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February 17, 2022

VIA CM/ECF

Patricia S. Connor
Clerk of Court
U.S. Court of Appeals for the Fourth Circuit
1100 East Main Street, Suite 501
Richmond, Virginia 23219

Re: Holloway et al. v. City of Virginia Beach et al. (21-1533, 21-2431)

Dear Ms. Connor:

Plaintiffs' mootness argument is wholly without merit and need not detain more of this Court's attention, as Plaintiffs request in a letter purportedly submitted under FRAP 28(j). ECF No. 80-1. For example, Plaintiffs' argument ignores that Defendants made their preclearance submission "pending the outcome of [this] appeal," which the Attorney General's office "understood." ECF No. 80-2 at 11. Moreover, the submission came to Plaintiffs' attention after filing their brief only because they never sought it before.

However, Defendants stand ready to provide additional briefing at the Court's request and leave it to the Court's discretion whether that would aid its consideration of this matter. If the Court chooses to call for further briefing, Defendants respectfully request the following:

First, the Court should order any briefing to be expedited and not alter the argument schedule for reasons Defendants have already outlined. ECF Nos. 43, 47. The Court's scheduling orders balanced the competing arguments of the parties regarding expedition and should not be disturbed, ECF No. 49, 61, especially in light of the unique election concerns at issue, *cf. Merrill v. Milligan*, --S. Ct.--, 2022 WL 354467 (U.S. Feb. 7, 2022).

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Second, the Court should stagger any briefing so that Plaintiffs, who carry the mootness burden, provide their position first. This will ensure that Defendants have an opportunity to provide an adequate and comprehensive response to what has so far been a cryptically asserted argument.

Third, the Court should invite the Commonwealth of Virginia, and its Attorney General, to file a brief on this topic. The Commonwealth is already participating as an *amicus*, ECF No. 58, and the Court has permitted the Virginia Solicitor General to participate at oral argument. ECF Nos. 67, 69. The Virginia Attorney General administers the Virginia Voting Rights Act and is best positioned to advise the Court about its “significance,” which Plaintiffs contend Defendants “misapprehend.” ECF No. 80-1 at 1. It would make little sense for the Court to entertain additional briefing without hearing from the Virginia Attorney General, who is best positioned to speak on these state-law issues.

Sincerely,

/s/ Richard B. Raile

Richard B. Raile
Partner

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing letter complies with the type-volume limitation in FRAP 28(j). According to Microsoft Word, the body of the letter contains 344 words and has been prepared in a proportionally spaced typeface using Times New Roman in 12-point size.

Dated: February 17, 2022

/s/ Richard B. Raile

Richard B. Raile

Counsel for Defendants-Appellants

CERTIFICATE OF SERVICE

I certify that on February 17, 2022, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

Dated: February 17, 2022

/s/ Richard B. Raile
Richard B. Raile

Counsel for Defendants-Appellants