

**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.*

Case No. 2:18-cv-0069

**DEFENDANTS’ OPPOSITION TO PLAINTIFFS’ RULE 60(B)  
MOTION FOR RELIEF FROM JUDGMENT**

Plaintiffs’ motion under Rule 60(b) challenges a stipulation of voluntary dismissal they willingly entered in November 2023. Plaintiffs dismissed this lawsuit because the City of Virginia Beach gave them all the relief they sought by adopting the 10-1 redistricting plan fashioned by Dr. Grofman, which Plaintiffs believe contains three minority opportunity districts and satisfies Section 2 of the Voting Rights Act (“VRA”).<sup>1</sup> Plaintiffs’ contention that some unknown form of an alternative system with seven single-member districts and three at-large districts (a “7-3-1 system”) would violate Section 2 presented no live claim at that time, since the City had adopted no such system. Hence, Plaintiffs ended the suit on their own volition—17 months ago.

Nothing material has changed. Virginia Beach remains governed by the same 10-1 system in force in November 2023. In requesting that the Court take the extraordinary step of vacating their voluntary dismissal, Plaintiffs rest on assertions to the vague effect that a 7-3-1 system is more likely to be imposed on, or adopted by, the City now than was the case when they dismissed

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<sup>1</sup> The defendants in this case are the City of Virginia Beach, the Virginia Beach City Council, the City Manager, the City Registrar of Elections, and the members of the Virginia Beach City Council, all in their official capacities (collectively, the “City”).

this action. These assertions fail even to establish a live claim, let alone justify relief from the judgment. Because federal jurisdiction lies only in the event of present injury-in-fact and cannot be based on contingencies that may or may not arise, this Court lacks jurisdiction to consider whether some future 7-3-1 system might violate the VRA.

The possibility of a future 7-3-1 system is at best highly speculative. The City may prevail in the state court litigation challenging the 10-1 system (the “*Branch* litigation”), as Plaintiffs believe should occur. Alternatively, the City’s electorate may vote in favor of the 10-1 system in an upcoming referendum, as a public-opinion poll suggests is likely, and a new General Assembly and Governor—following the voters’ will—may explicitly endorse the 10-1 system and cure all remaining doubt about the City’s authority to use it. But, even if events transpire as Plaintiffs fear, their voluntary dismissal was without prejudice and thus supplies no bar to their seeking relief in a new lawsuit in the future.

Plaintiffs also allege that the City is failing to “take all steps necessary to maintain a 10-1 system,” ECF No. 322 (“Mot.”) at 1, but they have no legal entitlement to “steps.” The VRA protects Plaintiffs from election methods actually imposed by a government that are dilutive under the Section 2 standard. Moreover, Plaintiffs’ factual assertions are inaccurate and hyperbolic. For example, they suggest the City is no longer defending the 10-1 system in the *Branch* litigation, but the City just today filed a motion for summary judgment, attached as Ex. A, urging the state court to reject the challenge to the 10-1 system in full. The City also urges the state court, in the alternative, to direct the case to trial on the question of whether a 7-3-1 system would be dilutive or retrogressive under the Virginia Voting Rights Act (“VAVRA”). Ex. A. The state court filing refutes the notion that the City has abandoned the defense of the 10-1 system and demonstrates its pursuit of various meritorious avenues to judgment in favor of the 10-1 system.

In sum, there is no legal basis for Plaintiffs to demand that a federal action be reopened to monitor or address future events that may never arise. Plaintiffs' motion should be denied.

### LEGAL STANDARD

Rule 60(b) operates as an "exception to finality" of judgments. *Waetzig v. Halliburton Energy Servs., Inc.*, 145 S. Ct. 690, 694 (2025) (quoting *Gonzalez v. Crosby*, 545 U.S. 524, 529 (2005)). The analysis of a motion under Rule 60(b) proceeds in two steps. A movant "must first demonstrate (1) timeliness, (2) a meritorious defense, (3) a lack of unfair prejudice to the opposing party, and (4) exceptional circumstances." *Justus v. Clarke*, 78 F.4th 97, 105 (4th Cir. 2023) (quoting *Wells Fargo Bank, N.A. v. AMH Roman Two NC, LLC*, 859 F.3d 295, 299 (4th Cir. 2017)). If those threshold requirements are satisfied, a Rule 60(b) movant must then show that one of the six grounds in Rule 60(b)(1) to 60(b)(6) applies. *Id.* (citing *Dowell v. State Farm Fire & Cas. Auto. Ins.*, 993 F.2d 46, 48 (4th Cir. 1993)). Plaintiffs bring their motion solely under Rule 60(b)(5) and 60(b)(6).

### ARGUMENT

#### **I. Plaintiffs Fail to Establish Essential Threshold Conditions to Relief from the Judgment**

Rule 60(b) is unsatisfied as to at least one predicate condition, and that failing alone defeats Plaintiffs' motion. Plaintiffs fail to show a presently existing meritorious claim. A Rule 60(b) movant must "demonstrate that granting that relief will not in the end have been a futile gesture, by showing that she has a meritorious defense or claim." *Boyd v. Bulala*, 905 F.2d 764, 769 (4th Cir. 1990); *see also Justus*, 78 F.4th at 105 n.6 (movant must show that vacatur would "not be an empty exercise") (citation omitted). Plaintiffs identify no claim of even remote merit. The operative complaint in this case asserts a cause of action against an election system "in which all councilmembers are elected at-large in citywide elections." ECF No. 62 at ¶ 6. But the Fourth

Circuit has already found that claim moot, given that a Virginia law (HB2198 (2021)) eliminated seven of the at-large districts. *Holloway v. City of Virginia Beach*, 42 F.4th 266, 277 (4th Cir. 2022). Plaintiffs correctly note that the Fourth Circuit remanded the case to permit Plaintiffs to challenge “whatever post-HB 2198 electoral system the City adopts.” *Id.*; see Mot. 3. But the post-HB2198 system the City adopted is the 10-1 system that this Court and Plaintiffs have endorsed, as Plaintiffs admit. Mot. 3. Plaintiffs have no quarrel with, or claim against, the 10-1 system.

Plaintiffs present no proposed Second Amended Complaint to clarify what live claim they might have. They instead leave all material facts to the imagination through vague assertions about what *might* happen in, or as the result of, the *Branch* litigation. Each of Plaintiffs’ assertions suffers from the fundamental defect of raising—at most—claims “contingent [on] 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 *Texas v. United States*, 523 U.S. 296, 300 (1998)). This Court lacks jurisdiction to adjudicate a claim that is unripe.

**A. Plaintiffs Have No Ripe Claim Against a 7-3-1 System**

Plaintiffs first suggest the Court should “retain[] jurisdiction over *Holloway* Plaintiffs’ claim that the 7-3-1 system set forth in the City’s charter violates Section 2 of the VRA.” Mot. 3. But no controversy of that nature is “definite and concrete, touching on the legal relations of parties having adverse legal interests,” as a claim must be to be ripe. *Aetna Life Ins. Co. of Hartford, Conn. v. Haworth*, 300 U.S. 227, 240–41 (1937). The City is not using any 7-3-1 system. It has used Plaintiffs’ preferred 10-1 system for the past two elections, and that system continues to govern. A ruling from this Court concerning a 7-3-1 system would be an advisory opinion.

Plaintiffs correctly note that the City has been sued by different plaintiffs (the “*Branch* Plaintiffs”), who insist on state-law grounds that “the City must adhere to the 7-3-1 system in the

charter.” Mot. 1 n.1; *see also id.* at 4–5. But Plaintiffs ignore the difference between a lawsuit and a judgment. Because “[i]t is easy to file complaints,” but harder to win relief, *O’Keefe v. Chisholm*, 769 F.3d 936, 943 (7th Cir. 2014), the outcome of the state suit is “contingent [on] future events.” *Scoggins*, 718 F.3d at 270. Plaintiffs say nothing of the possibility that the City might *prevail* in the *Branch* litigation. The City has successfully defended a preliminary injunction motion in the state action, and the state court has said that it “cannot conclude that the [*Branch*] Plaintiffs are likely to succeed on the merits or not succeed on the merits.” ECF No. 322-4, Mot. Ex. 4, at 15–16. Because the outcome is uncertain, it is equally uncertain whether a 7-3-1 system will ever be imposed by a state-court judgment. Under similar circumstances, the Fourth Circuit held that it had “no jurisdiction” to decide the constitutionality of an ordinance that had been amended simply because, depending on the result of litigation, the locality might have re-enacted the original ordinance. *11126 Baltimore Blvd. v. Prince George’s County*, 924 F.2d 557, 557–58 (4th Cir. 1991); *see also Microstrategy Inc. v. Convisser*, No. 00-cv-453, 2000 WL 554264, at \*3 (E.D. Va. May 2, 2000) (finding employee’s claim about potential future adverse action unripe).

Additional contingencies abound. Among them is that, even if the City is compelled to adopt a 7-3-1 system, Plaintiffs might end up with no viable claim against the particular 7-3-1 plan it adopts. The VRA “contains no *per se* prohibitions against particular types of districts.” *Voinovich v. Quilter*, 507 U.S. 146, 155 (1993). The VRA instead “established broad boundaries,” and “[w]ithin those boundaries, in any given case, infinite variations of apportionment plans could be formulated, none of which would violate federal law.” *Sexson v. Servaas*, 33 F.3d 799, 804 (7th Cir. 1994). As Plaintiffs explained to the Fourth Circuit, “[t]he Plaintiffs in this case are not asking for the 10-1 remedial map,” but the removal of dilution through a plan with “at least three opportunit[y]” districts. Oral Argument at 21:40–50, 22:56–23:06, *Holloway v. City of Virginia*

*Beach*, 42 F.4th 266 (2022) (No. 21-1533), <https://www.ca4.uscourts.gov/OAarchive/mp3/21-1533-20220308.mp3>. Notably, the Fourth Circuit believed the City would utilize a 7-3-1 system after its remand but still found the action moot because it remained to be seen *which* iteration of a 7-3-1 system the City would adopt. *See Holloway*, 42 F.4th at 276–77. The same scenario would arise if the state court in *Branch* were to order a 7-3-1 system: a live claim would arise only after a *specific* 7-3-1 system were adopted by the City or imposed upon it.

It is true that the City has defended the 10-1 plan in the *Branch* litigation based in part on its contention, relying on expert-witness opinion, that a 7-3-1 system cannot yield three opportunity districts. But the City’s VAVRA defense is the subject of ongoing litigation and may be proven incorrect; there are a large number of possible ways to configure a 7-3-1 plan, and, in the course of the *Branch* litigation, it is possible that a 7-3-1 plan with three minority opportunity districts may emerge, whether produced by *Branch* Plaintiffs, the state court, or the City itself.<sup>2</sup> The bottom line is that the City must actually “adopt[ ]” a new plan before Plaintiffs will have a ripe claim against it. *Holloway*, 42 F.4th at 277.

Moreover, Plaintiffs overlook the possibility that Virginia state mechanisms will protect their interests. The newly enacted VAVRA prohibits “[a]n at-large method of election, including one that combines at-large elections with district- or ward-based elections,” if the method impairs a minority group’s “ability . . . to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution.” Va. Code § 24.2-130(A). VAVRA separately subjects changes in election systems to a preclearance process meant to prevent “retrogression in

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<sup>2</sup> This answers Plaintiffs’ observation that a 7-3-1 plan proposed by the City years ago at the remedial phase of this case was found not to contain three opportunity districts. Mot. 2 n.2. It does not follow from a finding about one 7-3-1 plan—configured with last decade’s census data—that all 7-3-1 plans would fail to provide three opportunity districts.

the position of members of a racial or ethnic group with respect to their effective exercise of the electoral franchise.” *Id.* § 24.2-129(A). A 7-3-1 plan the City adopts must therefore be tested in preclearance proceedings and potentially in litigation, which may prove sufficient to achieve a plan without the dilutive effect Plaintiffs allege may result. As these processes work themselves out, a federal court’s obligation is to defer to state proceedings. *See Growe v. Emison*, 507 U.S. 25, 32–37 (1993). No live claim against a 7-3-1 system may ever arise, so this case cannot be reopened to adjudicate such a claim.<sup>3</sup>

**B. Developments in the Political Process Give Rise to No Ripe or Cognizable Claim**

Plaintiffs seek to lend credibility to their concerns about a future 7-3-1 system by alleging that “Defendants have recently taken additional actions contradicting their adoption of the 10-1 plan.” Mot. 6. Plaintiffs cite as examples the recently approved referendum to enable the City’s electorate to state its view on which election system should govern the City, statements by council members that they “support a referendum and/or a 7-3-1 system,” and a statement in a recent state-court filing that the City’s principal motivation in defending the 10-1 system is bringing the long-running litigation to a close rather than achieving any specific redistricting system. *Id.* at 8–10. Plaintiffs also note that the council voted not to make another attempt at persuading the General Assembly to approve a charter change to confirm the legality of the 10-1 system under state law. *Id.* at 6–7. These assertions are both legally and factually off the mark.

