraction of persons (e.g, 4.5 persons). Because of this occurrence, Maptitude adds a second step. The second step ensures that all blocks contain whole numbers.

⁹ Maptitude is one of the most commonly used software systems by state and local governments, educational institutions, and interest groups for drawing redistricting plans (See Appendix C for partial client list via Caliper website. Source: <https://www.caliper.com/mtrnews/clients.htm>).

¹⁰ Maptitude has two different disaggregation functions. One for wholly contained matching census geography (which was used in this effort) and the other for non-wholly contained and overlapping geographic areas.

The second step¹¹ strips the fractions of persons and assigns them to the largest populated block within the block group. The assignment of these persons eliminates the fractions of persons and increases the population of the largest populated block, but not by a significant amount in most cases.

Figure 6 below shows an actual and typical example of Maptitude's disaggregation process. Figure 6 shows block group 518100422024 in Virginia Beach, VA. It consists of 5 census blocks. The bright red color highlights the largest populated block. The number within each block contains the disaggregated CVAP for each census block.



Source: Maptitude for Redistricting data for Virginia Beach, VA

Figure 6 – Block Group 518100422024 Highlighting Largest Populated Block

¹¹ Regarding this second step, the Maptitude for Redistricting Documentation states: *Each user attribute field is disaggregated to the Census Block level by distributing the count for each higher-level district to its component blocks or block pieces. The portion assigned to each piece is determined using a weighting field (e.g. Population). These values are truncated to integers, any block count below the minimum threshold is changed to zero, and finally any remainder is then assigned to the largest component block in the district. Where two or more districts intersect a block, each will contribute to the block. The result is an attribute field at the block level containing the disaggregated data. The documentation uses the term "district" in place of the commonly used geographic area such as block group or VTD.*

The disaggregation process of Maptitude that determines the CVAP for each block is shown in tabular form in Table 3. The first column is the short label of the block ID. Each row represents a different census block with the largest populated block at the bottom. The second column contains the VAP for each census block while the third column contains the VAP for the block group. The fourth column is the weighted amount that will be used to determine the CVAP at the block level. This is calculated by using the block VAP divided by the block group VAP.

The fifth column shows the CVAP for the block group that will be divided up to each census block. The sixth column (Step 1 DisAggr) contains the calculated CVAP for each census block. It is calculated by multiplying the Weighted % by the block/block group CVAP.

The seventh column displays whole CVAP without the fractional amount for each census block. The eighth column provides the fractional change in each census block population due to stripping away or adding to the largest populated block (1.26012 persons). The ninth column shows the stripped away disaggregated CVAP amount for each block except for the largest populated block that includes the added fractional amount totaling the whole number of 226 (224.73988 plus 1.26012 equals 226).

Table 3 – Block Disaggregation Process for Block Group 518100422021								
BlockID	VAP Block	VAP BG	Weight %	CVAP BG	Step 1 DisAgg1	Stripped	Fraction Change	Step 2 DisAgg2
004	26	692	3.8%	540	20.28902	20	-0.28902	20
003	43	692	6.2%	540	33.55491	33	-0.55491	33
002	104	692	15.0%	540	81.15607	81	-0.15607	81
001	231	692	33.4%	540	180.26012	180	-0.26012	180
000	288	692	41.6%	540	224.73988		1.26012	226
Sum of fractions of persons that are added to largest Pop block (000)							1.26012	

Source: Maptitude for Redistricting census block disaggregated data; U.S. Census Bureau American Community Survey 2013-2017 5-Yr data, 2010 Decennial Population data; Report calculations using Maptitude for Redistricting disaggregation technique.

Measuring the Impact of the Largest Populated Block Disaggregation Technique

The increase in the largest populated block would be worrisome if the city council districts were made up of only a few census blocks. However, the Illustrative Plan's districts are made up of hundreds of census blocks (400 census blocks for District 1 and 633 for District 2 in the initial Illustrative Plan).¹² Thus, aggregating hundreds of census blocks reduces or eliminates any error associated with the assignment of the largest populated block.

¹² Calculated by counting the district's census blocks that are contained within the district plan block assignment or equivalency file.

