#### 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.

#### PLAINTIFFS' BRIEF IN RESPONSE TO DEFENDANTS' RESPONSE TO SPECIAL MASTER REPORT

For the reasons set out below, in Plaintiffs' prior remedial briefing, *see* ECF Nos. 261, 261-2, 273-2, 282, and in the Special Master's Report, Plaintiffs respectfully request that the Court adopt the Special Master's Plan with minor modifications, and make individual, express factual findings that evidence in the remedial phase of this case supports the Court's previous findings regarding the cohesion of Hispanic, Black, and Asian American ("HBA") voters and the presence of white bloc voting. Defendants' arguments to the contrary are meritless.

#### ARGUMENT

# I. The Special Master's Report Strongly Supports This Court's Liability Findings and Does Not Require This Court to Vacate or Clarify Its Ruling.

In their response to the Special Master's Report, Defendants "assume[] this Court has authority to address liability issues at this stage within the framework of the *Wright* decision." Defs. Br. at 2. However, contrary to Plaintiffs' arguments and the plain language of the Special Master's Report, Defendants argue that the Report undermines the Court's liability ruling. That is not so.

# A. The Special Master's Report Supports this Court's Finding of Minority Voter Cohesion.

First, Defendants assert that the Special Master's Report "rejects the possibility of inferring . . . . cohesion levels of individual groups of the alleged coalition." Defs. Br. at 3. However, the Special Master's Report makes no findings that contradict what this Court and previous experts have found regarding the ability to measure the cohesion of individual racial groups. *See* ECF Nos. 281-1; 242. The Special Master's Report also does not address whether the Court's conclusion about non-linear support among Asian American and Hispanic voters offers a better explanation for any purported differences between the groups than does a speculative hypothesis of non-cohesion offered by Defendants. *Id.; see also* ECF No. 242 at 86-87. Finally, there is no question that the Special Master's Report left undisturbed the mountain of *qualitative* evidence of cohesion or the Court's findings about that evidence. ECF No. 242 at 66-71; ECF No. 281-1 at 16-17. Thus, there simply is no basis for the Court to amend or vacate its earlier ruling.

Contrary to Defendants' failed arguments, Plaintiffs have detailed the numerous ways that the evidence presented in the remedial phase of this case supports the finding that Hispanic and Asian voters are politically cohesive with Black voters in Virginia Beach.<sup>1</sup> *See, e.g.*, ECF Nos.

<sup>&</sup>lt;sup>1</sup> Defendants falsely claim that Dr. Grofman "rejects the reliance on HP (Homogenous Precinct) analysis to predict minority voting cohesion . . ." in this case. Defs. Br. at 5. This is wrong. Rather, Dr. Grofman affirmed the method utilized by Dr. Spencer, and stated that HP analysis could be used to study the behavior of white voters in the city, and that "a simple comparison of the voting behavior in the overwhelmingly White districts and the voting behavior in the most heavily minority districts can be conducted." ECF No. 281-1 at 15. After reviewing Dr. Spencer's analysis, Dr. Grofman agreed with his findings, concluding that "despite the absence of homogenous minority precincts, the existence of homogenous non-minority precincts, and a general pattern of higher support for the minority candidate the higher the minority group as a whole, both by visual inspection of scatterplots showing support for minority candidates versus proportion minority in the district and by making use of ecological regression and ecological inference tools of analysis." *Id.* at 16.

261, 273 at 2-6, 273-1 (explaining how Plaintiffs' evidence and Defendants' expert Dr. Handley's analysis demonstrates that Hispanic and Asian voters are cohesive with Black voters); ECF No. 282 (summarizing support for Court's racially polarized voting findings in Special Master Report). Plaintiffs do not restate those arguments again here, but note that Dr. Grofman "f[ou]nd essentially indisputable evidence of political cohesive patterns of voting for both White voters and for minority voters in terms of electoral cohesion" and that:

For the minority community as a whole, high levels of demonstrated socio-economic cohesion and very high levels of minority electoral cohesion have been shown in the evidence reviewed in the Court Opinion and in my discussion above.

ECF No. 281-1 at 18-19. To argue that this evidence undermines the Court's finding on political cohesion is to ignore the facts and Dr. Grofman's unequivocal conclusion of cohesion based on "indisputable evidence."<sup>2</sup>

# B. The Special Master's Plan Demonstrates That a Viable Remedy is Easy to Draw in Virginia Beach.

Next, Defendants argue that the remedial phase "undermines the Court's liability phase conclusion" that *Gingles* prong 1 has been met in this case. Defs. Br. at 7. However, there was no serious dispute at trial that a plan with multiple HBA-majority districts by CVAP (or even a majority-Hispanic and Black district) could be drawn. *See* Tr. D1 Trans. at 135:25-162:11 (presenting ten different plans with multiple iterations of majority-HBA districts and a majority-Hispanic and Black district). Evidence from the remedial phase only *strengthens* the conclusion

<sup>&</sup>lt;sup>2</sup> Defendants also bizarrely assert that Dr. Grofman is arguing for the adoption of a particular legal standard in this case. Defs. Br. at 6-7. While Defendants may be unhappy with the clear preponderance of the evidence, their unfounded assertion has no support in the Special Master Report. Further, the article by Dr. Grofman cited by Defendants has no bearing on his opinions in this case. The article was written almost *thirty years* ago (1993), and as the Supreme Court has noted, Section 2 cases require "an intensely local appraisal" and "searching practical evaluation" of the facts and circumstances present in each unique case, which this Court has done. *Thornburg v. Gingles*, 478 U.S. 30, 78-79 (1986).

that multiple majority-HBA CVAP districts can easily be drawn in a Virginia Beach City Council plan, as both Plaintiffs and the Special Master have done so. *See, e.g.,* ECF No. 261 (Plaintiffs' remedial submission including three minority opportunity districts); ECF No. 281-1 at 4-6 (finding that the minority population in Virginia Beach is geographically concentrated and that drawing "three 50%+ minority CVAP districts . . . can be readily done.").