Beginning with the law, Plaintiffs erroneously rely on questionable predictions about “future events.” *Scoggins*, 718 F.3d at 270 (citation omitted). The City still maintains the 10-1

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<sup>3</sup> Plaintiffs fault the City for not entering a consent decree with them in this Court, Mot. 2 n.2, but a consent decree must fall within a federal court’s “subject-matter jurisdiction.” *Salazar v. District of Columbia*, 896 F.3d 489, 491 (D.C. Cir. 2018) (citation omitted). The City could not legally enter a consent decree with Plaintiffs in the absence of a live case or controversy.

system and continues to defend it in state court. Even if council members have expressed doubts about a 10-1 system or opened the door to a 7-3-1 system in the future, the VRA does not give Plaintiffs any entitlement to certain types of public statements by elected officials, to their voting in a particular manner, or to certain types of motives about election systems. Instead, the VRA protects Plaintiffs from a “qualification or prerequisite to voting or standard, practice, or procedure” that is actually “imposed or applied by” a “political subdivision.” 52 U.S.C § 10301(a). None of Plaintiffs’ miscellaneous complaints about the City or its council members presents a claim against a voting procedure that is actually being applied to them.

Moreover, Plaintiffs present an inaccurate picture of the City’s efforts to maintain the 10-1 system in the face of the pending challenge by the *Branch* Plaintiffs. Plaintiffs note that the City pledged to request a charter change from the General Assembly to remove *any* question about its legal right to adopt the 10-1 system. Mot. 3–4. But Plaintiffs neglect to mention that the City *did* request that change. In the 2024 session, *two* bills that would have given clear legal support to the 10-1 system were introduced and received overwhelming bipartisan support in both legislative chambers. But Governor Youngkin vetoed both bills, citing the *Branch* litigation itself as a basis (in an apparent reference to the legislative tradition of avoiding matters subject to ongoing litigation). Governor’s Veto, HB416 (2024) (May 17, 2024), <https://legacylis.virginia.gov/cgi-bin/legp604.exe?241+amd+HB416AG>. This placed the City in a circular bind: the *Branch* litigation was cited as the basis to veto the very legislation the City needed to moot the *Branch* litigation. Plaintiffs fault the City for not making the same request again in the 2025 session, Mot. 6–7, but asking the same Governor to approve the same request he twice rejected had no prospect of success. In fact, a bill to change the charter *was* introduced in 2025, and it failed. Nathaniel Cline, *Virginia Beach Voting System Remains in Limbo After Senate Rejection*, Virginia

Mercury (Feb. 13, 2025), <https://viriniamercury.com/2025/02/13/virginia-beach-voting-system-remains-in-limbo-after-senate-rejection/>.

That history provides the necessary context to understand the forthcoming referendum, which Plaintiffs inexplicably criticize—even though it provides a path to a 10-1 system free of any cloud of legal doubt. The Virginia Code provides a mechanism for the electorate of a locality to directly request a charter change from the General Assembly through a referendum. Va. Code § 15.2-201. The City is using that process here to give the electorate the opportunity to chart its own course. This mechanism carries the prospect of obtaining a charter change from the General Assembly where past efforts failed. When a requested change comes by referendum, it comes from the people of a locality directly, rather than from officials. It would be contrary to the City’s understanding of legislative tradition, and inconsistent with democratic principles, for the General Assembly to rebuff a charter change requested by the very people subject to the charter. Moreover, a new Governor will represent Virginia by the time a charter request under this procedure arrives in Richmond, creating a real possibility of a different outcome. It is a contradiction for Plaintiffs to criticize the City for failing to lobby for a charter change and, at the same time, to criticize the referendum, which creates meaningful possibility of support for the 10-1 system in Richmond.

Indeed, it seems likely that the Virginia Beach electorate will endorse a 10-1 system. Plaintiffs note that “a statistically-validated survey commissioned by Defendants . . . found that the public widely supports (81%) the 10-1 system.” Mot. 6–7 n.4. Yet Plaintiffs express fear that the vote will go the other way. *See id.* at 2. Maybe that will occur, maybe not. And it is unknown what the council would do if that occurs. Plaintiffs’ speculation about “future events” only proves they have no claim today. *Scoggins*, 718 F.3d at 270 (citation omitted).

**C. Events in the *Branch* Case Give Rise to No Ripe or Cognizable Claim**

Plaintiffs also complain of ongoing events in the *Branch* litigation, where the City has requested that Plaintiffs be joined to present to the state court their view that a 7-3-1 system would violate the VRA and VAVRA—positions and arguments important to a defense to the 10-1 system. Mot. 5–6. But Plaintiffs answer their own argument by noting that they “have opposed the City’s joinder motion” in state court. *Id.* at 2 n.3. In fact, Plaintiffs have told the state court that the *Branch* litigation imposes “no risk of conflicting obligations” with a future federal-court judgment, that Plaintiffs are “not necessary parties” to the *Branch* case, and that *res judicata* would not preclude them “from enforcing their rights under the federal VRA.” Ex. B, *Holloway* Resp. in Opp’n to City Defs.’ Mot. to Join Necessary Parties 12, 15. The state court has yet to rule on the pending motion. If Plaintiffs’ assertions have merit, they should be confident of prevailing on the motion in that forum. Their assertions in this Court provide yet more speculation about the future that proves there is no ripe claim.

It is moreover a mystery what claim Plaintiffs believe they have in conjunction with the *Branch* litigation. A joinder rule is not a “voting” mechanism subject to the VRA. 52 U.S.C. § 10301(a). And federal courts “do not have jurisdiction . . . over challenges to state court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court’s action was unconstitutional.” *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462, 486 (1983). Thus, even if the City’s joinder motion were granted—and even assuming joinder were somehow legally improper—Plaintiffs’ recourse would not be to this Court, but to appeal through the Virginia system and ultimately to the U.S. Supreme Court. *Id.* (citing 28 U.S.C. § 1257). A second form of recourse would lie in subsequent litigation Plaintiffs might bring in federal court, where Plaintiffs may renew their position that a state judgment in the *Branch* case would lack preclusive effect. That position would ultimately be decided in a case Plaintiffs bring in the forum

of their choice, not in the *Branch* litigation in state court. The many permutations of future outcomes from such litigation prove further still that no ripe claim exists.

It bears noting beyond this that Plaintiffs have mischaracterized the City's joinder request. Plaintiffs would not, as a result of joinder, "be forced to assert in that state court forum both the Virginia Voting Rights Act and the federal Voting Rights Act as a defense against the *Branch* Plaintiffs' Dillon Rule claim." Mot. 1–2. Joinder would provide Plaintiffs the *opportunity* to air their strongly felt assertions in a court empowered to adjudicate those assertions—before that court decides whether to direct the City to use a 7-3-1 system. If Plaintiffs choose not to present those positions, no one could force them to do so. But it is strange for Plaintiffs to disclaim any interest in making arguments in the *Branch* case. They filed an *amicus* brief in support of the City at a prior stage of the case, and have repeatedly pledged to sue the City if the state court orders a 7-3-1 system. Where Plaintiffs adamantly oppose a 7-3-1 system, and have been consistent in urging the City to adopt a 10-1 system, it is hard to understand their refusal to participate in the defense of that system in the face of a challenge by what they call "a group of litigants supported by special interests that oppose councilmembers being elected by their local constituents." Mot. 4.

Nor is their criticism of the City for its joinder request persuasive. It is entirely rational for the City to desire that all claims against it from all directions be resolved in one proceeding (which, as noted, is a contention the state court may or may not accept). And that is especially so given that the *Branch* Plaintiffs have argued that the City has no right to raise VAVRA as a defense; Plaintiffs' participation would seem to overcome that objection and improve the likelihood that the state court will never attempt to impose a 7-3-1 system—which is an outcome Plaintiffs claim they desire. Plaintiffs' insistence that only "this federal forum" is competent "to adjudicate their federal VRA claim," Mot. 10—aside from being premature—contradicts settled law that state courts are

competent and indeed obligated to decide federal questions. *Testa v. Katt*, 330 U.S. 386, 393 (1947); *Haywood v. Drown*, 556 U.S. 729, 736 (2009). “Our system of ‘cooperative judicial federalism’ presumes federal and state courts alike are competent to apply federal and state law.” *McKesson v. Doe*, 592 U.S. 1, 5 (2020). Plaintiffs provide no basis to depart from that norm here.

## **II. Plaintiffs Have Failed To Show Entitlement To Relief Under Rule 60(b)(5) or (b)(6)**

Even if all threshold conditions could be satisfied—which they cannot—Plaintiffs fail to justify the exceptional step of relief from the judgment under either of the subparts of Rule 60(b) on which they rely.

### **A. Rule 60(b)(5) Does Not Apply Because the Dismissal Entry Has No Prospective Application**

Plaintiffs first argue that relief from the dismissal entry is appropriate under Rule 60(b)(5) because its “prospective application” is “no longer equitable.” Mot. 8. While Plaintiffs focus on equitable contentions, they overlook that that their voluntary dismissal without prejudice has no prospective application. In plain English, the dismissal is without prejudice and does not preclude Plaintiffs from filing a VRA lawsuit. Plaintiffs do not explain why relief from the voluntary dismissal is proper when this other avenue to protect their interests is readily available.

Not all court orders have “prospective” application for purposes of Rule 60(b)(5). Because “[v]irtually every court order causes at least some reverberations into the future,” the fact that “a court’s action has continuing consequences . . . does not necessarily mean that it has ‘prospective application’ for the purposes of Rule 60(b)(5).” *FTC v. Hewitt*, 68 F.4th 461, 466–67 (9th Cir. 2023) (quoting *Maraziti v. Thorpe*, 52 F.3d 252, 254 (9th Cir. 1995)). Generally, the test for whether a judgment has “prospective application is whether it is [1] executory or [2] involves the supervision of changing conduct or conditions.” *Id.* (citation omitted); *see also Tapper v. Hearn*, 833 F.3d 166, 172 (2d Cir. 2016) (“[A] final judgment or order has ‘prospective application’ for

purposes of Rule 60(b)(5) only where it is “executory” or involves “the supervision of changing conduct or conditions.”) (citation omitted). Put differently, an order has no “prospective application” where the movant cannot identify “anything left to do under that order.” *Schwartz v. United States*, 976 F.2d 213, 218 (4th Cir. 1992), *overruled on other grounds*, *Kelly v. United States*, 590 U.S. 391 (2020). Thus, *Schwartz* found that a settlement dismissal judgment had no prospective effect, finding that a contrary ruling—that such an order “has prospective effect so long as the parties are bound by it”—would “read the word ‘prospective’ out of the rule.” *Id.*; *see also Twelve John Does v. District of Columbia*, 841 F.2d 1133, 1139 (D.C. Cir. 1988) (“That plaintiff remains bound by the dismissal is not a ‘prospective effect’ within the meaning of [R]ule 60(b)(5) any more than if plaintiff were continuing to feel the effects of a money judgment against him.”) (citation omitted).<sup>4</sup>

The case of *Perry-Bey v. City of Norfolk*, 678 F. Supp. 2d 348 (E.D. Va. 2009) is instructive. There, after the defendant city lost a VRA challenge to its at-large election system, the Court entered a “Final Judgment Order” that adopted a 5-2 plan (five single-member districts and two “single-member super-wards”) as a remedy. *Id.* at 354. When, years later, the city council added an eighth member to its council (a mayor elected at large), creating a “5-2-1” plan, residents of the city brought a new action challenging that system and, in relevant part, sought to have the city held in contempt of the “Final Judgment Order.” *Id.* at 356. On that point, the Court rejected the argument that the “Final Judgment Order” contemplated any ongoing judicial supervision, finding

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<sup>4</sup> *Waetzig*, cited by Plaintiffs, simply held that a voluntary dismissal without prejudice constituted a “final” proceeding from which relief was available under Rule 60(b). 145 S. Ct. at 696, 698. *Waetzig* involved an employee who, in a wrongful termination case, agreed to voluntarily dismiss his case to pursue arbitration, but after an adverse arbitration finding, moved to vacate the dismissal of his case and to vacate the arbitral award. *Id.* at 694. The Supreme Court did not reach the question of whether Rule 60(b) relief was appropriately granted in that case. *Id.* at 700–01.

that, in reapportionment cases, “the court’s jurisdiction is not continuing, and the plan, once adopted and acted upon, does not require further judicial supervision.” *Id.* at 382 (quoting *Jackson v. DeSoto Parish Sch. Bd.*, 585 F.2d 726, 730 n.1 (5th Cir. 1978)). The Court rejected the notion that the “Final Judgment Order” was a permanent injunction, *id.* at 379–80, and held that once the 5-2 plan was adopted, there was nothing left for the city to do, and the “Final Judgment Order” had no further prospective effect. *Id.* at 389.