In order to truly grasp the minute impact of Maptitude's disaggregation technique, I analyzed the entire district to measure the difference. Instead of performing the disaggregation process that was mentioned in Table 3 for a single block group, I perform this analysis on the entire Illustrative Plan.

To perform the analysis, an Excel spreadsheet was setup with all census blocks and the relevant data fields as shown in Table 3. As before, the same calculation of weight%, the first step of disaggregation, the conversion of all census population to integers, and the calculations of the total amount fraction change amount are included.

The key to analyzing the effect of adding the largest populated census block lies with summing all of the fractional population pieces that are contained within each district. If an area contains a split block group containing the largest populated census block it will be slightly higher and if the district contains only the remaining census blocks (where the stripped fraction population occurred), it will be slightly lower. However, because the vast majority of split block groups that contain the largest populated block also contain the census blocks that had their population fractions stripped off, the two offset each other.

The proof of this offset lies with the final change in population when all of the fractions of persons and the largest populated block are added together in a district. Table 4 demonstrates that District 1's CVAP was lowered by a little over five (5) people for the entire district (-5.09305). The HBA CVAP was lowered a little less than five persons (-4.63910). District 2 had even less of an impact, with 0.11179 persons for the CVAP and 0.85174 for the HBA CVAP. Given the minute differences, the impact is thus trivial.

Further evidence of this practically non-existent change is seen when the HBA CVAP% is calculated using the values without using the largest populated block and comparing it to Maptitude's disaggregation values (using the largest populated block technique). Calculating disaggregation without using the largest populated block technique is achieved by dividing the HBACVAP17 DisAggr column by the CVAP17 DisAggr column for each district.

The HBA CVAP% calculation appears to be exactly the same when they are compared using two (2) decimal places. Both processes, calculated to 50.03% for District 1 and 50.04% for District 2. In order to view any difference, at least three (3) decimal places must be taken in consideration.¹³

¹³ Three of the other districts (Districts 3-10), showed a difference of .01%.

Table 4 -Illustrative Plan's Population Impact of Largest Populated Block Technique