Defendants argue incorrectly that the minority opportunity districts in the Special Master's Plan do not meet a 50% threshold. *See* Defs. Br. at 8; ECF No. 283-3 (Brace Dec.).<sup>3</sup> Table 6 in the Special Master Report, however, shows that all three of the opportunity districts in the Special Master's Plan are majority-HBA by both VAP and CVAP. ECF No. 281-1 at 37-38 (listing demographics for Districts 4, 7, and 10). Plaintiffs confirmed that these numbers are accurate by uploading the block assignment file to Dave's Redistricting App ("DRA"), the program utilized by Dr. Grofman. In addition, Plaintiffs' mapping expert Mr. Fairfax independently verified that all three minority opportunity districts have HBA CVAP populations over 50%. Ex. 1 ("Fairfax Dec."). Using Maptitude redistricting software and the most recent ACS 2015-2019 CVAP data, Mr. Fairfax utilized multiple methods to analyze the demographics of the minority opportunity

<sup>&</sup>lt;sup>3</sup> Even if any of the Special Master's opportunity districts fell below 50% HBA CVAP—they do not—the districts would still remedy the Section 2 violation in this case, because they provide an equal opportunity for HBA voters to elect their candidates of choice. ECF No. 281-1 at 35, 39, 40. Although Plaintiffs must prove that it is possible to draw a district with over 50% of the relevant voting age population to prove Section 2 *liability*, once a violation has been shown, a remedial map imposed by a Court need not include "majority-minority" districts to achieve Section 2 compliance. Instead, that inquiry turns on a functional analysis of a district's electoral performance for the relevant minority group, not an arbitrary demographic threshold. *See Bartlett v. Strickland*, 556 U.S. 1, 23 (2009) (stating that "§ 2 allows States to choose their own method of complying with the Voting Rights Act, and we have said that may include drawing crossover districts" (internal citations omitted)); *see also Cooper v. Harris*, 137 S. Ct. 1455, 1472 (2017); *see also* ECF No. 281-1 at 30. Defendants' proposed districts did not provide such an opportunity and thus failed to remedy the proven Section 2 violation. ECF No. 281-1 at 30-31.

districts, and under all circumstances found that Districts 4, 7, and 10 in the Special Master Report are above 50%. *Id.* at ¶¶ 3, 8-9. Mr. Fairfax explained that because the demographic results are virtually the same using different software programs and disaggregation methods, and whether race "alone" or "combined" categories are used, he can conclude that the districts are above the 50% HBA CVAP threshold. *Id.* at ¶ 9.

In addition, the minor modifications that Plaintiffs suggest to the Special Master's Plan will not impact the ability to draw three minority opportunity districts with HBA CVAP populations over 50%. Plaintiffs suggested modifications to include the residence of Ms. Georgia Allen as well as Burton Station in a minority opportunity district impact District 4 (as well as District 9, which is not a minority opportunity district). *See* ECF No. 282; Fairfax Dec. at ¶¶ 10-12. Mr. Fairfax reviewed a modified version of the Special Master's Plan with these two changes to District 4, using the same methods outlined above, and found that the modified version of District 4 also has an HBA CVAP over 50%. *Id.* at ¶ 13-14. In addition, the statistics listed for the modified version of District 4 in Dave's Redistricting App show an HBA CVAP of 50.4%. Mr. Fairfax further verified that Ms. Allen's residence is contained in the modified District 4, and that this modified version of the Special Master's Plan would have an overall population deviation of 8.48%. *Id.* at ¶ 12-13.

Defendants next argue that the population deviation for the Special Master's Plan does not comply with the one-person, one-vote principle. Defs. Br. at 7-8. However, it is undisputed that the Plan's deviation of 9.4% is within the allowable constitutional threshold of 10%. *See, e.g., Brown v. Thomson*, 462 U.S. 835 (1983).<sup>4</sup> Defendants claim that the Plan's "9.4% deviation

<sup>&</sup>lt;sup>4</sup> The modifications suggested by Plaintiffs would also decrease the Plan's population deviation. *See* ECF No. 282 at 2-4; Fairfax Dec. at  $\P$  13.

exceeds the 5.97% deviation the Supreme Court [] found too large for a court-ordered plan in *Chapman v. Meier*, 420 U.S. 1, 26 (1975)." Defs. Br. at 7. But *Chapman* did not set a 5.97% threshold for court-drawn plans; rather, it invalidated a court-drawn state legislative plan that had a *20% population deviation* where no justification was provided for such a large variance. *Chapman*, 420 U.S. at 24. Of note, the *Defendants' own remedial proposal* in this case had a population deviation of 8.97% at the time it was submitted. *See* ECF No. 273-2 at ¶ 15.

Finally, Defendants argue that the Special Master Report undermines the Court's "alternative finding that 'Plaintiffs established that the African American community in Virginia Beach is sufficiently large and geographically compact' to meet the first *Gingles* precondition." Defs. Br. at 9. In fact, the Special Master Report has no bearing on this finding. Dr. Grofman himself stated that he looked at "African-Americans plus Hispanic plus Asian-Americans treated as a whole" in his analysis, and there is no indication that he even attempted to draw a district with a majority voting age population of any single racial group. *See generally*, ECF No. 281-1; 281-1 at 13, n. 15. Furthermore, Defendants' *own mapping expert* testified at his deposition that it was possible to draw a majority-Black district in Virginia Beach. *See* Ex. 2, Excerpt from Kimball Brace Dep., at 44:2-12. Defendants are mistaken that there is new evidence necessitating any kind of clarification of the Court's liability finding.

#### II. Defendants' Remaining Objections to the Special Master's Report are Meritless.

Defendants make a series of additional objections to the Special Master's Report, in an attempt to relitigate the Court's liability findings in this case. These arguments have no merit. Plaintiffs address each of them below.