This case is even less suited to Rule 60(b)(5). Unlike in *Perry-Bey*, there has been no final judgment issued by this Court enjoining a single-member-district “7-3-1 system,” and the final judgment the Court did issue—against the residence-district system—was vacated. The only order at hand is a voluntary dismissal without prejudice of an Amended Complaint that was found moot. ECF No. 318 (“Dismissal Entry”). The Dismissal Entry did not provide for the retention of jurisdiction by this Court for any purpose, much less to provide ongoing supervision of the City’s election system. *See id.* The Dismissal Entry, in short, has no prospective application whatsoever.

That lack of prospective application is what distinguishes this case from *Horne v. Flores*, 557 U.S. 433 (2009), relied upon by Plaintiffs. Mot. 8. Plaintiffs cite language in *Horne* for the proposition that Rule 60(b)(5) may be used to vacate a judgment if “‘a significant change either in factual conditions or in law’ renders continued enforcement ‘detrimental to the public interest.’” 557 U.S. at 447 (citation omitted). But *Horne* was an institutional reform case about educational practices, and it applied the rule only to potentially require, if changed circumstances were found, a court “to modify an injunction or consent decree in light of such changes.” *Id.* (quoting *Agostini v. Felton*, 521 U.S. 203, 215 (1997)); *see also Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 384 (1992) (“Modification of a consent decree may be warranted when changed factual conditions make compliance with the decree substantially more onerous.”). Nothing in *Horne* holds that

orders lacking prospective application come within Rule 60(b)(5)'s ambit if there is alleged detriment to the public interest.

**B. Rule 60(b)(6) Does Not Apply Because There Are No Extraordinary Circumstances**

Plaintiffs hedge their bets by invoking in the alternative Rule 60(b)(6), a catch-all provision that allows a Court to vacate a judgment for “any other reason that justifies relief.” Fed. R. Civ. P. 60(b)(6). As an initial matter, this provision cannot override the constitutional prohibition on adjudication of unripe claims. Moreover, Rule 60(b)(6) applies only in “extraordinary” circumstances, *Ackermann v. United States*, 340 U.S. 193, 202 (1950), and “should be only sparingly used.” *Twelve John Does*, 841 F.2d at 1140 (citation omitted). A showing of such circumstances must be “highly convincing.” *Holland v. Virginia Lee Co.*, 188 F.R.D. 241, 252 (W.D. Va. 1999) (quoting *United States v. Cirami*, 563 F.2d 26, 33 (2d Cir. 1977)).

Plaintiffs do not satisfy this standard. They invoke a decision finding it satisfied “upon repudiation of a settlement agreement which had terminated litigation pending before it.” *Fairfax Countywide Citizens Ass’n v. Fairfax County*, 571 F.2d 1299, 1302–03 (4th Cir. 1978); Mot. 12. But Plaintiffs admit there is in this case no “settlement agreement between the parties.”<sup>5</sup> Mot. 12. In truth, even assuming a ripe claim exists, Plaintiffs ask the Court to relieve them from their strategic litigation choices concerning such a claim. The City adopted the 10-1 system in August 2023 and requested a charter change from the General Assembly to erase all possible doubts as to the validity of that 10-1 system. However, the session did not begin until January 2024, so the outcome of the City’s lobbying effort could not be known before that time. Yet Plaintiffs agreed to

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<sup>5</sup> Indeed, relief under Rule 60(b)(6) is frequently held not to be available to a litigant who “asks for relief from a decision to settle.” *Schwartz*, 976 F.2d at 218–19. Even a *breach* of a settlement agreement is typically insufficient. See *Harman v. Pauley*, 678 F.2d 479, 481 (4th Cir. 1982); *Ford Motor Co. v. Mustangs Unlimited, Inc.*, 487 F.3d 465, 469 (6th Cir. 2007); *Sawka v. Healtheast, Inc.*, 989 F.2d 138, 141 (3d Cir. 1993).

join a stipulation of dismissal on November 27, 2023. ECF No. 318. If, as Plaintiffs now suggest, anything short of express confirmation by the General Assembly that the City may use a 10-1 system gives rise to a claim against the 7-3-1 system, their choice of voluntary dismissal was nothing but a litigation choice made for unknown, strategic reasons.

But Rule 60(b)(6) does not relieve litigants from the consequences of their litigation choices. *Ackermann* held that strategic decisions are not a circumstance warranting relief from judgment under Rule 60(b)(6), noting that “[t]here must be an end to litigation someday, and free, calculated, deliberate choices are not to be relieved from.” 340 U.S. at 198. The Fourth Circuit has found that a movant does not satisfy the “extraordinary circumstances” test where the movant’s “posited predicament was as much the result of his management of the action and his litigation strategy choices as it was the result of the district court’s erroneous judgment of dismissal.” *Aikens v. Ingram*, 652 F.3d 496, 503 (4th Cir. 2011); *see also, e.g., Budget Blinds, Inc. v. White*, 536 F.3d 244, 258 (3d Cir. 2008) (finding no extraordinary circumstance where “decision not to contest” a judgment “was the result of a deliberate choice”); *Paul Revere Variable Annuity Ins. v. Zang*, 248 F.3d 1, 6 (1st Cir. 2001) (similar). Plaintiffs may wish they had taken different actions in November 2023. Whether such wishes are supportable, they do not support the exceptional request of relief from the judgment.

### CONCLUSION

The Court should deny Plaintiffs’ motion.

DATE: May 12, 2025

Respectfully submitted,

/s/ Katherine L. McKnight

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 12, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will then send a notification of the filing to all parties of record.

*/s/ Katherine L. McKnight*

Katherine L. McKnight (VSB No. 81482)  
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# **Exhibit A**



MARK D. STILES  
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# City of Virginia Beach

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City File No. LT18853

May 12, 2025

**VIA HAND DELIVERY**

Tina E. Sinnen, Clerk  
Virginia Beach Circuit Court  
CIVIL DIVISION  
2425 Nimmo Parkway, Judicial Center  
Virginia Beach, Virginia 23456

Re: ***Linwood Branch, et al. v. City of Virginia Beach, et al.***  
Case No: CL24000322-00

Dear Ms. Sinnen:

Enclosed please find the Defendants' Cross-Motion for Summary Judgment and a Memorandum in Opposition to Plaintiff's Motion for Summary Judgment and in Support of Cross-Motion for Summary Judgment, which I thank you to file in the above matter.

If you have any questions, please contact the City Attorney's Office at (757) 385-4531 and ask for my paralegal, Lisa Luck.

Thanking you for your office's usual courtesy and assistance, I remain

Sincerely,

Christopher S. Boynton  
Deputy City Attorney

CSB/lcl

Enclosures

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**VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH**

**LINWOOD BRANCH, ET AL.,**

Plaintiffs,

v.

**CITY OF VIRGINIA BEACH, ET AL.,**

Defendants.

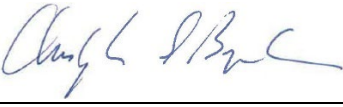
CASE NO.: CL24000322-00

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**CROSS-MOTION FOR SUMMARY JUDGMENT**

Defendants the City of Virginia Beach, the Virginia Beach City Council, Robert M. Dyer, Barbara Henley, Michael Burlucchi, Amelia Ross-Hammond, Rosemary Wilson, Robert W. Remick, Joash F. Schulman, Jennifer V. Rouse, David Hutcheson, Stacy Cummings, Cal Jackson-Green, and Patrick A. Duhaney (collectively, “City Defendants” or “City”), respectfully move the Court for summary judgment under Virginia Supreme Court Rule 3:20 on all claims asserted in the Complaint in this action. For reasons stated in the accompanying memorandum in support of this cross-motion and in opposition to Plaintiffs’ motion for summary judgment, the City Defendants respectfully request that the Court grant their motion and enter final judgment dismissing all claims in the Complaint.

## CITY DEFENDANTS

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\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I certify that a true copy of the foregoing was electronically mailed and/or mailed via first-class mail on this 12<sup>th</sup> day of May, 2025, upon the following:

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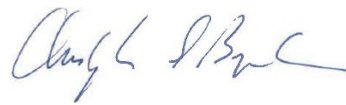
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**VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH**

**LINWOOD BRANCH, ET AL.,**

Plaintiffs,

v.

CASE NO.: CL24000322-00

**CITY OF VIRGINIA BEACH, ET AL.,**

Defendants.

---

**CITY DEFENDANTS' MEMORANDUM IN OPPOSITION TO**  
**PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**  
**AND IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT**

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*Counsel for the City Defendants*

## INTRODUCTION

This case is ripe for summary judgment but not in Plaintiffs' favor. Plaintiffs have improperly dressed up as a Dillon's Rule claim what is in fact their ideological disagreement with the General Assembly's recent steps to curtail and even eliminate at-large voting. The Virginia Beach City Charter does *not* impose the "7-3-1 system" Plaintiffs demand; it imposes voting entirely at-large, with seven "residence" districts (which limit where members may reside, not who may elect them). Abolishing that system, the General Assembly in 2021 passed HB2198, which transformed "residence" districts into traditional single-member districts (in which only district residents elect each district's council member). In this way, far from favoring at-large elections, HB2198 discouraged them by eliminating most at-large contests in the City.

HB2198's abolishment of the City's all at-large system also rendered the City eligible for the preexisting statutory power of increasing and reducing the number of electoral districts. The Virginia Code defines a "combination" system as one including both "single-member" and "at-large districts," delegates to local governments with combination systems the power of "increasing or diminishing the number of such districts," and provides that any such measure "shall be deemed to override the charter provisions." Faced with a challenge to the remaining at-large seats in long-running federal litigation, the City Council utilized this newly acquired authority to eliminate the remaining three at-large seats and add three single-member seats. It thereby mooted the federal action, saving the City's residents millions in potential attorney fees liability. That choice, in addition, brought the City's elections into compliance with yet another act of the General Assembly adverse to at-large voting—the Virginia Voting Rights Act (VAVRA), which forbids all at-large elections that are dilutive or retrogressive of minority voting strength.

This lawsuit proves that no good deed goes unpunished. Plaintiffs have no basis to bring what is essentially a political dispute in a court of law, and they do not persuasively explain away

the City’s express power to add or subtract “at-large districts” by an ordinance that overrides its charter (which HB2198 already overrides). Worse, Plaintiffs inexplicably demand that the Court impose at-large voting even if it violates VAVRA. This Court already found that a trial is necessary to resolve VAVRA issues, and Plaintiffs provide no basis for the Court to depart from that ruling. For these reasons and those set forth below, the Court should grant summary judgment for the City and deny Plaintiffs’ summary judgment motion.

### **BACKGROUND**

Virginia Beach is governed by a City Council comprising ten council members and one mayor. Its charter establishes at-large elections for all positions but directs that seven members reside, respectively, in seven “residence districts.” Virginia Beach City Charter § 3.01(A).

In 2017, two Black residents (the “*Holloway* plaintiffs”) filed a federal Voting Rights Act (“VRA”) case challenging the all-at-large system. *See Holloway v. City of Virginia Beach*, 42 F.4th 266, 271 (4th Cir. 2022). After an October 2020 bench trial, but before the district court ruled, the General Assembly in March 2021 enacted HB2198 (2021), which transformed the City’s at-large residence districts into single-member districts, preserving at-large voting for only three council seats and the mayoral position (a “7-3-1 system”). Code §§ 15.2-1400(F) & 24.2-222(A). In the same session, the General Assembly enacted VAVRA, which prohibits “[a]n at-large method of election, including one that combines at-large elections with district- or ward-based elections,” if the method impairs a minority group’s “ability . . . to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution . . . of the rights of voters who are members of a protected class.” *Id.* § 24.2-130(A). VAVRA separately subjects changes in election systems to a preclearance process meant to prevent “retrogression in the position of members of a racial or ethnic group with respect to their effective exercise of the electoral franchise.” *Id.* § 24.2-129(A). This provision, too, targets “seats elected at large.” *Id.* § 24.2-129(A)(1).