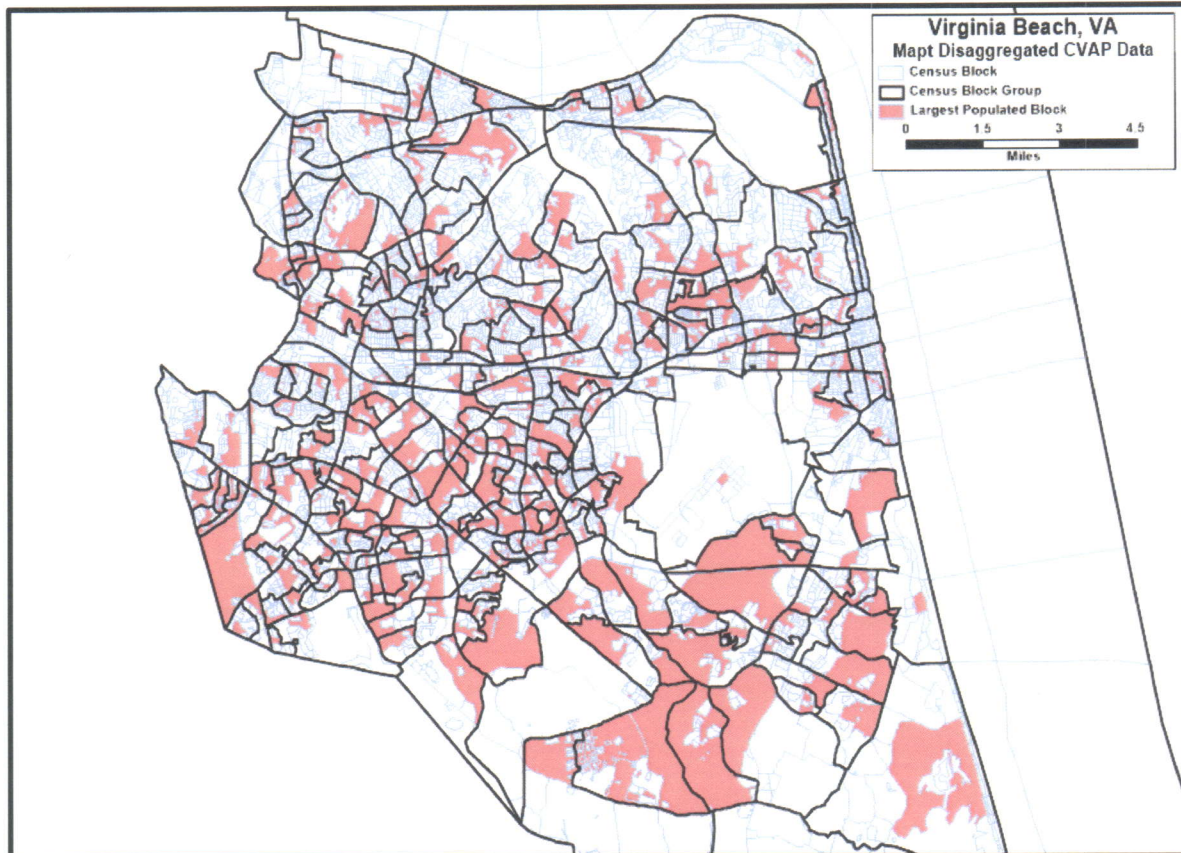
Dist	CVAP17 DisAggr	CVAP17 Strp	CVAP DISAG	CVAP17 Chg	CVAP17		
01	29766.09305	29641	29761	-5.09305	29761		
02	32803.88821	32642	32804	0.11179	32804		
03	31961.85648	31819	31960	-1.85648	31960		
04	33799.93322	33623	33802	2.06678	33802		
05	34688.84486	34407	34689	0.15514	34689		
06	34443.57816	34140	34447	3.42184	34447		
07	35686.66521	35367	35686	-0.66521	35686		
08	33657.33407	33485	33660	2.66593	33660		
09	32840.24399	32637	32843	2.75601	32843		
10	34851.55528	34651	34848	-3.55528	34848		
Dist	HBA CVAP17 DisAggr	HBAC17 Strp	HBA DISAG	HBAC17 Chg	HBA CVAP17	HBA CVAP17% Mapt	HBA CVAP17% Mapt wo/LPB
01	14892.63910	14770	14888	-4.63910	14888		
02	16414.14826	16235	16415	0.85174	16415		
03	13364.47424	13218	13365	0.52576	13365	41.82%	41.81%
04	10612.27770	10435	10612	-0.27770	10612	31.39%	31.40%
05	7131.76589	6861	7133	1.23411	7133	20.56%	20.56%
06	7428.54973	7128	7430	1.45027	7430	21.57%	21.57%
07	5228.71792	4928	5228	-0.71792	5228	14.65%	14.65%
08	9655.04044	9476	9658	2.95956	9658	28.69%	28.69%
09	8862.08495	8665	8863	0.91505	8863	26.99%	26.99%
10	7561.30030	7364	7559	-2.30030	7559	21.69%	21.70%

Source: Maptitude for Redistricting census block disaggregated data; U.S. Census Bureau American Community Survey 2013-2017 5-Yr data, 2010 Decennial Population data; Illustrative Plan Block Assignment List; Results from Microsoft Excel's consolidation function

Note: wo/LDB calculates districts's HBA CVAP% using disaggregation without the Largest Populated Block technique.

In addition, analysis for all of the Alternative Plans reveal that at most the majority HBA CVAP district plans using Maptitude's largest populated block only deviate .03% or less (see Appendix B).

Finally, the random distribution of the largest populated block tends to reduce its impact. This is due to the overpopulation occurring in a random manner as a district splits block groups. Figure 7 below reveals the random nature of the distribution of the largest populated block. There is no geographic pattern associated with its location.