#### A. Defendants' Objections Regarding Racially Polarized Voting Are Incorrect.

Defendants first argue that "the Special Master's racially polarized voting analysis excludes candidates found by the Court (and Plaintiffs' expert) to be minority preferred, yet who are not 'members of the minority community,'" and that "Circuit precedent rejects this approach." Defs. Br. at 9. But such an analysis has already been conducted in this case for *Gingles* prongs 2 and 3, and there was no reason for Dr. Grofman to repeat it. *See* ECF No. 242 at 73-92. Further, Dr. Grofman relies on this prior analysis, noting that it shows "there is [] evidence of minority cohesion where a White candidate is the minority candidate of choice," and that it shows racially polarized voting because "Whites and minorities sometimes agree[] on the same candidate of choice when the minority candidate of choice was White, but almost never agree[] when the minority candidate of choice was himself or herself a minority *opportunity districts*," and thus he only looked at contests involving minority candidates, since:

... an equal opportunity to elect candidates of choice would not be meaningful if the only candidates of choice of the minority community who could be elected were nonminority candidates. Because the minority community is, on average, less wealthy and less well-educated that the non-minority community, and because at-large elections do not allow minority candidates the potential for success in a district-based election within a limited geography where door to door campaigning, street signs, and mailers to a limited set of mailboxes, and friends and neighbors word of mouth could at least partially compensate for discrepancies in resources between minority and non-minority candidates, I am also cautious about treating non-minority winners of at-large elections as one who would be a minority candidate of choice in a district-based election within a heavily minority district. Thus, I am highly reluctant to project the results for such candidates in seeking to assess *minority opportunity to elect* within possible new remedial districts.

ECF No. 281-1 at 11-12, n.14 (emphasis in original).

Similarly, the circuit case law cited by Defendants discusses the *liability phase* of a Section

2 claim, and not the creation of minority opportunity districts. See, e.g., Lewis v. Alamance Cty.,

*N.C.*, 99 F.3d 600 (4th Cir. 1996) (reviewing summary judgment liability decision on appeal). In any event, *Lewis* supports the approach taken by Dr. Grofman, particularly where an analysis of both minority and non-minority candidates of choice has already been conducted. *See, e.g., Lewis* 99 F.3d at 610 & n.8 (noting that elections with minority candidates against white candidates may be "more probative than white-white elections" on the question of "whether racial polarization exists"); *United States v. Charleston Cty., S.C.*, 365 F.3d 341, 350 (4th Cir. 2004).

Defendants also claim that Dr. Grofman should have considered the candidacies of Furman and Wray "as evidence against cohesion." Defs. Br. at 10. However, multiple experts and the Court have previously found that neither Mr. Furman nor Mr. Wray were candidates of choice of the minority community or perhaps even viable candidates. ECF No. 281-1 at 11-12, n. 14, 19, 20, n. 20; ECF No. 242 at 71-72, 77; Tr. D2 Trans. at 372:6-13 (testimony of Dr. Spencer). Considering these candidates thus makes little logical sense.

Next, Defendants' similarly criticize Dr. Grofman's cohesion analysis, stating that he should have "examin[ed] each election to assess whether cohesion exists in *that* election and then count the election either as evidence in support of or evidence against cohesion." Defs. Br. at 10. Under that approach, they allege, six elections in Table 2 show cohesion, while six do not.<sup>5</sup> *Id*. Again, this Court and the parties have *already conducted* the exact analysis Defendants request and came to the opposite conclusion, *see* ECF No. 242 at 73-87, as did Dr. Grofman. In Table 2, Dr. Grofman analyzed twelve City Council elections with viable minority candidates from the

<sup>&</sup>lt;sup>5</sup> Even if the Court were to count the elections in Table 2 as Defendants urge, as this Court and other Courts in this Circuit have found, it is not the case that minority support for a candidate must be 50% in a *multi-candidate* election. *See* ECF No. 242 at 86; *Lewis*, 99 F.3d at 613, n.10 (holding that candidates are not required to "achieve a threshold of 50% in a multi-candidate election" to be considered a minority-preferred candidate). Thus, even under Defendants' preferred method of counting, at least 8 elections (or 66%, and well over 50%) demonstrate cohesion. ECF No. 281-1 at 14 (Table 2).

period between 2010 and 2018 and found that voting "between the minority and non-minority community" in Virginia Beach "is clearly polarized . . ." ECF No. 281-1 at 15. Dr. Grofman then built on this analysis, ". . . focus[ing] on the voting patterns that [he was] already examining in the context of determining whether particular proposed districts in alternative plans create genuine equal opportunity for the minority community to participate in the electoral process and to elect candidates of choice." *Id.* at 17. As Dr. Grofman notes, he:

look[ed] at the evidence for political cohesion derived from analysis of election returns ... My analysis parallels that in Judge Jackson's Opinion . . . and reaches, from a political science point of view, exactly the same conclusion, namely that, in terms of electoral cohesion, the minority community in Virginia Beach (African-American plus Hispanic, plus Asian-American), is, as a group, unquestionably politically cohesive in its support of minority candidates, while the White community in Virginia Beach is unquestionably politically cohesive in its opposition to minority candidates.

Id. at 17 (emphasis added).

Dr. Grofman analyzed each of the contests in Table 2, noting whether they demonstrated cohesion, and concluded that this analysis shows "essentially indisputable evidence of political cohesive patterns of voting for both White voters and for minority voters in terms of electoral cohesion," and in the majority of elections he analyzes. *Id.* at 14, 17-19. Thus, this additional evidence of HBA cohesion from Dr. Grofman not only does exactly what Defendants suggest, but also strengthens the Court's previous liability finding with complementary analysis.

#### **B.** Incumbent Pairings

Finally, Defendants requested that the Special Master "determine whether the[] pairing [of Guy Tower and Linwood Branch] can be avoided consistent with other criteria and Section 2 considerations." Defs. Br. at 11. While Plaintiffs do not object to this request, it should only be made if it doesn't negatively impact other criteria or election staggering, *see* ECF No. 281-1 at 41. However, Plaintiffs note that unpairing these incumbents is not a legal requirement.