The City contended that HB2198 mooted the Section 2 case. *Holloway*, 42 F.4th at 271–72. The Eastern District of Virginia disagreed and also held that the at-large system violates Section 2. *Holloway v. City of Virginia Beach*, 531 F. Supp. 3d 1015, 1032, 1102 (E.D. Va. 2021). In a subsequent remedial phase, the court ordered the City to implement a plan with ten single-member districts (the “10-1 system”). *Holloway v. City of Virginia Beach*, No. 2:18-cv-69, 2021 WL 6199585, at \*3 (E.D. Va. Dec. 22, 2021). The City appealed, and the Fourth Circuit held that HB2198 had mooted the challenge. *Holloway*, 42 F.4th at 277. However, the court determined that the *Holloway* plaintiffs “still may have viable challenges to whatever post-HB 2198 electoral system the City adopts.” *Id.* It therefore remanded the case to permit such a challenge. *Id.* at 278.

The *Holloway* ruling was issued in July 2022, an election year, “after the deadline for candidates to file to run for a city council seat.” Mem. Order on Dems., Special Pleas, & Mot. Prelim. Inj. 5 (Aug. 19, 2024) (“Order”). Because the qualification “deadline is mandated by [state] statute,” which the “City did not have the power to change,” it had “no choice but to move forward with the November 2022 city council elections using a 10-1 system.” *Id.* at 5–6. No suit was filed challenging the 10-1 system until this one in January 2024.

In early 2023, the City Council examined the City’s electoral system, soliciting public input and hiring a center at the University of Virginia to conduct a poll, which found that 81% of Virginia Beach residents favored a 10-1 system. Compl. Ex. B at 2. The City Council also observed that the 10-1 system was precleared by the Office of Attorney General under VAVRA and was found to provide three minority opportunity districts. *Id.* On August 15, 2023, the City Council voted 10-1 to adopt a 10-1 system. *Id.* at 1. The Office of Attorney General again precleared the 10-1 system under VAVRA. Still, Plaintiffs did not file suit.

In the General Assembly’s 2024 session, a bill was introduced to confirm the legality of the 10-1 system—and erase any doubt about the City’s right to use it—and it ultimately passed both chambers with super-majority, bi-partisan support. At that time, Plaintiffs finally brought this lawsuit. Citing this lawsuit, and following a legislative tradition of avoiding matters subject to ongoing litigation, the Governor vetoed the very legislation Plaintiffs claim the City needed for a 10-1 system. Governor’s Veto, HB416 (2024) (May 17, 2024), <https://legacylis.virginia.gov/cgi-bin/legp604.exe?241+amd+HB416AG>.

On February 1, 2024, eight days after Plaintiffs filed their complaint, the City filed a demurrer and special pleas, challenging Plaintiffs’ right to bring this suit and citing the City’s statutory authority to add and remove districts (including “at-large districts”) and VAVRA’s dictates as the legal justification for the 10-1 system. For their part, Plaintiffs delayed until April 2024 to move for a preliminary injunction.

On August 19, 2024, the Court denied Plaintiffs’ motion for a preliminary injunction and overruled most of the City’s demurrer grounds and special pleas. As to the injunction motion, the Court found it “cannot conclude that the Plaintiffs are likely to succeed on the merits or not succeed on the merits.” Order 15–16. This was because, in addressing the City’s special plea founded on VAVRA, the Court had determined that “it is possible that at trial evidence will be presented that will provide a basis for the court to determine if the authority to abolish the at-large seat[s] has been necessarily or fairly implied from” VAVRA. *Id.* at 15. The Court denied the plea in bar because “there is insufficient evidence to support” the VAVRA defense at the threshold stage. *Id.* The Court overruled the City’s demurrer insofar as it asserted the City’s statutory right to increase or diminish the number of districts, reasoning that a 1995 amendment to the City’s charter renamed the residence “boroughs” as “districts”; that the same General Assembly session enacted portions

of the Code authorizing adding and subtracting districts; and that, “[t]aken together,” these facts demonstrated that the General Assembly “chose not to provide that the number of districts could be increased or decreased.” *Id.* at 11. The Court also overruled the demurrer insofar as it challenged Plaintiffs’ right to bring this action. *Id.* at 3–7. The Court sustained the demurrer insofar as this action challenges the outcome of the 2022 election. *Id.* at 5–6.

Plaintiffs failed to prosecute this case before their summary judgment motion. No discovery has occurred, and the record has not advanced beyond the pleadings.

## ARGUMENT

### I. THRESHOLD DEFICIENCIES FORECLOSE PLAINTIFFS’ CLAIMS

Plaintiffs lack standing and a right of action for this suit. While the City raised these points at the demurer stage, and the Court overruled them, this Court retains “[t]he power to decide” this case, which “carries with it the power to reconsider as a necessary adjunct.” *Commonwealth v. McBride*, 302 Va. 443, 449–50 (2023); *see also Everett v. Tawes*, 298 Va. 25, 35 (2019).

Plaintiffs fail to establish standing, which requires “a direct interest, pecuniary or otherwise, in the outcome of the controversy that is separate and distinct from the interest of the public at large.” *Goldman v. Landsidle*, 262 Va. 364, 371–73 (2001). Here, the shift from a 7-3-1 system to a 10-1 system constitutes a policy trade-off applicable to all voters in equal measure. Residents cast ballots in more races but with weaker votes in a 7-3-1 system than in a 10-1 system, where they cast stronger votes in fewer races. Plaintiffs’ supposed injury applies “both to themselves and everyone else.” *Layla H. by Hussainzadah v. Commonwealth*, 81 Va. App. 116, 136 (2024).

In finding standing, the Court’s prior order looked to a right of action within Article VII, Section 5 of the Virginia Constitution, which confers redistricting rights and duties on local governments. Order 12–13. It also provides: “Whenever the governing body of any such unit shall

fail to perform the duties so prescribed in the manner herein directed, a suit shall lie on behalf of any citizen thereof to compel performance by the governing body.” Va. Const. art. VII, § 5. But this basis of standing is unavailable here. To “fail” in the relevant sense is “to neglect to do something: leave something undone.” Webster’s Third New International Dictionary 814 (unabr. 3d ed. 1993) (“Webster’s Third”). That occurs where, after the census, a governed body “fail[s] to enact a reapportionment plan.” *Mellow v. Mitchell*, 607 A.2d 204, 205 (Pa. 1992). But the City is not alleged to have failed to redistrict. The City is also not alleged to have violated “the manner” of redistricting “*herein* directed,” Va. Const. art. VII, § 5 (emphasis added), given that the Virginia Constitution does not compel a 7-3-1 system.

Plaintiffs also lack a private cause of action. “In Virginia, ‘substantive law’ determines whether a private claimant has a right to bring a judicial action.” *Cherrie v. Va. Health Servs., Inc.*, 292 Va. 309, 314 (2016) (citation omitted). Here, neither the City’s charter nor any statute authorizes this suit (and neither does Article VII, Section 5). The Court’s prior order looked to the Declaratory Judgment Act, Order 4, but, in *Cherrie*, the Supreme Court held that the Declaratory Judgment Act cannot be “the statutory vehicle” without a statutory right of action. 292 Va. at 317; *see also Charlottesville Area Fitness Club Operators Ass’n v. Albemarle Cnty. Bd. of Sup’rs*, 285 Va. 87, 101 (2013); *Miller v. Highland Cnty.*, 274 Va. 355, 371–72 (2007).

The Order erred further in positing that Plaintiffs are “not seeking to enforce the charter and statutes” and drawing “a difference between a declaratory judgment action that seeks to enforce a statute or ordinance, and one that seeks a declaration that the legislative body did not have the power to enact the law at issue.” Order 4. This is a distinction without a difference because Dillon’s Rule is a mechanism for limiting a locality to powers “granted by the General Assembly.” *City of Richmond v. Confrere Club of Richmond, Inc.*, 239 Va. 77, 79 (1990). The Supreme Court

has rejected Dillon’s Rule challenges in the absence of a cause of action. *See Lafferty v. Sch. Bd. of Fairfax Cnty.*, 293 Va. 354, 358, 362 (2017) (finding no cause of action for claim asserting *ultra vires* acts in violation of Dillon’s Rule); *Stoney v. Anonymous*, No. 200901, 2020 WL 5094625, at \*4 (Va. Aug. 26, 2020) (“Anonymous also lacks an express or implied right of action under § 4-11 of the Richmond City Charter.”). This case likewise requires a cause of action, but none exists.

Plaintiffs also invoke the mandamus action in Code § 24.2-304.4, but it too is inapplicable because it applies where a governing body “fails to perform the duty of reapportioning the representation on the governing body.” Code § 24.2-304.4. The City *did* redistrict through the challenged 10-1 plan. Mandamus is unavailable where the plaintiff disagrees with *how* a government conducts a redistricting that it *does* conduct. The statutory text expressly provides that an ordinance “chang[ing] the boundaries, or increas[ing] or diminish[ing] the number of districts or wards . . . shall *not be subject to judicial review*, unless it is alleged that the representation is not proportional to the population of the district or ward.” *Id.* (emphasis added). Because Plaintiffs do not contend that districts are malapportioned, judicial review is foreclosed.

## **II. PLAINTIFFS’ CLAIMS FAIL AS A MATTER OF LAW**

On the merits, the City’s power to employ a 10-1 system stands firmly on constitutional and statutory text. Under Dillon’s Rule, local governments have “those powers that are expressly granted, those necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable.” *Sinclair v. New Cingular Wireless PCS, LLC*, 283 Va. 567, 576 (2012) (citation omitted). Accordingly, the inquiry is whether power to conduct the challenged action “is expressly granted or necessarily implied from the powers granted.” *City of Chesapeake v. Gardner Enters., Inc.*, 253 Va. 243, 246 (1997). This analysis centers on “the plain meaning of the words used.” *Marble Techs., Inc. v. City of Hampton*, 279 Va. 409, 418 (2010) (citation

omitted). Here, both the Virginia Constitution and Virginia Code delegate to the City the power to add or subtract districts, including at-large districts.

**A. The Ordinance Is Authorized by Clear Statutory Text**

The Virginia Constitution provides that “[w]hen members” of a local governing body are “elected by district, the governing body of any county, city, or town may, in a manner provided by law, increase or diminish the number, and change the boundaries, of districts, and shall” each decade “reapportion the representation in the governing body among the districts in a manner provided by law.” Va. Const. art. VII, § 5. This text vests a constitutionally delegated prerogative in cities to “increase or diminish the number” of electoral districts. *Id.*

The General Assembly, in turn, established the “manner provided by law” referenced in Article VII, Section 5, through Code § 24.2-304.1. That provision begins by defining three potential election systems: elections may be (i) “at large from the county, city, or town,” (ii) “from single-member or multi-member districts or wards,” or (iii) “from any combination of *at-large*, single-member, and multi-member *districts* or wards.” Code § 24.2-304.1(A) (emphasis added). Note that subdivision (iii) uses the term “districts” to refer to “at-large” seats in a “combination” system. *See id.*

The next subsection delegates local governmental power to modify election systems in jurisdictions where “the members are elected from districts or wards and other than entirely at large from the locality,” i.e., in combination systems or those with only single-member districts. *Id.* § 24.2-304.1(B). Subsection (B) provides that, each decade, “the governing body of each such locality shall reapportion the representation among the districts or wards, including, if the governing body deems it appropriate, increasing or diminishing the number of such districts or wards.” *Id.* Because the “districts” referenced in the first sentence of subsection (B) include all

types of districts—except those in a system “entirely at large from the locality”—the term includes the “at-large . . . districts” referenced in subsection (A).

The final subsection confirms this point. It opens with a blanket ban on redistricting “at any time other than that required following the decennial census” but follows with exceptions. *Id.* § 24.2-304.1(D). One exception applies where redistricting is needed as “the result of an increase or decrease in the number of districts or wards *other than at-large districts* or wards.” *Id.* (emphasis added). This text confirms again that the term “districts” includes “at-large districts.” And the language “increase or decrease in the number of districts or wards” links back to the delegated power in subsection (B) of “increasing or diminishing the number of such districts or wards.” The follow-on text of subsection (D)—“other than at-large districts or wards”—confirms that a lawful increase or decrease in subsection (B) includes the alteration of numbers of at-large districts. Otherwise, there would be no reason to exempt the case of an increase or decrease of at-large districts.

The Code refers to an ordinance redrawing or changing the number of districts as “a decennial redistricting measure,” *id.* § 24.2-311(D), and speaks with clarity about cases of “conflict”:

In the event of a conflict between the provisions of a decennial redistricting measure and the provisions of the charter of any locality, the provisions of the redistricting measure *shall be deemed to override the charter provisions* to the extent required to give effect to the redistricting plan.

