



February 17, 2022

Via CM/ECF

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

RE: *Holloway et al. v. City of Virginia Beach, et al.*, No. 21-1533

Dear Ms. Connor:

Pursuant to Fed. R. App. P. 28(j), Plaintiffs-Appellees respectfully submit this letter to provide the Court with the City of Virginia Beach's application for preclearance of its remedial plan under the Virginia Voting Rights Act ("VVRA") and its receipt of preclearance from the Virginia Attorney General. Appellees were not informed of the City's preclearance submission and approval until last week, after they filed their appellees' brief.

The City submitted the remedial plan to satisfy its independent legal obligations under the VVRA. The VVRA became law *after* the district court entered its injunction in this case. The Attorney General noted the plan was being precleared under the VVRA—the scope of which exceeds Section 2 of the federal Voting Rights Act—because the plan “will ensure the creation of three ‘minority opportunity to elect’ districts.” Ex. 1.

At this point, both parties contend this case has become moot. Indeed, while the City misapprehends the significance of the VVRA preclearance process to the issue of mootness, it nevertheless contends in its reply brief that the VVRA—not merely a prior law regarding residency districts—is central

to its mootness argument. *See* Reply at 3 (relying upon VVRA's requirements to contend that the case is moot).

Because the City did not reveal its preclearance submission or results in any of its prior motions or briefing, Appellees believe the Court would benefit from supplemental briefing on the appropriate disposition of this appeal in light of both parties' contentions that the VVRA has rendered this appeal moot. Contrary to the City's contention, Reply at 2, vacatur is not an automatic result. *See, e.g., Catawba Riverkeeper Found. v. N.C. Dep't of Transp.*, 843 F.3d 583, 590 (4th Cir. 2016).

Respectfully submitted,

J. Gerald Hebert
J. GERALD HEBERT P.C.
191 Somerville St. No. 405
Alexandria, VA 22304
(703) 628-4673

Annabelle E. Harless
CAMPAIGN LEGAL CENTER
55 W. Monroe St., Ste. 1905
Chicago, IL 60603
(312) 312-2885

/s/ Mark P. Gaber
Mark P. Gaber
Robert N. Weiner
Christopher D. Lamar
CAMPAIGN LEGAL CENTER
1101 14th Street, NW, St. 400
Washington, D.C. 20005
(212) 736-2000

Attorneys for Plaintiffs/Appellees

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.

/s/ Mark P. Gaber

Mark P. Gaber

Counsel for Plaintiffs/Appellees

No. 21-1533

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

LATASHA HOLLOWAY, *et al.*,

Plaintiffs/Appellees,

v.

CITY OF VIRGINIA BEACH, *et al.*,

Defendants/Appellants.

On Appeal from the United States District Court
for the Eastern District of Virginia, Norfolk Division

**EXHIBITS IN SUPPORT OF APPELLEES' NOTICE OF
SUPPLEMENTAL AUTHORITY**

EXHIBIT 1
Preclearance Decision



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Mark R. Herring
Attorney General

January 14, 2022

202 North Ninth Street
Richmond, Virginia 23219
804-786-2071
Fax 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

**SENT VIA UPS and
EMAIL (DPatters@vbgov.com)**

Donna Patterson
Director of Elections/General Registrar
Voter Registration & Elections
2449 Princess Anne Rd, Building 14
Virginia Beach, VA 23456

Re: Request for Certification of No Objection
OCR Case No.: VR2022-006

Dear Ms. Patterson:

The Office of Civil Rights has completed its review of the above-referenced Request for Certification of No Objection submitted to the Office of the Attorney General of Virginia – Office of Civil Rights in accordance with the Virginia Voting Rights Act, Va. Code §24.2-129. We received your submission on December 30, 2021.

We have carefully considered the information you provided in your request. The City of Virginia Beach plans to adjust the boundaries of election districts in accord with a federal court order and after the review of a special master appointed by that court. We note that the plan being adopted by the City of Virginia Beach will ensure the creation of three “minority opportunity to elect” districts, has a population deviation of less than five percent (5%) for each district, and is based upon extensive research by the special master appointed by the federal court.