#### CONCLUSION

For the reasons stated above, Plaintiffs respectfully request that the Court (1) adopt the Special Master's Illustrative Map after modifications to District 4 are made to include the residence of Georgia Allen and the Burton Station community, and (2) make express factual findings that the remedial submissions from both parties and the Special Master's Report reinforce the Court's earlier findings that there is minority voter cohesion among HBA voters in Virginia Beach and that white bloc voting usually defeats candidates preferred by HBA voters.

Dated: December 7, 2021

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#### **CERTIFICATE OF SERVICE**

I hereby certify that on the 7th day of December 2021, I electronically filed the foregoing

with the Clerk of the Court using the CM/ECF system, which will then send a notification of such

filing to the following:

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# **EXHIBIT 1** Declaration of Anthony Fairfax

Pursuant to 28 U.S.C. § 1746, I, Anthony Fairfax, declare under penalty of perjury that the following is true and correct to the best of my knowledge:

# Background

- 1. I have been asked to verify whether the three minority opportunity districts in the Special Master's remedial plan (Districts 4, 7, and 10) are majority Hispanic, Black and Asian (HBA) combined according to their Citizen Voting Age Population (CVAP).
- 2. I was also to asked to verify whether the three minority opportunity districts in a modified version of the Special Master's plan ("Modified Plan") are majority HBA combined according to their CVAP; whether the Modified Plan contains the address of Georgia Allen; and to report the overall population deviation for the Modified Plan.

#### Summary

3. After reviewing the Special Master's minority opportunity districts and analyzing the demographics, I conclude that Districts 4, 7, and 10 contained within the Special Master's Plan all are greater than 50% HBA CVAP. I also reached this conclusion for Districts 4, 7, and 10 in the Modified Plan. This is the case whether the "alone" race categories or multiracial categories for calculating district demographics are utilized.

# Software and Data

4. The software utilized to analyze the Special Master's Plan was Maptitude for Redistricting (Maptitude) by Caliper Corp. Maptitude for Redistricting is one of the leading redistricting software applications utilized by consultants, major nonprofit groups, and governmental entities.

- 5. In addition, I utilized several datasets to conduct this analysis, including:
  - a) The 2020 Census data (PL94-171 data) for the state of Virginia;
  - b) To evaluate district configurations, I downloaded the most recent race/ethnicity citizenship data, which is the 2015-2019 5-Year American Community Survey (ACS) shapefile dataset at the block group level for the City of Virginia Beach.<sup>1</sup> In addition to the block group shapefile, I also downloaded a dataset containing disaggregated CVAP data at the 2020 census block level; and<sup>2</sup>
  - c) Plaintiffs' counsel gave me the block equivalency file for the Special Master's Remedial Plan and the Modified Plan. The block equivalency file enabled me to recreate the Special Master's plan and Modified Plan utilizing the Maptitude software.

#### Methodology

- 6. In order to review the 2019 5-Year CVAP data at the district level for the Special Masters' Plan, I utilized Maptitude for Redistricting's disaggregation/aggregation process. The disaggregation/aggregation process is an industry-acceptable and standard process used to when evaluating citizenship data or other data that is not provided at the census block or other levels.<sup>3</sup> Two separate verification processes were utilized to disaggregate and reaggregate the data. First, the block group shapefile CVAP data were disaggregated to the census block level and aggregated to the district level and other geographic levels. Second, in a separate procedure, the census block CVAP data that had been previously disaggregated was processed by only aggregating the data to the district level and other geographic levels.
- 7. After both disaggregation/aggregation processes were completed, estimated CVAP data were available for the next step, which was to import the Special Master's plan into the Maptitude system. I imported the block equivalency files for the Special Master's plan into Maptitude. Once imported, I was able to select the appropriate summary race/ethnicity fields and view and compare the HBA totals with the totals presented in the Special Master's Final Report (using both data processes). The results were viewed in Maptitude's Dataview tables, and hardcopy pdf reports were generated (see Appendix A).

<sup>&</sup>lt;sup>1</sup> See https://www.census.gov/programs-surveys/decennial-census/about/voting-rights/cvap.2018.html

<sup>&</sup>lt;sup>2</sup> Both of these files were downloading from the Redistricting Data Hub website, which provides public access to commonly used redistricting data. The website provides two forms of CVAP data, a block group level shapefile using 2010 block group boundaries and another dataset with CVAP data disaggregated to 2020 census blocks. See https://www.redistrictingdatahub.org

<sup>&</sup>lt;sup>3</sup> Disaggregation apportions a population to a lower geographic area from a higher geographic area using a percentage of a matching population field at both geographic levels. In this instance, voting age population was used as the weighted variable to apportion amounts to census blocks. Aggregation sums up the lower level results to all other higher geographic levels that are to be used. Maptitude also includes a pure geographic disaggregation/aggregation process that was not utilized during this analysis.

#### A. IV. Summary Analysis of Special Master's Opportunity Districts

8. After recreating the Special Master's Plan in Maptitude, it is apparent that each of the minority opportunity districts has a CVAP percentage over 50% for HBA alone categories as well as the combined categories. This is true using the data utilized by the Special Master in Dave's Redistricting (see Table 1) or the Maptitude data (see Tables 2 and 3).<sup>4</sup>

		NH		NH	NH		HBA
	Total	White	Hispanic	Black	Asian	HBA	Comb
District 4	30,440	47.7%	8.7%	34.8%	6.8%	50.3%	52.3%
District 7	33,828	46.8%	8.6%	30.5%	12.5%	51.6%	53.2%
District 10	29,989	45.4%	9.0%	32.5%	11.4%	52.8%	54.6%

 Table 1 – Special Master's Plan for Districts 4, 7, 10 (CVAP Percentages)

Source: Special Master's Report at 37-38.