Source: Maptitude for Redistricting Census Block and Block Group Data

Figure 7 – Depiction of the Largest Populated Census Block

Further evidence that the assignment of the largest populated block with the fractional population is not an issue centers on Dr. Morrison's own results. First, Dr. Morrison validates Maptitude's disaggregation process by replicating the process using his own IPF method and returning virtually the same results. His results for the Illustrative Plan were a 49.99% CVAP for District 1 and 49.96% for District 2. My results, using Maptitude's disaggregation process, were 50.03% for District 1 and 50.04% for District 2, respectively. This yields a difference of .04% for District 1 and .08% for District 2. As stated previously in this report, these amounts are extremely negligible, Dr. Morrison's values round to 50%, and he appears to use a different weighting population (total population) than I do (voting age population).¹⁴

In addition, Dr. Morrison's results tend to validate the actual amounts that I originally calculated. In essence, two different disaggregation processes were used, and the results were extremely close to each other. This duplicated processing verifies that the disaggregation amounts determined using the Maptitude method are the actual CVAP values for the Illustrative Plan's Districts 1 and 2.

Given all of these factors, I conclude that overall the Maptitude disaggregation process produces reliable disaggregated CVAP values. As I noted above, Maptitude is a widely used application for redistricting and its disaggregation method is a commonly used and reliable technique in the field (see Appendix C).

VI. Response to Dr. Morrison's Claim Regarding an Alleged Assumption of HBA Political Cohesiveness and Communities

Dr. Morrison states that my use of Hispanic, Black, and Asian population data presumes that political cohesiveness exists between Hispanics, Blacks, and Asians. He states that I "*concocted [an] aggregate of three distinct protected minorities (Hispanics, Blacks, and Asians)*". He also states that: "*This 'tripart minority coalition' district presumes political cohesion among Hispanics, Blacks, and Asians (an embedded assumption without support)*". This argument is nonsensical, for a number of reasons which I outline below.

First, by design, the very purpose of the effort was to focus on whether Hispanic, Black, and Asian CVAP could form a majority in single-member districts. In order to do so, one must consider and aggregate the Hispanic, Black and Asian population data together. It would not make much sense to try to determine whether a majority HBA CVAP district could be drawn by only looking at the black CVAP, for example.

Second, my report provides no opinion on the cohesiveness of minority voters, nor is any proof of the cohesiveness of minority voters necessary to meet the first prong or precondition of *Gingles*.¹⁵ As stated before, the precondition reads:

"The minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district."

¹⁴ The data provided by Dr. Morrison did not contain label descriptions, but appear to reflect the use of total population and not voting age population.

¹⁵ *Thornburg v. Gingles*, 478 U.S. 30 (1986)

It is my understanding that the political cohesiveness of the HBA population will be addressed by other experts retained by Plaintiffs.

It is also worth stating that Dr. Morrison does not address at all the analysis shown in my initial report that further shows that Hispanics, Blacks, and Asians share common communities and form communities of interest in Virginia Beach. Dr. Morrison's claims seem to suggest that Hispanics, Black, and Asians do not exist in common communities to form a majority minority district. Again, my unrebutted analysis in my initial report shows that is not the case.

Reviewing census tracts from 1990 to recent years shows a growing community of Hispanic, Black and Asians. In 1990, there was only one majority HBA (Total Population) census tract in the city of Virginia Beach.¹⁶ However, according to the 2013 – 2017 5-Year ACS data (2015MP), 10 census tracts now have a combined HBA majority. These 2013-2017 majority HBA communities¹⁷ are located near the western center of Virginia Beach and toward the west and north-west Norfolk & Chesapeake boundary areas of the city (see Figure 8).

A review of the location of these majority HBA census tracts reveals that they are growing only in certain locations of the city. Simply put, HBA persons have chosen to reside in the same areas of the city.

¹⁶ 1990 Decennial Census Survey census tract level

¹⁷ A census tract usually contains one or more neighborhoods within its boundary.