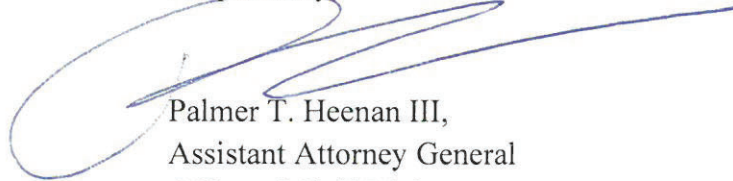
Moreover, these changes do not appear to have the purpose or effect of denying or abridging the right to vote based on race or color or membership in a language minority group nor does it appear that the covered practices will result in the retrogression in the position of members of a racial or ethnic group with respect to their effective exercise of the electoral franchise. Accordingly, on behalf of the Attorney General, **we have no objection** to City of Virginia Beach’s plan to adopt the plan ordered by the federal court. This letter, in accordance with Va. Code § 24.2-129, will serve as the Attorney General’s **certification of no objection** to the proposed changes.

Donna Patterson, Dir. of Elections – Virginia Beach
Request for Certification of No Objection; OCR No.: VR2022-006
January 14, 2022
Page 2

Under these facts, we find no reason to object to City of Virginia Beach's proposed changes to their voting practices.¹ Please be advised, however, that the Attorney General's certification of no objection to the covered practice discussed above will not bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure should the Attorney General subsequently have reason to believe such practice may have a discriminatory effect on members of a racial or ethnic group. Moreover, this certification of no objection does not remove or otherwise alter any requirement imposed upon City of Virginia Beach by any federal, state, or local ordinance, statute, or regulation, including **any requirement imposed by the Department of Elections that you provide them with this certification of no objection.**

If you have any questions, please contact us at (804) 786-3998 or at votingrights@oag.state.va.us. With kindest regards, I am

Respectfully,



Palmer T. Heenan III,
Assistant Attorney General
Office of Civil Rights

PTH

¹ The issuance of this certification of no objection is premised on City of Virginia Beach's stated plan to seek a temporary waiver for the split precincts created by the Special Master's report for the upcoming election and, subsequently, the potential creation of new precincts to remove as many split precincts as possible.

EXHIBIT 2
Preclearance Submission

From: [Dana R. Harmeyer](#)
To: votingrights@oag.state.va.us
Cc: PHeenan@oag.state.va.us
Subject: Virginia Beach Preclearance Request for Court Ordered Remedial Plan
Attachments: [City of Virginia Beach Preclearance Request Dec 30 2021.pdf](#)
[Final Order.pdf](#)
[281-1 - Special Master Report.pdf](#)
[288 - Supplemental Memo of Special Master.pdf](#)

Dear Sir or Madam:

I am respectfully requesting the Office of the Attorney General review the attached request for preclearance of a remedial plan entered by the Eastern District of Virginia Court. The Final Order, Special Master Report and Supplemental Memo of the Special Master are attached for reference. Please let me know if you would like any additional information regarding this matter.

Best regards,

Dana Harmeyer

Senior City Attorney



Office of the Attorney General - Office of Civil Rights

202 North Ninth Street · Richmond, VA 23219 · Office: (804) 225-2292 Fax: (804) 225-3294

Request for Certification of No Objection

The Office of the Attorney General has been designated by the Virginia Voting Rights Act, Va. Code § 24.2-125 et seq., as the state agency responsible for processing, reviewing, and approving requests submitted by governing bodies for "certifications of no objection" (hereafter "request" or "Request for Certification of No Objection") to changes in certain covered practices affecting voting. These responsibilities have been assumed by the Office of Civil Rights within the Office of the Attorney General.

In order to submit such a request, the Office of Civil Rights requires governing bodies to submit the form contained on Pages 2 - 4. The spaces provided on this form are not meant to limit or otherwise suggest an appropriate length for a response. In the event that your responses do not fit into the spaces provided on this form, please submit additional pages with your request.

Any Request for a Certification of No Objection must be accompanied by the documents and information listed as required on Page 4. Failure to submit the required documentation may result in your request being rejected. You may also submit supplemental documentation if you believe it will facilitate review of your request. Examples of some types of supplemental information can be found on Page 4. In the event that the Office of Civil Rights requires additional documentation to review your request, you will be notified as soon as possible after your request has been received.