		NH		NH	NH		HBA
	Total	White	Hispanic	Black	Asian	HBA	Comb
District 4	30,413	47.7%	8.8%	35.1%	6.6%	50.4%	53.2%
District 7	33,828	46.6%	8.6%	31.2%	12.4%	52.2%	55.2%
District 10	30,027	45.3%	8.9%	32.4%	11.6%	52.8%	56.8%

Source: Special Master Plan Block Equivalency File and census block CVAP data in Maptitude

#### Table 3 – Recreation of the Special Master's Plan for Districts 4, 7, 10

#### (Block Group CVAP%)

		NH		NH	NH		HBA
	Total	White	Hispanic	Black	Asian	HBA	Comb
District 4	30,161	47.7%	8.8%	34.9%	6.8%	50.4%	52.7%
District 7	33,273	47.1%	8.6%	30.1%	12.6%	51.3%	53.9%
District 10	30,167	45.2%	9.0%	32.6%	11.4%	53.0%	56.4%

Source: Special Master Plan Block Equivalency File and block group CVAP data in Maptitude

<sup>&</sup>lt;sup>4</sup> The Census Bureau classifies those that select one race on the deccenial census survey as "Alone." For example, those that only selected Black and did not select another race category. The "Combined" designation refers to all of the racial categories combined for a given race. For instance, those that selected Black Alone plus those that selected Black and White, and those that select Black, White, and Asian, etc. It is important to note that all of the race categories in this analysis used the "Not Hispanic" category in order to not duplicate counting of Hispanic or Latino persons when the Hispanic category is added.

9. The results from both of the recreations were very similar to the Special Master's Plan and Final Report (see Table 2 & 3 in Special Master's Report), and there is no question that all methods show that all three opportunity districts are above 50% HBA CVAP. Any difference between the results is immaterial and is likely due to either the Special Master's use of Dave's Redistricting Application (DRA) (which may have a different disaggregation/aggregation process) or the combined race values that are used in DRA for each of the racial groups.<sup>5</sup> That the results are very similar using both methods and software validates that the districts' demographics are over 50% HBA CVAP.

#### B. Summary Analysis of Modified Special Master Plan

- **10.** A second plan, the Modified Plan was also reviewed. The Modified Plan included slight modifications to the Special Master's Plan to add the residence of plaintiff Georgia Allen within District 4 and to add the Burton Station community to District 4.
- **11.** Using the same process outlined above in paragraphs 6 and 7 of my declaration, I imported the block equivalency file into Maptitude and reviewed the CVAP percentages. Similarly, two types of disaggregation/aggregation CVAP datasets were reviewed. The results for the Modified Plan are shown in Tables 4 and 5 (see Appendix B).
- 12. Also, I utilized Maptitude to geocode the address for Georgia Allen's residence and overlayed the point location on the Modified Plan. I then verified that the address was located within District 4's boundaries. Georgia Allen's address is located within the boundaries of District 4.
- **13.** All three opportunity districts in the Modified Plan (Districts 4, 7 and 10) have populations above 50% HBA CVAP, regardless of the disaggregation/aggregation method and whether the alone or combined race categories are viewed. In addition, the overall plan deviation for the Modified Plan is 8.48%.

		NH		NH	NH		HBA
	Total	White	Hispanic	Black	Asian	HBA	Comb
District 4	32,458	47.8%	8.8%	35.2%	6.3%	50.3%	52.0%
District 7	33,828	46.6%	8.6%	31.2%	12.4%	52.2%	54.1%
District 10	30,027	45.3%	8.9%	32.4%	11.6%	52.8%	55.3%

#### Table 4 – Recreation of the Modified Plan for Districts 4, 7, 10 (Block CVAP%)

Source: Modified Plan Block Equivalency File and census block CVAP data in Maptitude

<sup>&</sup>lt;sup>5</sup> Since the recreations of the Special Master's plan are higher than the results from using DRA, the slight error is most likely due to both dissaggregation/aggregation processes and DRA's use of combined racial groups.

		NH		NH	NH		HBA
	Total	White	Hispanic	Black	Asian	HBA	Comb
District 4	32,271	47.6%	8.8%	35.2%	6.5%	50.5%	52.2%
District 7	33,273	47.1%	8.6%	30.1%	12.6%	51.3%	53.2%
District 10	30,167	45.2%	9.0%	32.6%	11.4%	53.0%	55.5%

# Table 5 – Recreation of the Modified Plan for Districts 4, 7, 10 (Block Group CVAP%)

Source: Modified Plan Block Equivalency File and block group CVAP data in Maptitude

14. Once again, after recreating the Modified Special Master's Plan in Maptitude, it is apparent that each of the minority opportunity districts has a CVAP percentage over 50% for HBA alone categories and the combined categories.

Dated: December 7, 2021.

Thoyze

Anthony Fairfax

Appendix A

Maptitude Population Summary Report

Recreated Special Master's Plan

Districts 4, 7, 10

VAB Special Masters Block CVAP Report VAB Special Masters Block Group CVAP Report User: Tony Fairfax

Plan Name: VAB Special Masters Block CVAP

Plan Type: Special Master Plan

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	Jula		Juli	ппагу	

#### Friday, November 26, 2021

District	Population D	eviation	% Devn. CVA	AP_TOT19	[%	[%	[%	[%	[HBACVAP1	[HBA
					CVAP_WHT1	CVAP_HSP1	CVAP_BLK19	CVAP_ASN1	<b>9</b> %]	CVP19cmb%
					9]	9]	]	9]		]
04	43,810	-2,137	-4.65%	30,413	47.73%	8.75%	35.09%	6.55%	50.4%	53.24%
07	45,773	-174	-0.38%	33,828	46.55%	8.65%	31.15%	12.42%	52.21%	55.18%
10	45,821	-126	-0.27%	30,027	45.28%	8.86%	32.37%	11.58%	52.8%	56.83%
Total:	135,404									

Ideal District: 45,947

Summary Statistics:	
Population Range:	43,810 to 45,821
Ratio Range:	0.05
Absolute Range:	-2,137 to -126
Absolute Overall Range:	2,011
Relative Range:	-4.65% to -0.27%
Relative Overall Range:	4.38%
Absolute Mean Deviation:	812.33
Relative Mean Deviation:	1.77%
Standard Deviation:	936.89