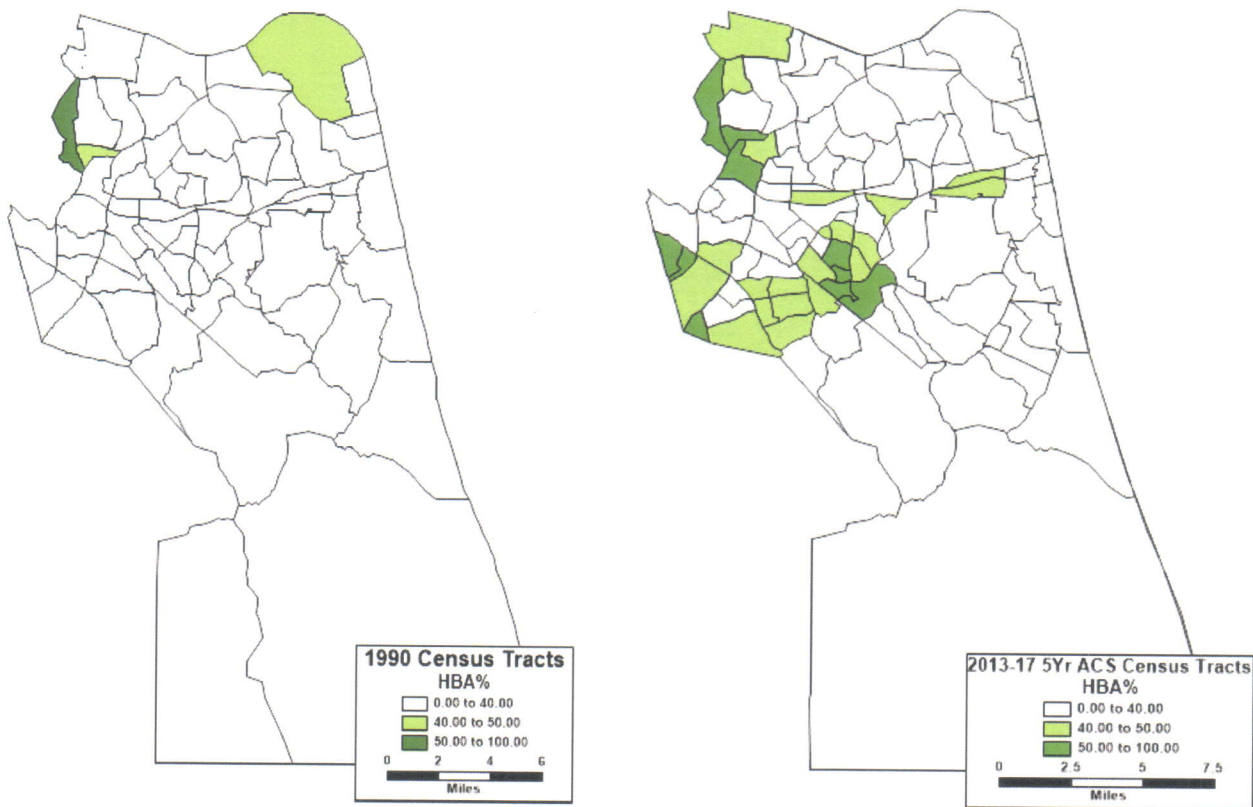


Figure 8 – Virginia Beach, VA Maj. HBA (Total Race) Census Tracts (1990 Decennial Census & 2013-2017 5Yr ACS)

Note: Race categories are Alone (Single Race) Not Hispanic categories

Source: U.S. Census Bureau PL94-171 data for 1990; 2013 - 2017 5-Year ACS data

Additional evidence is shown by reviewing the dot density maps. This provides a different perspective yet yields similar conclusions.

Figures 9, 10, and 11 depict the distribution of Hispanic, Black, and Asian populations throughout the city. Each red dot on the map represents 500 persons residing within the census tract for each respective race/ethnicity. Collectively, the red dots of Hispanic, Black, or Asian population are centered mostly around census tracts that are greater than 40% or 50% HBA.

In fact, reviewing data that sums each race/ethnicity in the census tracts that have greater than 40% HBA verifies that most Hispanic, Black, and Asian persons reside in the same communities. Table 5 shows that 31 of Virginia Beach's 100 census tracts contain 54.90% of the HBA combined population. The same census tracts contain 45.50% of the Hispanic population, 59.02% of the Black population, and 52.20% of the Asian population.