*Id.* § 24.2-311(E) (emphasis added). Plaintiffs say this “merely provides that decennial redistricting preempts a local body’s governing charter.” Pls.’ Mem. Supp. Mot. Summ. J. 10 (“Opening Mem.”). But where the question is whether the charter or the ordinance controls, this admits that Code § 24.2-311(E) *merely* resolves this case.

The City properly exercised those delegated powers. By operation of HB2198, the City employs a “combination of at-large” and “single-member” “districts.” Code § 24.2-304.1(A). Because “the members” of the City Council “are elected from districts . . . and other than entirely at large,” the City Council is delegated the power, if “it deems appropriate,” of “increasing or diminishing the number of such districts.” *Id.* § 24.2-304.1(B). The ordinance adopting a 10-1 plan exercises this power by increasing the number of single-member districts from seven to ten and reducing the number of at-large districts from three to zero. The same ordinance also “reapportion[ed] the representation among the districts or wards,” *id.*, by assigning residents to districts and equalizing their population. The ordinance is therefore a decennial redistricting measure that “shall be deemed to override the charter provisions.” *Id.* § 24.2-311(E). Plaintiffs’ effort to enforce the charter fails where the ordinance overrides the charter. *See Webster’s Third 1609* (“override” means “to dominate or prevail over” or “to set aside”).

**B. Plaintiffs’ Counterarguments Lack Merit**

Plaintiffs say the provisions the City cites “obviously do not apply to at-large seats.” Opening Mem. 12. This certitude is unjustified.

As an initial matter, Plaintiffs seem to deny the City’s power to add or subtract districts at all under the view that the provisions delegating that power “apply *only* when ‘members are elected by district’—which is the *opposite* of being elected at large.” Opening Mem. 11. But the Code provides for “combination” systems comprising “at-large” “districts” together with “single-member . . . districts.” Code § 24.2-304.1(A); *see* Opening Mem. 11. Because the City has a combination system, its government has power to add or subtract districts. Code § 24.304.1(B).

The plain text also defeats Plaintiffs’ narrower suggestion that the City may add or subtract only single-member districts but not at-large districts. The power of addition and subtraction applies to “districts,” including “at-large districts.” *See id.* § 24.2-304.1(D)(iv); *see also id.* § 24.2-

304.1(A). By proposing that the word “districts” in subsection (B) excludes at-large districts, even though it includes at-large districts in subsections (A) and (D), Plaintiffs’ theory rests on “the most basic of textual inconsistencies—the same word meaning two different things in the same statute.” *Tvardek v. Powhatan Vill. Homeowners Ass’n, Inc.*, 291 Va. 269, 281 (2016); *cf. Commonwealth v. Jackson*, 276 Va. 184, 194 (2008) (reciting “common canon” that, even “in separate statutes,” the “same term” presumptively “has the same meaning”). Indeed, subsection (B) itself precludes that possibility by clarifying that elections “from districts” include all elections “other than entirely at large from the locality.” Code § 24.2-304.1(B). The term “districts” in subsection (B) means all districts in a combination system, just as it carries the same meaning in subsections (A) and (D). And, while the term “*such* districts” in subsection (B) may refer to those “having just been mentioned,” Opening Mem. 11 (citation omitted), those just-mentioned districts include at-large as well as single-member districts.

Plaintiffs’ theory also ignores the presumption that “words are to be given their ordinary meaning.” *Phelps v. Commonwealth*, 275 Va. 139, 142 (2008). The term “district” is routinely used to describe “at-large districts” as well as “single-member districts.” *See Holloway*, 42 F.4th at 275 (using this terminology); *see also Thornburg v. Gingles*, 478 U.S. 30, 50 n.17 (1986) (describing at-large seat as an “at-large district”).

Additionally, Plaintiffs defy the doctrine that courts “must presume that the legislature chose its words with care and that each of the words has a specific meaning and is not superfluous.” *Hodges v. Commonwealth*, 45 Va. App. 118, 131 n.6 (2005). Plaintiffs would effectively blot from the Code the phrase “including, if the governing body deems it appropriate, increasing or diminishing the number of such districts or wards,” Code § 24.2-304.1(B), and from the Constitution the phrase “increase or diminish . . . and change the boundaries, of districts.”

Va. Const. art. VII, § 5. Plaintiffs argue that addition or subtraction of districts may occur only if necessary to equalize population. Opening Mem. 12. But population can always be equalized sufficiently without changing the number of districts. *See Sixty-Seventh Minn. State Senate v. Beens*, 406 U.S. 187, 198 (1972) (holding power of federal court to order population equality did not embrace the power to change the size of the body). Moreover, no Virginia city can add or subtract single-member districts without adding or subtracting at-large districts. The General Assembly has provided that the “governing body of every locality” can be “no[] more than 11 members,” Code § 15.2-1400(B), and the size of every city is set by charter, *see, e.g.*, Virginia Beach City Charter § 3.01(A) (eleven members). It is thus impossible to add or subtract single-member districts without adding or subtracting at-large districts.

Plaintiffs next argue the text cannot be taken seriously because it “prove[s] far too much” by empowering “every city in the Commonwealth with at-large voting in its charter to unilaterally override” it. Opening Mem. 13. This is incorrect. A locality with elections entirely at-large has no power to change the number of its districts. The City did not itself possess the authority granted by Code § 24.2-304.1 before HB2198’s passage gave it a combination system. That same point defeats Plaintiffs’ reliance on 1981-1982 Op. Att’y Gen. Va. 90 (1981), which addressed residence districts (called “qualification districts”) in an all-at-large system, not a combination system as defined in Code § 24.2-304.1.

Plaintiffs, in short, get Dillion’s Rule exactly backwards. In seeking to enforce the City’s charter, they actually quarrel with the General Assembly for enacting HB2198, which created single-member districts in the City and overrode its charter. Plaintiffs note that the General Assembly “does not generally hide elephants in mouse holes,” Opening Mem. 14 (citation omitted), but this case involves neither elephants nor mouse holes. The elephant-in-mousehole

canon presumes a legislature “does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions.” *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468 (2001) (quoted favorably on this doctrine in *NAACP (Hanover Cnty. Chapter) v. Commonwealth*, 74 Va. App. 702, 715 (2022)). That is not the case here, where HB2198 plainly imposed a combination system, Code § 24.2-304.1(B) plainly confers the power of adding and subtracting districts on localities with combination systems, and Code § 24.2-311(E) explicitly privileges an ordinance making such alteration over a conflicting charter. Plaintiffs’ support for at-large elections does not make the General Assembly’s actions to eliminate them an “elephant” or its clear legislation a “mouse hole.”

**C. The Rationale of the Demurrer Order Was Erroneous**

The Court’s prior order drew inferences from a 1995 amendment to the City’s charter, noting that Code § 24.2-304.1(B) passed in the same General Assembly session where the City’s charter was amended “to refer to districts rather than boroughs” and to require periodic redistricting of those districts. Order 11. The Court read the charter amendment “together” with Code § 24.2-304.1(B) to “indicate that the General Assembly intended for valid reapportionment to occur only by changing district boundary lines.” *Id.* Plaintiffs similarly contend that, because the charter amendment followed the passage of Code § 24.2-304.1(B) during the 1995 session, it carves out an exception from the generally applicable code. Opening Mem. 14.

Both arguments overlook that, in 1995, the City’s elections were *entirely* at-large and utilized *no* single-member districts. The 1995 charter amendment used the word “districts” to describe “residence districts” used in elections conducted entirely “at large.” Virginia Beach City Charter 3.01(A). Because Virginia Beach had only at-large districts, Code § 24.2-304.1(B) plainly did not apply to Virginia Beach in any manner. It was not until 26 years later, in March 2021, that the City’s residence districts became single-member districts through HB2198—and thus fell

under the ambit of Code § 24.2-304.1(B). For that reason, the Court erred in inferring that the General Assembly’s use of the term “districts” informs the meaning of “districts” in Code § 24.2-304.1(B): the General Assembly could not have meant to equate residence districts with single-member districts. Plaintiffs are likewise wrong to contend that the General Assembly “*subsequently*” overrode Code § 24.2-304.1(B) in Virginia Beach. Opening Mem. 14. Code § 24.2-304.1(B) had no application in Virginia Beach in 1995 because its terms do not reach a governing body elected “entirely at large from the locality.” Code § 24.2-304.1(B). It was HB2198 that conferred on Virginia Beach the powers of Code § 24.2-304.1(B), and that enactment enjoys status as the later enactment. Plaintiffs do not, and could not, contend that the City’s charter overrides HB2198.

**III. MATERIAL FACT QUESTIONS UNDER VAVRA FORECLOSE PLAINTIFFS’ SUMMARY JUDGMENT MOTION**

Even if the 10-1 plan were not justified by the City’s power to override its charter in a decennial redistricting ordinance, Plaintiffs are not entitled to summary judgment because the City has asserted a second legal justification for the 10-1 system under VAVRA. While the fact-intensive nature of the VAVRA issue prevents the City from seeking summary judgment in its favor under this defense, material fact disputes equally foreclose summary judgment in favor of Plaintiffs. This Court has already held that “trial” is needed on this question, Order 15, and Plaintiffs provide no basis for the Court to depart from that ruling now.<sup>1</sup>

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<sup>1</sup> Plaintiffs and the Commonwealth cite out of context a statement of the Court’s prior order that that VAVRA “does not expressly provide that it modifies city charters.” Order 11; Commonwealth’s *Amicus Curiae* Br. 5, 9 (“Commonwealth Mem.”); Opening Mem. 6, 16. In context, this was a ruling that VAVRA contains no *per se* bar on at-large voting, not that VAVRA questions are incapable of adjudication in this case, as the Court expressly found them to be.

**A. Dilutive or Retrogressive At-Large Elections Violate State Law**

Enacted in 2023, VAVRA belongs to a national trend of “voting rights federalism,” as states have enacted laws that “do more than federal law requires to prevent racial discrimination in voting.” Ruth M. Greenwood & Nicholas O. Stephanopoulos, *Voting Rights Federalism*, 73 Emory L.J. 299, 301 (2023). Its cornerstone provision, titled in part “At-large method of election,” provides that “[a]n at-large method of election . . . shall not be imposed or applied by the governing body of any locality in a manner that impairs the ability of members of a protected class . . . to elect candidates of its choice or its ability to influence the outcome of an election.” Code § 24.2-130(A). A violation occurs “if it is shown that racially polarized voting occurs in local elections and that this, in combination with the method of election, dilutes the voting strength of members of a protected class.” *Id.* § 24.2-130(B). This provision is modeled on California’s voting rights act, which forbids at-large elections on proof of (1) racially polarized voting and (2) an alternative that improves minority opportunity or influence as compared to at-large elections. *See* Cal. Elec. Code § 14028; *Pico Neighborhood Ass’n v. City of Santa Monica*, 534 P.3d 54, 64–71 (Cal. 2023).

VAVRA contains a separate provision protecting against “the retrogression in the position of members of a racial or ethnic group with respect to their effective exercise of the electoral franchise.” Code § 24.2-129(A). It requires a locality to obtain preclearance of a change in election methods, which includes a change in “the boundaries of election districts” as well as “adding seats elected at large.” *Id.* § 24.2-129(A)(1) & (3). The governing body may obtain preclearance with the Office of the Attorney General if it finds the change will not lead to “retrogression.” *Id.* § 24.2-129(A) & (D). Alternatively, the governing body may publish the change for a notice-and-comment period, and, subsequently, any person “subject to or affected by” the change may challenge it in circuit court on the ground that it is retrogressive in effect. *Id.* § 24.2-129(C). Under

both systems, the electoral change does not take effect unless and until the proceeding results in a determination of the absence of retrogressive effect. *Id.* § 24.2-129(C) & (D).