9:44 AM

User: Tony Fairfax

Plan Name: VAB Special Masters Block Group CVAP

Plan Type: Special Masters Plan

Population Summary	
Friday, November 26, 2021	10:15 AM

District	Population De	eviation	% Devn.	CVAPTOT19	[%	[%	[%	[%	[HBA2	[% HBA2
					CVAPWHT1	CVAPHSP19]	CVAPBLK19] C	CVAPASN19]	CVAP19%]	CVPComb19
					9]					]
04	43,810	-2,137	-4.65%	30,161	47.66%	8.8%	34.87%	6.77%	50.44%	52.66%
07	45,773	-174	-0.38%	33,273	47.06%	8.59%	30.11%	12.61%	51.31%	53.9%
10	45,821	-126	-0.27%	30,167	45.23%	9.02%	32.56%	11.44%	53.02%	56.4%

Total: 135,404

Ideal District: 45,947

Summary Statistics:	
Population Range:	43,810 to 45,821
Ratio Range:	0.05
Absolute Range:	-2,137 to -126
Absolute Overall Range:	2,011
Relative Range:	-4.65% to -0.27%
Relative Overall Range:	4.38%
Absolute Mean Deviation:	812.33
Relative Mean Deviation:	1.77%
Standard Doviation:	

#### **Field Descriptions for Reports:**

VAB Special Masters Block CVAP VAB Special Masters Block Group CVAP

#### VAB Special Masters Block CVAP:

CVAP\_TOT19 – Total 2019 CVAP CVAP\_WHT19% - Not Hispanic White Alone 2019 CVAP CVAP\_HSP19% - Hispanic 2019 CVAP CVAP\_BLK19% - Not Hispanic Black Alone 2019 CVAP CVAP\_ASN19% - Not Hispanic Asian Alone 2019 CVAP HBACVAP1919% - Hispanic Black and Asian Alone 2019 CVAP

VAB Special Masters Block Group CVAP: CVAPTOT19 – Total 2019 CVAP CVAPWHT19% - Not Hispanic White Alone 2019 CVAP CVAPHSP19% - Hispanic 2019 CVAP CVAPBLK19% - Not Hispanic Black Alone 2019 CVAP CVAPASN19% - Not Hispanic Asian Alone 2019 CVAP HBACVAP1919% - Hispanic Black and Asian Alone 2019 CVAP

\*Field names are slightly different in each dataset

Appendix B

Maptitude Population Summary Report

Modified Special Master's Plan

All Districts

VAB Modified Special Masters Block CVAP Report VAB Modified Special Masters Block Group CVAP Report User: Tony Fairfax

Plan Name: VAB Modified Special Masters Block CVAP

Plan Type: VAB CC 10 District

# **Population Summary**

Monday, December 6, 2021

District	Population D	Deviation	% Devn. CV/	AP_TOT19	[%	[%	[%	[%	[%	[%
					CVAP_WHT1	CVAP_HSP1	CVAP_BLK19	CVAP_ASN1	HBACVAP]	HBACVAPCo
					9]	9]	]	9]		mb]
01	47,583	1,636	3.56%	37,113	65.17%	4.61%	20.65%	7.87%	33.13%	35.25%
02	45,624	-323	-0.70%	30,630	72.46%	4.64%	14.3%	7.63%	26.57%	28.26%
03	47,230	1,283	2.79%	34,948	63.56%	7.89%	21.54%	5.76%	35.19%	37.02%
04	46,727	780	1.70%	32,458	47.8%	8.75%	35.18%	6.32%	50.26%	51.97%
05	45,062	-885	-1.93%	34,485	77.45%	7.22%	10.2%	3.91%	21.32%	23.39%
06	43,686	-2,261	-4.92%	33,373	75.43%	4.33%	16.36%	2.64%	23.32%	25.28%
07	45,773	-174	-0.38%	33,828	46.55%	8.65%	31.15%	12.42%	52.21%	54.06%
08	46,779	832	1.81%	34,775	83.98%	3.38%	6.79%	4.87%	15.05%	17.08%
09	45,185	-762	-1.66%	33,642	77.37%	5.7%	10.29%	5.2%	21.18%	22.16%
10	45,821	-126	-0.27%	30,027	45.28%	8.86%	32.37%	11.58%	52.8%	55.26%

Total: 459,470

Ideal District: 45,947

Summary Statistics:	
Population Range:	43,686 to 47,583
Ratio Range:	0.09
Absolute Range:	-2,261 to 1,636
Absolute Overall Range:	3,897
Relative Range:	-4.92% to 3.56%
Relative Overall Range:	8.48%
Absolute Mean Deviation:	906.20
Relative Mean Deviation:	1.97%
Standard Deviation:	1 106 78