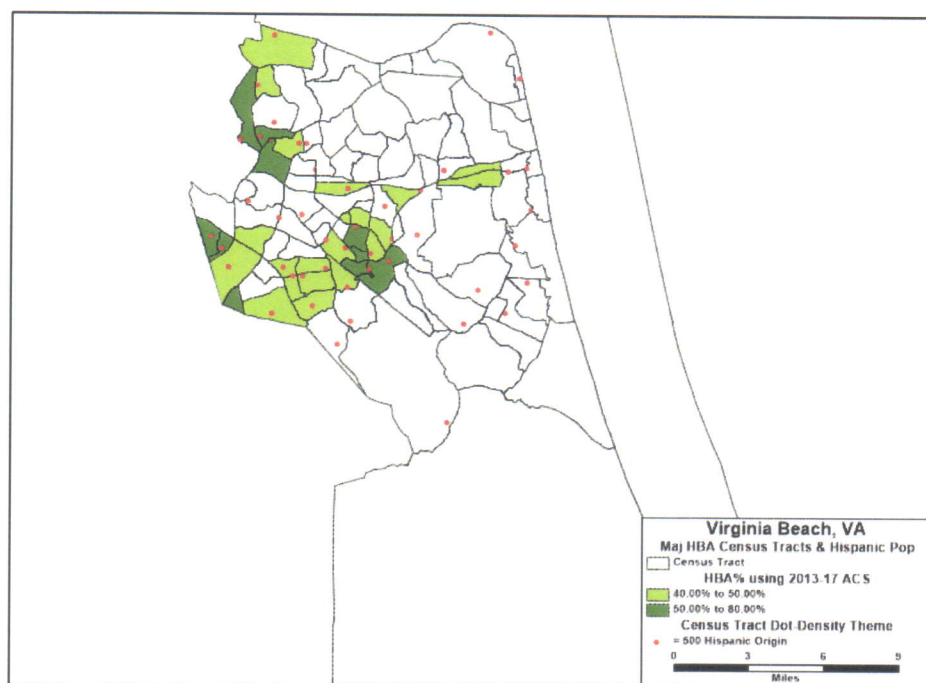


Figure 9 – Virginia Beach, VA Maj. HBA (Total Race) Census Tracts
(with Hispanic Dot Density Points using 2013-2017 5Yr ACS)

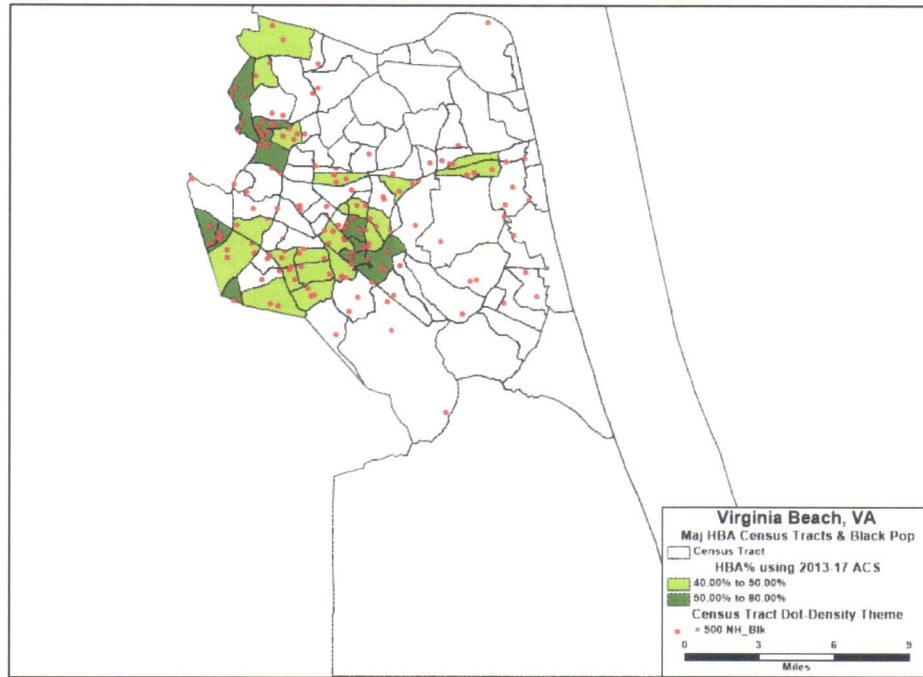


Figure 10 – Virginia Beach, VA Maj. HBA (Total Race) Census Tracts
(with Black Dot Density Points using 2013-2017 5Yr ACS)