The City has contended that, when City Council adopted the August 2023 decennial redistricting measure, a 7-3-1 system would violate VAVRA. At least at this stage, Plaintiffs have not disputed this. Any such dispute would require a trial with testimony and evidence, likely including expert testimony, which this Court previously ordered but Plaintiffs seek to avoid. At the special plea stage, the City presented a statistical study by Dr. Lisa Handley establishing that voting is racially polarized in Virginia Beach and the expert opinion of demographer Kim Brace that at the time City Council adopted the 10-1 districts and maps, a 7-3-1 system would not adduce three opportunity districts to match the 10-1 system. This at minimum creates a material fact question as to whether a 7-3-1 system would be dilutive of minority voting power. And, because the 10-1 system was twice precleared by the Office of the Attorney General, this same evidence creates a fact question regarding whether a shift to a 7-3-1 system would be retrogressive. Because the Court is bound to assume at this stage that a 7-3-1 system would violate VAVRA, Plaintiffs are not entitled to summary judgment that a 7-3-1 system would comply with VAVRA.<sup>2</sup>

**B. Summary Judgment Without Addressing VAVRA Would Be Improper**

Plaintiffs argue that the City is forbidden from complying with VAVRA even if a 7-3-1 system violates it, claiming “there is no textual indication” that localities may comply with VAVRA. Opening Mem. 16. But a statute is not a suggestion. VAVRA overtly gives a directive to

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<sup>2</sup> Plaintiffs note a letter of the Attorney General contending that coalition claims are not cognizable under VAVRA, Opening Mem. 3 n.1, but the City has never relied on a coalition theory. *See* City Defs.’ Mem. Supp. Dems. & Special Pleas 18–19. Far from making a “strategic retreat” from a coalition theory, Opening Mem. 3 n.1, the City has consistently argued against coalition claims. *See* Appellants’ Am. Opening Br. 23–31, *Hollway v. City of Virginia Beach*, No. 21-1533 (4th Cir. Jan. 14, 2022), Doc. 53-1. Besides, the Attorney General’s letter merits no deference because it was not promulgated in accordance with Code § 2.2-505(A).

“the governing body of any locality” that “[a]n at-large method of election . . . shall not be imposed or applied” if it would be dilutive. Code § 24.2-130(A). The statute six times calls non-compliance a “violation,” *id.* § 24.2-130(B)–(D), indicating what localities must avoid. *See Webster’s Third 814* (“violation” is “an infringement or transgression”). The statute then demands that localities pay attorney fees to successful plaintiffs in VAVRA cases, *see* Code §§ 24.2-129(C) & 24.2-130(C), which confirms a purpose of deterrence. In no uncertain terms, the statute declares that government bodies must not use at-large elections that are dilutive or retrogressive.

By law and common sense, parties have power to comply with law. Virginia has long employed the “ancient” “predicate-act canon,” Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 192 (2012), which counsels that, “wherever a general power to do a thing is given, every particular power necessary for doing it, is included.” *Harrison v. Day*, 201 Va. 386, 397 (1959) (citation omitted). This doctrine applies in Dillon’s Rule cases. *See, e.g., Ticonderoga Farms, Inc. v. County of Loudoun*, 242 Va. 170, 174–75 (1991) (finding the power to prohibit solid waste disposal necessarily included predicate power to regulate it); *Res. Conservation Mgmt., Inc. v. Bd. of Sup’rs of Prince William Cnty.*, 238 Va. 15, 20 (1989) (similar); *City Council of Alexandria v. Lindsey Trs.*, 258 Va. 424, 429 (1999) (similar). By prohibiting dilutive at-large elections, the General Assembly granted power to avoid dilutive at-large elections.

The City did not, as Plaintiffs contend, need “a *judicial* power” to comply with VAVRA, Opening Mem. 16, any more than judicial power is needed to comply with the speed limit or prohibitions on securities fraud. While judicial review is proper in hindsight in the event of a justiciable controversy, the City has respected judicial power by submitting its VAVRA position to this Court’s review. The Commonwealth mirrors Plaintiffs’ arguments in contending that VAVRA “would implicate Virginia Beach’s at-large elections . . . only if it were shown that

members of a protected class had been impaired . . . as a result of the dilution or abridgement of their rights.” Commonwealth Mem. 10–11. But the Commonwealth does not explain why this case—assuming the Court finds it justiciable—is an improper forum for those questions. Nor do the Commonwealth or Plaintiffs explain how this Court could order the City to violate the law. It is Plaintiffs and the Commonwealth who defy judicial process by insisting on judgment *without* judicial review. That would be abdication—and it would be especially improper when the *Holloway* plaintiffs have pledged to present these issues in federal court if Plaintiffs prevail. Virginia courts should be the first to interpret and apply VAVRA.

Plaintiffs’ remaining arguments fare no better. They defy plain text in asserting that VAVRA compliance may occur only through localities’ power “to adjust the ‘boundaries’ of single-member districts.” Opening Mem. 17. The statute unmistakably forbids “[a]n at-large method of election” that would be dilutive or retrogressive. Code § 24.2-130(A). Adjusting boundaries of single-member districts cannot satisfy that clear language. Plaintiffs also say a judicial rewrite of VAVRA is necessary to create harmony with HB2198. Opening Mem. 16–17. The conflict is imagined. HB2198 compels *single-member* district elections in residence districts; it does not require at-large elections. Code §§ 15.2-1400(F) and 24.2-222(A). There is no conflict between a statute mandating single-member-district elections in residence districts and one mandating single-member-district elections for all seats in circumstances of dilution or retrogression. All these obligations point in one direction—prohibition of at-large elections.

The Commonwealth criticizes the City’s VAVRA defense as “a post hoc justification,” Commonwealth Mem. 5, but that is false. The ordinance explained that the City desired a “system with three (3) Minority Opportunity Districts,” that the 10-1 plan “obtained pre-clearance” from “the Virginia Attorney General under the Virginia Voting Rights Act,” and that “the City Council

desires to adopt a redistricting ordinance” having the “districts previously pre-cleared by the Virginia Attorney General.” Compl. Ex. B at 2–3. The point is also irrelevant because the City’s motive is not at issue. The Commonwealth quotes *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178 (2017), which adjudicated a motive-based claim under the Equal Protection Clause. Commonwealth Mem. 5–6. But that doctrine has nothing to do with Dillon’s Rule, which turns on “a local government’s powers,” *Commonwealth v. McBride*, 302 Va. 443, 449 (2023), not its motive. The most analogous line of federal precedent holds that, “[a]s long as Congress had [legislative] authority as an objective matter, whether it also had the specific intent to legislate pursuant to that authority is irrelevant.” *Crawford v. Davis*, 109 F.3d 1281, 1283 (8th Cir. 1997); see *Woods v. Cloyd W. Miller Co.*, 333 U.S. 138, 144 (1948). So too here.

**C. The 10-1 Plan Provides the VAVRA Retrogression Baseline**

Plaintiffs ask the Court to rule that the 10-1 plan does not provide the retrogression benchmark plan under VAVRA, even though the Office of the Attorney General twice precleared the 10-1 plan. Opening Mem. 17–20. As an initial matter, the point is largely academic, since the 10-1 plan serves the dual role of benchmark for retrogression purposes, see Code § 24.2-129, and comparator for measuring minority opportunity for vote-dilution purposes, see *id.* § 24.2-126. Moreover, the VAVRA benchmark provides a measurement for adjudicating the question of whether the adopted plan is retrogressive. That fact-laden question requires trial, so it would be peculiar for the Court to issue a ruling about what benchmark is proper before the retrogression inquiry itself is ripe for adjudication. The Court should therefore reserve the question for trial.

In all events, Plaintiffs err in arguing that the 10-1 plan cannot be the benchmark because it “was used *only* pursuant to the district court’s order in *Holloway*.” Opening Mem. 18. This assertion is untrue: the *Holloway* order had been vacated when the City used the 10-1 plan in 2022, and the City used that system to comply with deadlines “mandated by [state] statute.” Order 5.

Moreover, the federal precedent Plaintiffs invoke directs the inquiry to what “practice . . . was ‘in force or effect’ on [the] date” of the change in election systems. *Riley v. Kennedy*, 553 U.S. 406, 421 (2008) (citation omitted). Here, as of a future change to a 7-3-1 system, the 10-1 plan will have been in force and effect for at least two elections (in 2022 and 2024). That is true whether or not legal deficiencies might be alleged against the 10-1 system in hindsight because “an election practice may be ‘in force or effect’ for § 5 purposes despite its illegality under state law if, as a practical matter, it was ‘actually in effect.’” *Id.* at 424 (citation omitted); see *Perkins v. Matthews*, 400 U.S. 379, 395 (1971) (finding single-member district system provided the retrogression standard even though the city ignored a state law commanding at-large elections).<sup>3</sup> Because the 10-1 plan marks the status quo, it is the retrogression baseline.

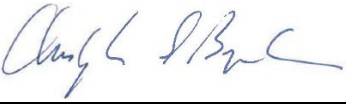
### CONCLUSION

The Court should grant the City’s motion for summary judgment and deny Plaintiffs’ motion for summary judgment.

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<sup>3</sup> *Riley* found this standard met in the “extraordinary circumstance” where an election procedure was adopted but “challenged in state court at first opportunity,” and “the lone election” under that system “was held in the shadow of that legal challenge.” 553 U.S. at 424–25. Here, by contrast, no one challenged the 10-1 system in 2022, Plaintiffs did not even file this suit until January 2024, they lost their preliminary injunction motion, and they failed to diligently prosecute this case thereafter.

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**CERTIFICATE OF SERVICE**

I certify that a true copy of the foregoing was electronically mailed and/or mailed via first-class mail on this 12<sup>th</sup> day of May, 2025, upon the following:

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Christopher S. Boynton

# **Exhibit B**

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH

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Linwood Branch, *et al.*,  
*Plaintiffs,*  
v.  
City of Virginia Beach, *et al.*,  
*Defendants.*

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Case No.: CL24000322-00

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***HOLLOWAY* PLAINTIFFS' RESPONSE IN OPPOSITION TO  
CITY DEFENDANTS' MOTION TO JOIN NECESSARY PARTIES**

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April 14, 2025

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## INTRODUCTION

The City defendants’ motion to involuntarily join Ms. Latasha Holloway and Ms. Georgia Allen (hereinafter “*Holloway* plaintiffs”) as purportedly necessary parties to this litigation should be denied. This is a case about whether *state law* requires Virginia Beach to revert from its 10-1 electoral district system to a 7-3-1 system. That question is entirely distinct from whether *federal law*—in particular Section 2 of the Voting Rights Act (VRA)—requires the City to maintain a 10-1 system.

No law supports the City’s effort to force the *Holloway* Plaintiffs to involuntarily litigate their federal rights in some other party’s state court lawsuit raising an entirely separate issue. The City cannot join the *Holloway* plaintiffs into a state court action against their will simply because the City wishes to consolidate the state claims and potential future federal claims against it in the forum of its choosing. If the City abandons the 10-1 system, either because of a judgment in this lawsuit or for any other reason, the *Holloway* plaintiffs are entitled to adjudicate their federal VRA rights in a federal forum if they so choose.

Nor is joinder appropriate under Virginia law. City defendants’ motion is remarkably untimely, and they have failed to provide any adequate justification for this Court to exercise its discretion to grant them an extension. Furthermore, the *Holloway* plaintiffs have no interest in, and do not wish to participate in, the

adjudication of the *Branch* plaintiffs’ procedural state law dispute. And the mere possibility that (1) this Court may determine that state law mandates a 7-3-1 system and (2) a federal court might later determine that federal law mandates a 10-1 system does not somehow mean the City is potentially subject to inconsistent judgments. That is because there will be no question which judgment the City must follow in that circumstance—the federal court order, pursuant to the Supremacy Clause of the United States Constitution. The judgments would not be inconsistent; the state court judgment would be superseded by the supreme federal court decree.

The motion should be denied.

#### **LEGAL STANDARD**

The joinder of necessary parties is governed by Virginia Code and the Rules of the Supreme Court of Virginia. Va. Code § 8.01-7 permits the court to add new parties “[i]n any case in which full justice cannot be done, or the whole controversy ended, without the presence of new parties to the suit.” Meanwhile, Va. Sup. Ct. R. 3:12(a) dictates that:

A person who is subject to service of process may be joined as a party in the action if (1) in the person’s absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person’s absence may (i) as a practical matter impair or impede the person’s ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest of the person to be joined.

Rule 3:12(b) continues: “A motion to join an additional party may . . . be filed with the clerk within 21 days after service of the complaint” subject to the discretion of the court.

“[T]he necessary party doctrine is calculated to ensure that all parties central to a dispute can have their interests resolved, so that absent parties’ interests are not adversely affected and participating parties may be awarded complete relief.” *Synchronized Constr. Servs., Inc. v. Prav Lodging, L.L.C.*, 288 Va. 356, 366, 764 S.E.2d 61, 67 (2014). “A necessary party is one who has an interest in the subject matter of the litigation that is likely to be defeated or diminished by the litigation.” *Westlake Props., Inc. v. Westlake Pointe Prop. Owners Ass’n, Inc.*, 273 Va. 107, 122, 639 S.E.2d 257, 266 (2007); *see also, e.g., Garner v. Joseph*, 300 Va. 344, 351, 866 S.E.2d 583, 587 (2021); *Raney v. Four Thirty Seven Land Co., Inc.*, 233 Va. 513, 519, 357 S.E.2d 733, 736 (1987).