8:20 PM

User: Tony Fairfax

Plan Name: VAB Modified Special Masters BG CVAP

Plan Type: VAB CC 10 Districts

# **Population Summary**

Monday, December 6, 2021

District	Population	Deviation	% Devn.	CVAPTOT19	[% CVAPWHT19]	[% CVAPHSP19]	[% CVAPBLK19]	[% [ <b>CVAPASN19</b> ]	[% HBACVP2]
01	47,583	1,636	3.56%	37,052	64.55%	4.55%	21.67%	7.94%	34.15%
02	45,624	-323	-0.70%	30,726	72.32%	4.63%	14.37%	7.54%	26.55%
03	47,230	1,283	2.79%	35,270	63.63%	7.89%	21.41%	5.65%	34.95%
04	46,727	780	1.70%	32,271	47.63%	8.78%	35.22%	6.53%	50.53%
05	45,062	-885	-1.93%	34,482	77.5%	7.18%	10.17%	3.93%	21.29%
06	43,686	-2,261	-4.92%	33,385	75.35%	4.38%	16.45%	2.55%	23.39%
07	45,773	-174	-0.38%	33,273	47.06%	8.59%	30.11%	12.61%	51.31%
08	46,779	832	1.81%	34,793	84.03%	3.36%	6.81%	4.87%	15.04%
09	45,185	-762	-1.66%	33,846	77.36%	5.69%	10.28%	5.21%	21.18%
10	45,821	-126	-0.27%	30,167	45.23%	9.02%	32.56%	11.44%	53.02%
Total Popula	ation:		459,470						
Ideal District I	Population:		45,947						
Summary S	statistics:								
Population R	ange:		43,686 to 47	,583					
Ratio Range:			0.09						
Absolute Ran	ige:		-2,261 to 1,6	36					
Absolute Ove	erall Range:		3,897						
Relative Rang	ge:		-4.00% to 3.5	56%					
Relative Over	rall Range:		8.48%						
Absolute Me	an Deviation:		906.20						
Relative Mea	n Deviation:		1.97%						
Standard Dev	viation:		1,106.78						

8:23 PM

#### **Field Descriptions for Reports:**

VAB Modified Special Masters Block CVAP VAB Modified Special Masters Block Group CVAP

# VAB Modified Special Masters Block CVAP:

CVAP\_TOT19 – Total 2019 CVAP CVAP\_WHT19% - Not Hispanic White Alone 2019 CVAP CVAP\_HSP19% - Hispanic 2019 CVAP CVAP\_BLK19% - Not Hispanic Black Alone 2019 CVAP CVAP\_ASN19% - Not Hispanic Asian Alone 2019 CVAP HBACVAP1919% - Hispanic Black and Asian Alone 2019 CVAP

#### VAB Modified Special Masters Block Group CVAP:

CVAPTOT19 – Total 2019 CVAP CVAPWHT19% - Not Hispanic White Alone 2019 CVAP CVAPHSP19% - Hispanic 2019 CVAP CVAPBLK19% - Not Hispanic Black Alone 2019 CVAP CVAPASN19% - Not Hispanic Asian Alone 2019 CVAP HBACVAP1919% - Hispanic Black and Asian Alone 2019 CVAP

\*Field names are slightly different in each dataset

# 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.

# **EXHIBIT 2** Excerpted Transcript of September 17, 2020 Deposition of Kimball Brace

Transcript of Kimball Brace Conducted on September 17, 2020 11 (41 to 44)

