

**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

**PLAINTIFFS’ REPLY TO DEFENDANTS’ RESPONSE TO PLAINTIFFS’ MOTION
FOR STAY OF PROCEEDINGS**

Defendants focus their Response to Plaintiffs’ stay motion on their arguments in support of dismissal, contending that the case should not be stayed because they believe it must be dismissed as unripe. Plaintiffs will fully respond to Defendants’ motion to dismiss in due course,¹ but Defendants are wrong. As a result of the Fourth Circuit’s decision, the law today provides that the Virginia Beach City Council has seven members who are to be elected from districts and three members who are to be elected at-large (“7-3 system”). Unless the legislature adopts a Charter amendment or this Court enjoins that system, the 7-3 system is the law of the land today for all future elections for the City Council. “A case is fit for adjudication ‘when the action in controversy is final and not dependent on future uncertainties. Stated alternatively, ‘[a] claim is not ripe if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.’” *Scoggins v. Lee’s Crossing Homeowners Ass’n*, 718 F.3d 262, 270 (4th Cir. 2013) (quoting

¹ The deadline for filing this Reply precedes the deadline for filing the response to the dismissal motion.

Miller v. Brown, 462 F.2d 312, 319 (4th Cir. 2006)). Whether or not the 7-3 system—the system that as of today will govern the 2024 and all future elections—violates the Voting Rights Act is not dependent on some future contingent event; it presents a currently live dispute

That dispute is not somehow unripe because the City has decided, for practical timing reasons, to continue implementing the 10-district system for the upcoming November 8, 2022 election. That does not change the law of the land, and as it stands today that law mandates a 7-3 system for the 2024 election. Plaintiffs are not required to wait until November 9, 2022 to challenge the existing system established by the City’s Charter. It is fully known—and not abstract—what the City Charter requires. A challenge to the 7-3 system is therefore ripe. And it is not difficult to see that the 7-3 system violates the Voting Rights Act. As Special Master Grofman explained, “[t]he seven single member district and three at-large district plan submitted by the City of Virginia Beach can be rejected on multiple grounds,” including because it “creates at most two *minority opportunity districts* whereas . . . the creation of three *minority opportunity districts* appears to be mandated.” Doc. 281-1 at 25.

The dispute over the 7-3 system likewise does not become unripe because of the possibility that the City Council will in the future request a legislative amendment to its Charter. It is always possible an existing law may change; that possibility does not render a challenge to the existing law unripe. Plaintiffs have requested a short stay of litigation until March 2023 as a showing of good faith and in the interest of judicial economy because they are hopeful—and have reason to believe—that the newly constituted City Council in January 2023 might request the legislature to amend the City Charter to adopt a 10-district system without the need of further litigation. The City Council would certainly be wise to do so, because this Court has already adopted the Special Master’s report finding that a 7-3 system is unlawful because it fails to provide three minority

opportunity districts. And the Virginia Voting Rights Act likewise is violated by a 7-3 system. It would seem wise—and financially prudent—for the City to avoid even more litigation given this Court’s fact-finding regarding the lawfulness of a 7-3 system. Although Plaintiffs believe it is in the parties’, the City’s, and the residents’ best interest to provide the new City Council taking office in January 2023 some time and space to voluntarily take steps to adopt a VRA-compliant election system, that does not as a legal matter make the challenge to the 7-3 system unripe. It is merely a reason for the Court to consider staying the litigation.

Defendants’ only argument in opposition to a stay is its meritless contention that this lawsuit has become unripe. Defendants do not refute Plaintiffs’ argument that the interests of judicial economy weigh heavily in favor of granting a stay of proceedings. Nor do Defendants refute that Plaintiffs will experience hardship absent a stay. Finally, the Defendants failed to explain any prejudice that they might experience if the stay is granted. In sum, Plaintiffs’ arguments in favor of this Court granting its Motion for a Stay of Proceedings are unchallenged by Defendants. Plaintiffs respectfully request that this Court accordingly grant Plaintiffs’ Motion.

Dated October 24, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2022, the foregoing document was filed electronically with the Clerk of the Court using CM/ECF system, and that the following counsel of record were served by CM/ECF:

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