## ARGUMENT

### **I. *Holloway* plaintiffs cannot be forced to argue any claims in this court.**

The *Holloway* plaintiffs are entitled to pursue their federal law cause of action in federal court. While City defendants argue that “without the participation of the *Holloway* plaintiffs, the Court will not be briefed on one potential justification for the 10-1 system,” Mem. at 13, the City cites no basis—nor is there one—supporting the idea that the *Holloway* plaintiffs can be involuntarily compelled to participate in

this state court litigation in order to raise a federal law issue that is wholly unrelated to the application of the Dillon Rule to Virginia Beach’s charter.

“[A] case arises under federal law when federal law creates the cause of action asserted.” *Gunn v. Minton*, 568 U.S. 251, 257 (2013); 28 U.S.C.A. § 1331. Any claim that the *Holloway* plaintiffs may have against the 7-3-1 system under the federal VRA obviously will arise under federal law. *See* 52 U.S.C. § 10301. And where “the ‘arising under’ statute . . . grants federal district courts ‘original jurisdiction’ over cases presenting a federal question, . . . [t]he plaintiff may avail herself of that jurisdiction.” *Royal Canin U. S. A., Inc. v. Wullschleger*, 604 U.S. 22, 27 (2025). City defendants seek to, but cannot, deprive *Holloway* plaintiffs of that right.

The longstanding rule is that “the complaint—the plaintiff’s own claims and allegations—[are] the key to ‘arising under’ jurisdiction” and that “[i]f the complaint presents no federal question, a federal court may not hear the suit.” *Id.* at 26 (quoting *Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Trust for Southern Cal.*, 463 U.S. 1, 9-10 (1983)). Here, where *Branch* plaintiffs have expressly disclaimed any federal questions in their complaint, this matter will likely be bound to the *Branch* plaintiffs’ choice of venue, regardless of any defense or counterclaims. *Id.* (“[T]he determination of jurisdiction is based only on the allegations in the plaintiff’s ‘well-pleaded complaint’—not on any issue the defendant may raise.”). City defendants cannot go beyond the subject of *Branch* plaintiffs’ complaint and force *Holloway*

plaintiffs into *Branch* plaintiffs’ chosen state court venue to litigate any federal law claims they might have against a 7-3-1 system. It is within the discretion of *Holloway* plaintiffs, not City defendants, to determine if and when they bring any federal law claims and in what venue. *Holloway* plaintiffs’ right to craft their own complaint, with their own claims and allegations, cannot be extinguished because another party has chosen to file a case regarding the procedural requirements of state law, the adjudication of which *Holloway* plaintiffs do not assert an interest and which does not impede their rights.

The *Holloway* plaintiffs have good reason not to advance their federal law claim in this case but rather to await adjudication in their federal forum should that become necessary. When the United States Court of Appeals for the Fourth Circuit remanded the *Holloway* Plaintiffs’ VRA case to the federal district court, it noted that any further proceedings against a 7-3-1 system—if such a system were to be pursued by the City—could build off and rely upon the evidence that was already in the record in the first *Holloway* proceeding, as well as the federal district court’s preexisting findings of fact. *See Holloway v. City of Virginia Beach*, 42 F.4th 266, 277 (4th Cir. 2022) (“The plaintiffs maintain that they still may have viable challenges to whatever post-HB 2198 electoral system the City adopts. And if they do, the parties and district court likely will have done much – though not all – of the work necessary to analyze those claims.”). That federal court record and factual

findings cannot be simply transported into this state court proceeding. Instead, the federal district court that oversaw the trial and the substantial federal court record is best situated to review any federal law claim the *Holloway* plaintiffs may choose to pursue.

The fact that this Court *can* adjudicate federal law issues that are raised by parties does not authorize the City to seek to *force* a non-party to involuntarily appear in this Court and adjudicate their federal law rights here. That is especially so when, as discussed below, there is no risk of irreconcilable judgments stemming from separate actions. City defendants ask this Court to engage in a stunning overreach of judicial power and offer no law to justify what they seek. The Court should reject that invitation.

## **II. City defendants' motion is untimely.**

City defendants Rule 3:12 motion ought to be denied as untimely. Rule 3:12(b) states that “[a] motion to join an additional party may . . . be filed with the clerk within 21 days after service of the complaint” subject to court’s discretion under Rule 1.9. Possible reasons to exercise discretion and grant an extension:

. . . include lack of prejudice to the opposing party, the good faith of the moving party, the promptness of the moving party in responding to the opposing parties’ decision to progress with the cause, the existence of a meritorious claim or substantial defense, . . . the existence of legitimate extenuating circumstances, . . . and the justified belief that suit has been abandoned or will be allowed to remain dormant on the docket.

*Emrich v. Emrich*, 9 Va. App. 288, 293, 387 S.E.2d 274, 276 (1989) (internal citations omitted). However, “[t]rial courts may properly refuse an extension where the delay is due to negligence or carelessness on the part of a party.” *Id.* There is no doubt that City defendants have far exceeded the 21-day time limit, and City defendants have failed to state sufficient reason for this Court to grant an extension.

First, granting the extension would significantly prejudice *Holloway* plaintiffs. City defendants cite that the *Branch* plaintiffs have not diligently prosecuted the case, waiting to file the case until long after the 10-1 system’s adoption and taking no action from after their temporary injunction was denied on August 19, 2024 until March 24, 2025. The City claims that this illustrates “the lack of any colorable prejudice to [the *Branch* plaintiffs] by the timing of this motion.” Mem. of Law in Support of City Defs.’ Mot. to Join Necessary Parties at 20 (“Mem.”). The factor to be considered, however, is the “lack of prejudice to the opposing party.” *Emrich*, 9 Va. App. at 293. *Branch* plaintiffs’ delay cannot eliminate the delay’s prejudice to the *Holloway* plaintiffs. This matter is now at the summary judgment stage before this Court, with demurrers and special pleas in bar having been briefed and adjudicated months ago. *Holloway* plaintiffs will experience prejudice if forced to enter this litigation at this late stage, where they may have made very different choices that would have shaped this litigation differently if they wished to be involved in it (they do not).

*Second*, City defendants claim that their delay is justified by the extenuating circumstance that the General Assembly was considering “legislation that might have mooted the *Branch* Plaintiffs’ claims in this case, including a bill in 2024 to amend the City Charter.” Mem. at 20. But that 2024 bill was vetoed by Governor Youngkin on May 17, 2024. And, on November 12, 2024, the day the City Council declined to send another such charter change request to the General Assembly, Mayor Bobby Dyer commented, “As long as it’s under litigation, the governor will not sign it, and that’s what I was told.”<sup>1</sup> So it is hard to believe that, at least as of November 2024, “[t]he City in good faith believed that such legislation had a reasonable prospect for success.” Mem. at 20. This cannot, therefore, justify the delay.

*Third*, City defendants argue that “[t]he need for joinder became more clear based on recent events in this case” including “continued threats from *Holloway* plaintiffs.” Mem. at 20. *Holloway* plaintiffs have not made “threats” but rather have maintained and asserted their longstanding position that a 7-3-1 system is dilutive in violation of the federal VRA, and that they will challenge any such system in federal court if one is adopted. *See, e.g.*, Ex. 2, Transcript of Video Teleconference

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<sup>1</sup> Marta Berglund and Tracy Cooper, *Virginia Beach’s 10-1 election system fails to move forward after Tuesday vote*, 13News Now (Nov. 12, 2024), <https://www.13newsnow.com/article/news/local/mycity/virginia-beach/virginia-beachs-10-1-election-system-fails-to-move-forward-after-tuesday-vote/291-6d7af347-c52b-4a35-aab2-f97ea3b99a56>.

Proceedings, Br. *Amicus Curiae* of Georgia Allen in Support of Defendants, at 7 (“[I]f that is the next step that the Council seeks instead of responding to public input and seeking to adopt the ten-one system, or a system which would address the minority vote dilution effectively, the plaintiffs will seek to amend their Complaint to challenge the seven-three system which is currently on the books as a matter of law.”). *Holloway* plaintiffs’ maintenance of a position which they have clearly articulated since at least May 2021—over two and a half years before this lawsuit was even filed—cannot justify such an extensive delay in moving to join *Holloway* plaintiffs. *Id.*

*Fourth*, the City claims that the ends of justice support granting an extension because the “case raises foundational questions about how the City of Virginia Beach is organized, and the Court’s judgment will impact the City’s more than 450,000 residents.” Mem. at 20. However, as outlined below, full justice can be done with regard to the resolution of the Dillon Rule subject of this litigation without the joinder of *Holloway* plaintiffs. In contrast, as outlined above, justice would be thwarted by the forced joinder of *Holloway* plaintiffs, who would be denied their right to a federal forum to enforce their federal rights. The ends of justice, therefore, require denial.

With the failure of each of City defendants’ proffered circumstances justifying an exercise of discretion, all that is left is a “failure to exercise due diligence under

the circumstances” which “does not constitute a reasonable or legal excuse for failure to comply with filing requirements.” *Emrich*, 9 Va. App. at 293. This Court should reject Defendants’ motion as untimely.

### **III. *Holloway* plaintiffs are not necessary parties to this litigation.**

A determination that *Holloway* plaintiffs are necessary parties who must be joined under Rules 3:12(a)(2) would run contrary to the law. The plain text of Rule 3:12(a)(2) notes that a person subject to service may be joined as a party if “*the person* claims an interest relating to the subject of the action” (emphasis added). The non-party to be joined, not the party seeking joinder, must claim that interest.<sup>2</sup> This is consistent with the design of Rule 3:12(a)(2) “to avoid having persons deprived of their property without giving them an opportunity to be heard and defend their interests in the property.” *Grubb v. Grubb*, 272 Va. 45, 56, 630 S.E.2d 746, 753 (2006); *see also MartianCraft, LLC v. Richter*, 98 Va. Cir. 269 (2018) (“proceeding

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<sup>2</sup> Federal courts have repeatedly held this when applying Federal Rule of Civil Procedure 19(a)(1)(B) which is nearly identical to Rule 3:12(a)(2). *See, e.g., McKiver v. Murphy-Brown, LLC*, 980 F.3d 937, 951 (4th Cir. 2020); *Amari v. Griffin*, 339 F.R.D. 91, 94 n.2 (W.D. Va. 2021) (“Rule 19(a)(1)(B) applies only where the non-party to be joined claims an interest relating to the subject of the action.” (internal quotation omitted)); *Marina One, Inc. v. Jones*, 29 F. Supp. 3d 669, 678 (E.D. Va. 2014) (describing the non-party claiming an interest as “a prerequisite” to a necessary party determination under Rule 19(a)(1)(B)); *Sunbelt Rentals Inc. v. Guzman*, No. 520CV00070KDBDSC, 2020 WL 5522997, at \*2 (W.D.N.C. Aug. 27, 2020), *report and recommendation adopted*, No. 520CV00070KDBDSC, 2020 WL 5517682 (W.D.N.C. Sept. 14, 2020) (“Importantly, the nonjoined party must be the one claiming an interest. . . . It is well established that where the absent party has not claimed an interest, Rule 19(a)(1)(B) does not apply.”).

on the Plea in Bar without ensuring that these individuals have formal notice of the litigation and the opportunity to respond to it would constitute an injustice”); *Boasso Am. Corp. v. Zoning Adm’r of City of Chesapeake*, 293 Va. 203, 211, 796 S.E.2d 545, 549 (2017) (“A pleading should signal to opposing parties that they are the subject of a legal action and that they must protect their interests.”).

Joinder of *Holloway* plaintiffs under Rule 3:12(a)(2) would therefore be improper, because *Holloway* plaintiffs have not asserted any interest in the procedural state law subject of this action. *Holloway* plaintiffs are clearly aware of this litigation, as demonstrated by Ms. Allen’s *amicus* brief last year and the instant filing, and *Holloway* plaintiffs have an obvious interest in maintaining the Virginia Beach City Council 10-1 system of election to remedy the vote dilution they experienced under the City’s at-large elections. But the Dillon Rule is the subject of this action, and *Holloway* plaintiffs do not assert that their potential vote dilution claim represents an interest in what the Dillon Rule may or may not require. That is, *Holloway* plaintiffs’ rights do not turn on the Dillon Rule’s requirements. The prerequisite for joinder under Rule 3:12(a)(2) has not, therefore, been met. For that reason alone, this Court should deny City defendants’ motion.