<sup>41</sup> 1 law as it pertains to Virginia Beach. We worked	43 1 how that applies in Virginia Beach?
2 with the National Conference of State Legislatures	2 A. Well. from the standpoint of Virginia
3 in their compilation of legal requirements. I'm	3 Beach. you're looking at trying to create
4 one of those on the group of people that created	4 districts that fairly reflect the minority voting
5 what's called the Red Book. It has been a book on	5 strength. That usually means that you're trying
6 redistricting and redistricting law that the	6 to determine minority voting strength That may
7 National Conference of State Legislatures has	7 be through racial voting analysis. It may be
8 generated for the last three to four decades And	8 through compilation of data
9 I'm one of those that have been involved in	Generally what we what we have looked
10 helping put that together	10 at before in terms of Virginia Beach is what is
11  O  Okay  And  Wanted to go back to the	11 the canability of the minority groups to to
12 one-person one-vote requirement. With respect to	12 effectuate successful outcomes in their districts
12 local redistricting in Virginia Beach, do you know	12 when there is a candidate of their similar ethnic
14 what the legal requirement is for one person	14 grouping
15 one-vote in Virginia Beach?	$15  O  And \ did \ you conduct a racial bloc yoting$
16 A It's similar to what it is in the state	16 analysis for your report in this case?
17 for Congressional I'm sorry: not	17 A For this report no I did not
18 Congressional for state Senate state House	17 A. For this report, no, i did not. 18 O And ob I'm sorry And also the
10 districts It's generally that you have an	10 current set of residency districts include a
20 overall 10 percent deviation window that you need	20 district that is majority minority is that right?
21 to get your districts within Generally that's	21 A It is a combination of minority majority
22 looked at as 5 percent above the ideal district	22 There is no single race minority majority.
	22 There is no single face minority-majority
1	
1 size and 5 percent below the ideal district size.	1 district.
1 size and 5 percent below the ideal district size. 2 So all of the districts that you're	44 1 district. 2 Q. But it is possible to draw a district that
<ul> <li>42</li> <li>1 size and 5 percent below the ideal district size.</li> <li>2 So all of the districts that you're</li> <li>3 drawing need to come into that window. It's</li> </ul>	<ul> <li>44</li> <li>1 district.</li> <li>2 Q. But it is possible to draw a district that</li> <li>3 is majority Black in Virginia Beach if you're</li> </ul>
<ul> <li>42</li> <li>42</li> <li>1 size and 5 percent below the ideal district size.</li> <li>2 So all of the districts that you're</li> <li>3 drawing need to come into that window. It's</li> <li>4 something that we recognize and is on all of our</li> </ul>	<ul> <li>44</li> <li>1 district.</li> <li>2 Q. But it is possible to draw a district that</li> <li>3 is majority Black in Virginia Beach if you're</li> <li>4 drawing one of seven districts; is that right?</li> </ul>
<ul> <li>42</li> <li>1 size and 5 percent below the ideal district size.</li> <li>2 So all of the districts that you're</li> <li>3 drawing need to come into that window. It's</li> <li>4 something that we recognize and is on all of our</li> <li>5 reports. The first page is generally what is the</li> </ul>	<ul> <li>44</li> <li>1 district.</li> <li>2 Q. But it is possible to draw a district that</li> <li>3 is majority Black in Virginia Beach if you're</li> <li>4 drawing one of seven districts; is that right?</li> <li>5 A. It is, and that's why I included the one</li> </ul>
<ul> <li>42</li> <li>42</li> <li>1 size and 5 percent below the ideal district size.</li> <li>2 So all of the districts that you're</li> <li>3 drawing need to come into that window. It's</li> <li>4 something that we recognize and is on all of our</li> <li>5 reports. The first page is generally what is the</li> <li>6 factors that come into play in that jurisdiction</li> </ul>	<ul> <li>44</li> <li>1 district.</li> <li>2 Q. But it is possible to draw a district that</li> <li>3 is majority Black in Virginia Beach if you're</li> <li>4 drawing one of seven districts; is that right?</li> <li>5 A. It is, and that's why I included the one</li> <li>6 map that I was able to pull out of my files from</li> </ul>
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<ul> <li>42</li> <li>42</li> <li>1 size and 5 percent below the ideal district size.</li> <li>2 So all of the districts that you're</li> <li>3 drawing need to come into that window. It's</li> <li>4 something that we recognize and is on all of our</li> <li>5 reports. The first page is generally what is the</li> <li>6 factors that come into play in that jurisdiction</li> <li>7 when you're drawing districts and what's the</li> <li>8 window that you need to be looking at and being</li> </ul>	<ul> <li>44</li> <li>1 district.</li> <li>2 Q. But it is possible to draw a district that</li> <li>3 is majority Black in Virginia Beach if you're</li> <li>4 drawing one of seven districts; is that right?</li> <li>5 A. It is, and that's why I included the one</li> <li>6 map that I was able to pull out of my files from</li> <li>7 2010. That was one of the plans that a minority</li> <li>8 member came in and worked with me to create a</li> </ul>
42 1 size and 5 percent below the ideal district size. 2 So all of the districts that you're 3 drawing need to come into that window. It's 4 something that we recognize and is on all of our 5 reports. The first page is generally what is the 6 factors that come into play in that jurisdiction 7 when you're drawing districts and what's the 8 window that you need to be looking at and being 9 cognizant of.	<ul> <li>44</li> <li>1 district.</li> <li>2 Q. But it is possible to draw a district that</li> <li>3 is majority Black in Virginia Beach if you're</li> <li>4 drawing one of seven districts; is that right?</li> <li>5 A. It is, and that's why I included the one</li> <li>6 map that I was able to pull out of my files from</li> <li>7 2010. That was one of the plans that a minority</li> <li>8 member came in and worked with me to create a</li> <li>9 majority-minority. It's kind of strange-looking</li> </ul>
<ul> <li>42</li> <li>42</li> <li>1 size and 5 percent below the ideal district size.</li> <li>2 So all of the districts that you're</li> <li>3 drawing need to come into that window. It's</li> <li>4 something that we recognize and is on all of our</li> <li>5 reports. The first page is generally what is the</li> <li>6 factors that come into play in that jurisdiction</li> <li>7 when you're drawing districts and what's the</li> <li>8 window that you need to be looking at and being</li> <li>9 cognizant of.</li> <li>10 Q. And you mentioned that you need a 10</li> </ul>	<ul> <li>44</li> <li>1 district.</li> <li>2 Q. But it is possible to draw a district that</li> <li>3 is majority Black in Virginia Beach if you're</li> <li>4 drawing one of seven districts; is that right?</li> <li>5 A. It is, and that's why I included the one</li> <li>6 map that I was able to pull out of my files from</li> <li>7 2010. That was one of the plans that a minority</li> <li>8 member came in and worked with me to create a</li> <li>9 majority-minority. It's kind of strange-looking</li> <li>10 and stretches the the entire width of the city,</li> </ul>
<ul> <li>42</li> <li>42</li> <li>1 size and 5 percent below the ideal district size.</li> <li>2 So all of the districts that you're</li> <li>3 drawing need to come into that window. It's</li> <li>4 something that we recognize and is on all of our</li> <li>5 reports. The first page is generally what is the</li> <li>6 factors that come into play in that jurisdiction</li> <li>7 when you're drawing districts and what's the</li> <li>8 window that you need to be looking at and being</li> <li>9 cognizant of.</li> <li>10 Q. And you mentioned that you need a 10</li> <li>11 percent window. Is it possible to have that</li> </ul>	<ul> <li>44</li> <li>1 district.</li> <li>2 Q. But it is possible to draw a district that</li> <li>3 is majority Black in Virginia Beach if you're</li> <li>4 drawing one of seven districts; is that right?</li> <li>5 A. It is, and that's why I included the one</li> <li>6 map that I was able to pull out of my files from</li> <li>7 2010. That was one of the plans that a minority</li> <li>8 member came in and worked with me to create a</li> <li>9 majority-minority. It's kind of strange-looking</li> <li>10 and stretches the the entire width of the city,</li> <li>11 but that's the only way that they could create</li> </ul>
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<ul> <li>42</li> <li>42</li> <li>1 size and 5 percent below the ideal district size.</li> <li>2 So all of the districts that you're</li> <li>3 drawing need to come into that window. It's</li> <li>4 something that we recognize and is on all of our</li> <li>5 reports. The first page is generally what is the</li> <li>6 factors that come into play in that jurisdiction</li> <li>7 when you're drawing districts and what's the</li> <li>8 window that you need to be looking at and being</li> <li>9 cognizant of.</li> <li>10 Q. And you mentioned that you need a 10</li> <li>11 percent window. Is it possible to have that</li> <li>12 window be 3 percent below and 7 percent above,</li> <li>13 such that it makes up a total window of 10</li> </ul>	<ul> <li>44</li> <li>1 district.</li> <li>2 Q. But it is possible to draw a district that</li> <li>3 is majority Black in Virginia Beach if you're</li> <li>4 drawing one of seven districts; is that right?</li> <li>5 A. It is, and that's why I included the one</li> <li>6 map that I was able to pull out of my files from</li> <li>7 2010. That was one of the plans that a minority</li> <li>8 member came in and worked with me to create a</li> <li>9 majority-minority. It's kind of strange-looking</li> <li>10 and stretches the the entire width of the city,</li> <li>11 but that's the only way that they could create</li> <li>12 a it in working with me.</li> <li>13 Q. Okay. And so when you have these criteria</li> </ul>
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