Requests should be submitted by both first-class mail (or a delivery service) and e-mail. Failure to submit your request using both methods may result in a delay in the processing of your request. No request will be deemed submitted until it is received at the Office of Civil Rights. Requests should be submitted by mail to:

Office of the Attorney General
Office of Civil Rights
202 North Ninth Street
Richmond, VA 23219

Requests should be submitted by e-mail to: votingrights@oag.state.va.us.

Should you have any questions about submitting a Request for a Certification of No Objection, you may contact the Office of Civil Rights by e-mail at votingrights@oag.state.va.us or by phone at (804) 225-2292.

ATTENTION: Answer all questions completely, and please attach additional pages if needed to complete your request.

-- FOR OFFICIAL OCR USE ONLY --

Locality Submitting Request: City of Virginia Beach

Department Submitting Request: Office of the City Attorney

Name of Official Submitting Request: Dana R. Harmeyer, Esq

Title of Official Submitting Request: Senior City Attorney

Street Address: 2401 Courthouse Drive, Rm 260

City/County: Virginia Beach **ZIP Code:** 23456

Office Number: (757) 385-453 **Fax:** (757) 385-561 **E-mail:** dharmeye@vbgov.com

Alternate Contact: Christopher Boynton

Title of Alternate Contact: Deputy City Attorney

Street Address: 2401 Courthouse Drive, Rm 260

City/County: Virginia Beach **ZIP Code:** 23456

Office Number: (757) 385-453 **Fax:** (757) 385-561 **E-mail:** cboynton@vbgov.com

Jurisdiction Affected by the Proposed Change: City of Virginia Beach

Precinct(s) within Jurisdiction Affected by Proposed Change: All Precincts

Governing Body Adopting the Proposed Change: Court Ordered

Date the Proposed Change was Adopted: Final Order Issued December 22, 2021

Date the Proposed Change will Take Effect: Order is effective upon entry

Please describe the authority under which the proposed change is being enacted (e.g., an act of the General Assembly, a city council ordinance, an administrative decision). If necessary, please attach additional pages:

The Court Order is issued to remedy a violation of VRA Section 2. The Order is attached.

Please describe the reasons for the proposed change. If necessary, please attached additional pages:

The Court issued a lengthy opinion March 31, 2021, finding the election system in Virginia Beach violates VRA Section 2

Please provide a clear narrative of how the proposed change to the covered practice will affect voting. Include a statement of what your current practice is and how the change you are requesting would impact your current practice. Please ensure that your narrative contains details as to how you believe this change would impact racial or language minority groups. If necessary, please attach additional pages.

I have attached the Special Master's Report and Supplemental Special Master Memo. These documents provide the information regarding the proposed new election system for the City of Virginia Beach.

If the proposed change to a covered practice will affect less than the entire jurisdiction over which the governing body has authority, please describe the scope of the change. If necessary, please attach additional pages.

Please see attached Final Order.

Have you filed for preclearance for this proposed change to a covered practice to the Department of Justice?

Yes ☐ No ☒

Has there been any litigation regarding the proposed change to a covered practice or is there any litigation pending regarding the proposed change?

Yes ☒ No ☐

If the answer the above question is "Yes", please identify the litigation by the jurisdiction in which it has been filed, the case number, and briefly describe the current status and, if available, the outcome of the litigation. If necessary, please attach additional pages.

Latasha Holloway, et al. v. City of Virginia Beach, et al., Civil Action 2:18-cv-69 (EDVA)

The Office of Civil Rights *requires* the following documentation to be submitted with any Request for Certification of No Objection.

- A copy of the ordinance, order, statute, rule, or regulation that embodies the proposed change.
- A copy of the ordinance, order, statute, rule, or regulation that is being amended, repealed, or otherwise changed.
- A complete copy of the existing ordinances, orders, statutes, rules, and regulations that the governing body currently uses to administer elections.
- A certification that, if the proposed change will affect the physical location where voting occurs that the new physical location for voting complies with all local, state, and federal building codes, statutes, and regulations, including without limitation, *that the new physical location for voting complies with the American with Disabilities Act.*
- A certification that the proposed change has not yet been administered or enforced.
- For any proposed change that results in changes to the boundaries of a locality, the number of elected seats in the locality, or changes that result in a single seat being converted into an "at-large" seat or "multi-member" seat, demographic information that identifies total and voting age population of the area affected by the proposed change, by race and language group.
- For any proposed change that results in changes to the boundaries of a locality, the number of elected seats in the locality, or changes that result in a single seat being converted into an "at-large" seat or "multi-member" seat, map information sufficient to identify the current and proposed boundaries of the affected area.