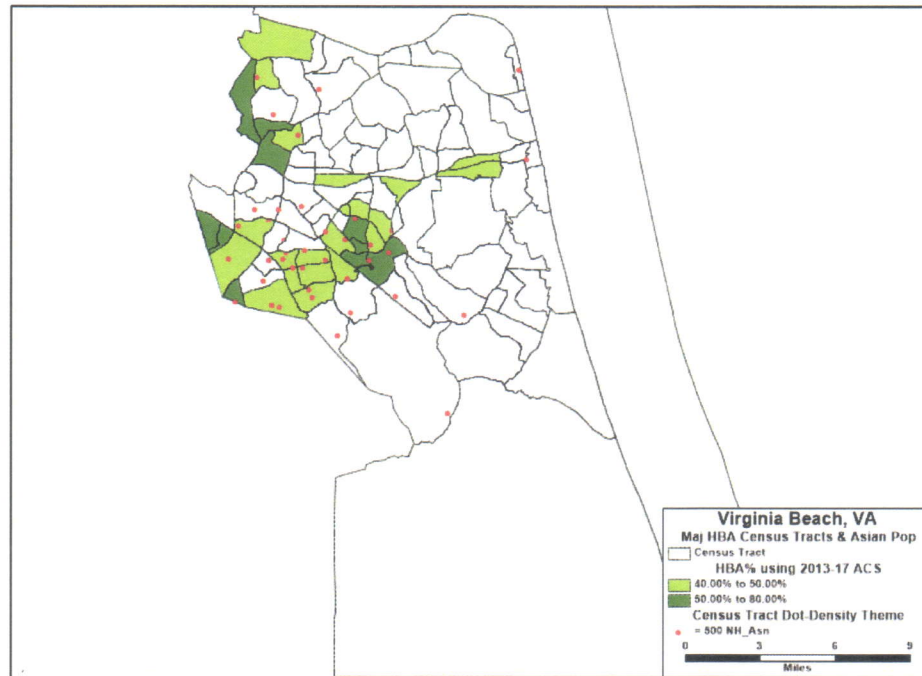


Figure 11 – Virginia Beach, VA Maj. HBA (Total Race) Census Tracts (with Asian Dot Density Points using 2013-2017 5Yr ACS)

Table 4 – VAB Population of HBA Residing in >40% and >50% HBA Census Tracts

HBA % CT	# CTs	Hispanic	Black	Asian	HBATTL
>40%	31	13188	49113	13735	76036
>50%	10	4629	22381	4102	31112
City Total	100	28987	83210	26312	138509
HBA % CT	# CTs	Hispanic%	Black%	Asian%	HBATTL %
>40%	31	45.50%	59.02%	52.20%	54.90%
>50%	10	15.97%	26.90%	15.59%	22.46%
City Total	100	100.00%	100.00%	100.00%	100.00%

Note: HBATTL – Total Hispanic, Black, and Asian combined persons (Not Hispanic Black and Asian categories); and CT - Census Tract


Source: U.S. Census Bureau 2013-2017 5-Year ACS data using Maptitude for Redistricting Dataview Statistical Summary option

Finally, not only do the maps show that the Hispanic, Black, and Asian populations tend to reside in HBA census tracts, close inspection of the maps reveals a similar pattern outside of the majority HBA census tracts. Thus, even where a census tract is not majority HBA, the HBA population tends to reside in those areas.

VII. Conclusions

After addressing all of Dr. Morrison's concerns, I stand by my original conclusion that the minority population in the city of Virginia Beach, VA is sufficiently large and geographically compact to enable the creation of two single-member majority Hispanic, Black and Asian combined districts.

I, Anthony E. Fairfax, am over the age of 18 and fully competent to make this declaration. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.


Anthony E. Fairfax
August 26, 2019