However, even if this Court finds that *Holloway* plaintiffs’ interest in the maintenance of the 10-1 system suffices as a claimed interest in the subject of this action, *Holloway* plaintiffs are still not necessary parties. Rule 3:12(a)(2)(i) does not

apply, because any interest they claim will not be impaired or impeded by the disposition of this action in their absence. If this Court rules against the City and concludes that *state law* requires a 7-3-1 system, the *Holloway* plaintiffs' *federal law* claim, and their right to pursue that claim in *federal court*, will in no way be impaired. Nor does Rule 3:12(a)(2)(ii) apply, because the City faces no risk of conflicting obligations if it loses this lawsuit *and* loses a subsequent federal court lawsuit. The Supremacy Clause of the United States Constitution dictates that the federal court order would supersede this Court's application of the Dillon Rule.

**A. *Holloway* plaintiffs do not claim an interest in the subject matter of this action that will be impaired or impeded if they are not joined.**

*Holloway* plaintiffs are not necessary parties to this action under Rule 3:12(a)(2)(i). As discussed above, *Holloway* plaintiffs have claimed no interest in the procedural state law issues that are the subject of this action. But even if this Court finds that *Holloway* plaintiffs' claimed interest under the federal VRA does, in fact, relate to the subject of this action, that claimed interest nevertheless will not as a practical matter be impaired or impeded by the disposition of the *Branch* litigation without *Holloway* plaintiffs.

Rule 3:12(a)(2)(i) provides that an additional party may be added when "the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may . . . as a practical matter impair or impede the person's ability to protect that interest." However, an absent

party need not be joined “where an absent party’s interests are separable from those of the parties before the court, so that the court may enter a decree without prejudice to the rights of the absent party.” *Bonanno v. Quinn*, 299 Va. 722, 731, 858 S.E.2d 181, 185 (2021) (quoting *Michael E. Siska Revocable Tr. ex rel. Siska v. Milestone Dev., LLC*, 282 Va. 169, 176, 715 S.E.2d 21, 25 (2011)).

Courts have repeatedly held that a party is not necessary if they have an interest that is “separate, distinct, and entirely unaffected” by the instant action. *Raney*, 233 Va. at 520. *See, e.g., Westlake Props., Inc.*, 273 Va. at 122 (holding that individual property owners who “may have had, and may still have, claims against [a party in the action] for other damage suffered as a result of its negligence,” were not necessary parties to the action where the claim “neither implicated nor imperiled any claim by an individual property owner for damages not related to” the specific challenged negligence); *Grubb*, 272 Va. at 57; *McKiver*, 980 F.3d at 952 (“[E]ven if [an absent party] is alleged to have played a central role in the action at issue, and even if resolution of the action will require the court to evaluate the absent party’s conduct, that party in many cases . . . will not have interests that warrant protection under Rule 19(a)(1)(B)(i).”) (internal quotations omitted).

Take for example *Thomas v. Carmeuse Lime & Stone, Inc.*, where a circuit court identified a person whose claimed interest in the property at issue in the case “may well conflict with the interest claimed by Defendants” and noted that a ruling

of the court “could potentially also impair or impede [the person’s] ability to protect his interest.” No. 7:12-CV-00413-JCT, 2013 WL 5491875, at \*2 (W.D. Va. Oct. 2, 2013). The court also indicated, however, that “it may well be that [the person] could protect his interests subsequent to this lawsuit, through a separate lawsuit or otherwise.” *Id.* at \*2 (internal quotations omitted). Acknowledging these competing factors, the circuit court permitted, but did not require, the person to join as a party plaintiff. *Id.*

Like *Thomas*, while the disposition of the *Branch* litigation may have some implications for interests claimed by *Holloway* plaintiffs, they have the ability to protect those interests through a separate lawsuit. Indeed, *Holloway* plaintiffs’ interests are more plainly separable than in *Thomas*. The different rights claimed by the *Branch* and *Holloway* plaintiffs do not arise from the same contract or even under the same law but merely relate to the same electoral system. No decree of this Court on the applicability of the Dillon Rule can prejudice *Holloway* plaintiffs’ rights to challenge a future system of election for diluting their votes in violation of the federal VRA. And while the *Holloway* plaintiffs’ choice to pursue their federal rights in a federal forum might be *inconvenient* for the City, inconvenience is not the same as facing conflicting legal obligations.

The doctrines of *res judicata* and collateral estoppel further illustrate how *Holloway* plaintiffs’ asserted interests will not be impaired or impeded if they are

not joined. At the outset, since both doctrines require privity, “[n]either collateral estoppel nor res judicata would encumber such future litigation because [*Holloway* plaintiffs] would not have been a party to the . . . action, and no party in that . . . action identifies with [*Holloway* plaintiffs’] interest to such a degree that it could be said to have represented [their] legal rights.” *Synchronized Constr. Servs., Inc.*, 288 Va. at 367. But, *even if Holloway* plaintiffs were joined, their federal VRA interests would not be impaired or impeded. Nor could the City or the Court force the *Holloway* plaintiffs to even present their federal claim in this forum even if they were joined as parties.

*Holloway* plaintiffs’ claims will not be barred by *res judicata* as outlined by the Rules of the Supreme Court of Virginia:

A party whose claim for relief *arising from identified conduct, a transaction, or an occurrence*, is decided on the merits by a final judgment, is forever barred from prosecuting any second or subsequent civil action against the same opposing party or parties on any claim or cause of action *that arises from that same conduct, transaction or occurrence*, whether or not the legal theory or rights asserted in the second or subsequent action were raised in the prior lawsuit, and regardless of the legal elements or the evidence upon which any claims in the prior proceeding depended, or the particular remedies sought.

Va. Sup. Ct. R. 1:6 (emphasis added). *Res judicata* would not preclude *Holloway* plaintiffs from enforcing their rights under the federal VRA, because the *Branch* claims arise from City defendants’ adoption of the 10-1 system—with which *Holloway* plaintiffs have no issue—whereas any future challenge to a 7-3-1 system

of election would arise from a wholly different occurrence. The City cannot *force res judicata* onto the *Holloway* plaintiffs by seeking to involuntarily join them into a state court action in which they have chosen not to participate.

Nor would collateral estoppel prevent *Holloway* plaintiffs from later protecting their interests.

Virginia law on collateral estoppel is clear . . . For the doctrine to apply, the parties to the two proceedings, or their privies, must be the same; the factual issue sought to be litigated actually must have been litigated in the prior action and must have been essential to the prior judgment; and the prior action must have resulted in a valid, final judgment against the party sought to be precluded in the present action.

*TransDulles Ctr., Inc. v. Sharma*, 252 Va. 20, 22-23, 472 S.E.2d 274, 275 (1996).

Applying this test, plaintiffs will not be stopped from bringing claims to enforce their rights under the federal VRA, a factual issue entirely separate from the one in this action. The City cannot use joinder rules—designed for wholly different circumstances in which a non-parties' rights will be necessarily disposed of by the pending action—in a quest to avoid defending itself in a federal forum should the *Holloway* plaintiffs proceed with a federal claim. And while the *Holloway* plaintiffs believe that this Court should rule against the *Branch* plaintiffs for a host of reasons, including under the Virginia Voting Rights Act, the City cannot force the *Holloway* plaintiffs to unwillingly advance *any* claim—state or federal—in this lawsuit.

*Holloway* plaintiffs' rights under the federal VRA will not be impaired or impeded in any way. The Supremacy Clause guarantees that any outcome of this

state court litigation cannot interfere with *Holloway* plaintiffs' rights under federal law. U.S. Const. art. VI, cl. 2; *Arizona v. United States*, 567 U.S. 387, 399 (2012). *Holloway* plaintiffs' federal VRA claims, then, cannot be barred by any decree arising from this lawsuit, and *Holloway* plaintiffs' ability to protect their federal-VRA-derived interests would therefore not be impaired or impeded absent joinder.

Because the *Holloway* plaintiffs' interests in enforcing their rights under the federal VRA will be "entirely unaffected" if they are not joined, they are not necessary parties under Rule 3:12(a)(2)(i). *Raney*, 233 Va. at 520.

**B. City Defendants will not face double, multiple, or otherwise inconsistent obligations by reason of any claimed interest of the *Holloway* plaintiffs.**

For many of the same reasons that *Holloway* plaintiffs are not necessary parties under Rule 3:12(a)(2)(i), they are not necessary parties under Rule 3:12(a)(2)(ii). Once again, *Holloway* plaintiffs have claimed no interest in the procedural state law issues that are the subject of this action. Even so, no interest claimed by *Holloway* plaintiffs will subject City defendants to "a multiplicity of litigation," Mem. at 15, or inconsistent obligations. Rule 3:12(a)(2)(ii) provides that an additional party may be added when:

the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may . . . leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest of the person to be joined.

It would no doubt be more convenient for the City to extinguish all claims regarding the City Council system of election in one case, but “[a] party is not necessary simply because joinder would be convenient, or because two claims share common facts.” *S. Co. Energy Mktg., L.P. v. Va. Elec. & Power Co.*, 190 F.R.D. 182, 185 (E.D. Va. 1999). Rather, the party seeking joinder must be subjected to “inconsistent obligations.” City defendants face no such risk.

Even if a 7-3-1 system is imposed as a result of this litigation and *Holloway* plaintiffs later successfully challenge that system under federal law in federal court, City defendants would not be subject to inconsistent obligations. A determination that the Dillon Rule requires a particular process to change the charter, resulting in the imposition of a 7-3-1 system, can be entirely legally consistent with a second determination resulting in the same 7-3-1 system’s invalidation under federal law. This is because any obligations resulting from *Branch* plaintiffs’ claims would relate to how the Virginia Beach City Council can *voluntarily* change its system of election, whereas any obligations resulting from *Holloway* plaintiffs’ claims would relate to how the Council *must* change its system of election when so ordered by a court, not at all implicating the Dillon Rule determination.<sup>3</sup> The fact that, as explained above,

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<sup>3</sup> As explained above, due to the Supremacy Clause, the imposition of a 10-1 system under the *federal* VRA would certainly not create an inconsistent obligation; any perceived inconsistent obligation arising from state law would necessarily be superseded by a required change under federal law.

neither *res judicata* nor collateral estoppel would bar *Holloway* plaintiffs from pursuing their claims against a future electoral system *even if they were to be joined* further demonstrates that the obligations that could be imposed as a result of *Holloway* plaintiffs' claimed interests are not, in fact, inconsistent with the obligations that could be imposed as a result of *Branch*.

The cases cited by City defendants are inapplicable. For example, in *Palermo v. Epple*, each of the parties—including the third party that the court deemed necessary—were claiming their own interest in visitation; the court properly identified that no party had the “same interest . . . [i]n the zero sum calculation of visitation,” and all three parties were necessary to effectuate full relief with the rights of each party accounted for in the visitation schedule. No. 1966-14-4, 2015 WL 7253740, at \*3 (Va. Ct. App. Nov. 17, 2015). But the zero-sum scenario in the *Branch* litigation is not, as City defendants claim, that only one system of election can be used to elect Virginia Beach City Council, but instead that there can be only one interpretation of the Dillon Rule as it relates to the City's ability to voluntarily change its electoral system. That full relief can be afforded without the presence of the *Holloway* plaintiffs. The *Holloway* plaintiffs have nothing to add with regard to the Dillon Rule.

The federal caselaw cited by City defendants is similarly unavailing. Though it may be possible that City defendants lose the *Branch* matter and later lose in a

federal court challenge to the 7-3-1 system of election, that would not put City defendants “in the position of losing in both cases *due to conflicting determinations.*” *DPR Constr., Inc. v. IKEA Prop., Inc.*, No. 1:05CV259(JCC), 2005 WL 1667778, at \*4 (E.D. Va. July 6, 2005) (emphasis added). This case is not like one where a defect can be either of design or construction, *id.*; or where there are conflicting readings of a single union contract, *Teamsters Loc. Union No. 171 v. Keal Driveaway Co.*, 173 F.3d 915, 918 (4th Cir. 1999); or where only one party is entitled to a retirement account, *Childress v. UBS Fin. Servs., Inc.*, No. 1:12CV00045, 2012 WL 5409832, at \*1 (W.D. Va. Nov. 6, 2012). In each of those scenarios, it is true that the success of one party necessarily requires the defeat of the other. But, as outlined above, the City will face no inconsistent obligations—it may instead simply be forced to follow a supreme federal court decree that moots the effectiveness of any ruling against it under state law in this action.

## CONCLUSION

For the foregoing reasons, *Holloway* plaintiffs respectfully request that this Court deny City Defendants’ Motion to Join Necessary Parties as it relates to the attempted joinder of *Holloway* plaintiffs.

Respectfully submitted,

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I certify that on April 14, 2025, a true copy of the foregoing was electronically mailed to the following:

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