Review of a Request for Certification of No Objection may be facilitated by the following supplemental information:

- Additional demographic information, including without limitation, the number of registered voters for the affected area by voting precinct before and after the change, by race and language group, and any estimates of population, by race and language group, made in connection with the adoption of the change.
- Additional mapping information, including without limitation, the prior and new boundaries of all voting precincts within the locality, the location of racial and language minority groups within all voting precincts, any natural boundaries or geographical features that influenced the selection of boundaries of the prior or new units, the location of prior and new polling places, and the location of prior and new voter registration sites.
- Information related to election returns for prior general and primary elections.
- For submissions involving controversial or potentially controversial changes, evidence of any notice provided to the public of the intended change.
- Where a change is made affecting the use of the language of a language minority group in the electoral process, information that will enable the Attorney General to determine whether the change is consistent with the minority language requirements of the Virginia Voting Rights Act.

I have completed the above form and have attached the information required for this Request for Certification of No Objection to the best of my knowledge and ability. I certify that the information contained above and attached to this Request is truthful and accurate.



Signature

12/30/2021
Today's Date

From: [VotingRights](#)
To: [Dana R. Harmeyer](#); [VotingRights](#)
Subject: RE: Virginia Beach Preclearance Request for Court Ordered Remedial Plan
Date: Thursday, December 30, 2021 1:15:10 PM

CAUTION: This email originated from outside of the City of Virginia Beach. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Understood! Thanks for letting me know, Dana.

Sincerely,

Palmer T. Heenan III
Assistant Attorney General
Office of the Attorney General

202 North 9th Street

Richmond, Virginia 23219

Office: (804) 786-3998

PHeenan@oag.state.va.us

<http://www.ag.virginia.gov>



From: Dana R. Harmeyer <DHarmeye@vbgov.com>
Sent: Thursday, December 30, 2021 1:09 PM
To: VotingRights <votingrights@oag.state.va.us>
Subject: RE: Virginia Beach Preclearance Request for Court Ordered Remedial Plan

Palmer:

Thanks for the acknowledgement.

I don't believe it is germane to your review, but the City has appealed the liability finding to the Fourth Circuit Court. Earlier in the process, the Fourth Circuit was unwilling to review the liability determination until the completion of the remedial phase. The City intends to comply with the court's order pending the outcome of the appeal.

Dana

From: VotingRights <votingrights@oag.state.va.us>
Sent: Thursday, December 30, 2021 12:33 PM
To: Dana R. Harmeyer <DHarmeye@vbgov.com>
Subject: RE: Virginia Beach Preclearance Request for Court Ordered Remedial Plan

CAUTION: This email originated from outside of the City of Virginia Beach. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Mr. Harmeyer,

We are in receipt of your request and will respond as soon as possible. In the meantime, should we require any additional information, we will let you know.

Have a great holiday!

Sincerely,

Palmer T. Heenan III
Assistant Attorney General
Office of the Attorney General

202 North 9th Street

Richmond, Virginia 23219

Office: (804) 786-3998

PHeenan@oag.state.va.us

<http://www.ag.virginia.gov>



From: Dana R. Harmeyer <DHarmeye@vbgov.com>

Sent: Thursday, December 30, 2021 12:31 PM

To: VotingRights <votingrights@oag.state.va.us>

Cc: Heenan III, Palmer T. <PHeenan@oag.state.va.us>

Subject: Virginia Beach Preclearance Request for Court Ordered Remedial Plan

Dear Sir or Madam:

I am respectfully requesting the Office of the Attorney General review the attached request for preclearance of a remedial plan entered by the Eastern District of Virginia Court. The Final Order, Special Master Report and Supplemental Memo of the Special Master are attached for reference. Please let me know if you would like any additional information regarding this matter.

Best regards,

Dana Harmeyer

Senior City Attorney