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-00069

BRIEF OF THE COMMONWEALTH OF VIRGINIA
AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

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INTRODUCTION AND INTERESTS OF *AMICUS CURIAE*

For several years, the Plaintiffs in this case have pushed the City of Virginia Beach to adopt a 10-1 method for selecting its City Council, where ten members of the City Council would represent individual districts while the mayor would be elected by Virginia Beach at large. The City's charter and Virginia law, however, provide for a 7-3-1 system, meaning seven members are elected by individual districts while the four other seats (three members plus the mayor) are elected by all voters in Virginia Beach.

Plaintiffs argue that the change to the City Council's composition is required by the federal Voting Rights Act (VRA) or the Virginia Voting Rights Act (VVRA), which seek to put "an end to the denial of the right to vote based on race." *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 655 (2021). Specifically, Plaintiffs claim that a 7-3-1 system prevents a coalition of "Black, Hispanic/Latino, and Asian/Asian American Pacific Islander" voters from having an equal opportunity to elect their preferred candidates. See Second Amend. Compl. (SAC) (ECF No. 340) at ¶ 1. But these so-called "coalition claims"—which combine multiple different minority groups to analyze whether the "class" is disfavored—are not authorized by either the VRA or the VVRA. This Court should reject the coalition theory: the text and structure of both the VRA and the VVRA, as well as the consequences and constitutional difficulties engendered by the coalition theory, all require dismissal.

Amicus curiae the Commonwealth of Virginia has interests in protecting its citizens' voting rights and ensuring its localities' compliance with both the VRA and the VVRA. Plaintiffs' coalition theory distorts those statutes and will undermine the fairness of Virginia's elections by requiring Virginia Beach to treat nonparty members of Plaintiffs' putative coalition as if they share Plaintiffs' political preferences. Aside from the "offensive and demeaning assumption" this theory requires, *Miller v. Johnson*, 515 U.S. 900, 912 (1995), record evidence earlier in this very

proceeding showed that at least some members of the coalition do *not* support the same candidates or have the same political goals as the individual plaintiffs who claim to represent them. Indeed, the Attorney General was elected as Virginia Beach's first Cuban-American member of the House of Delegates—and is now the first Hispanic statewide officeholder—notwithstanding his affiliation with the political party which, according to Plaintiffs, the coalition that includes Hispanic voters does not support. Virginia submits this brief to express concern about the ramifications of accepting Plaintiffs' theory and allowing it to proceed, which could reverberate across the Commonwealth and beyond.

BACKGROUND

According to its charter, the City of Virginia Beach is governed by an eleven-member City Council comprised of a mayor and ten other councilmembers. City of Virginia Beach Charter § 3.01(A). Before 2021, all eleven members were elected at-large—that is, by all City voters—although seven of the eleven were required to reside in one of seven "residence districts." *Ibid.*; *Holloway v. City of Va. Beach*, 42 F.4th 266, 271 (4th Cir. 2022). In 2021, this Court held that the old system violated Section 2 of the VRA. See *Holloway v. City of Va. Beach*, 531 F. Supp. 3d 1015, 1027 (E.D. Va. 2021). This Court eventually ordered the City to implement a plan with ten single-member districts, including three districts where minority voters formed a majority of the voting population. See *Holloway v. City of Va. Beach*, 2021 WL 6199585, at *2 & n.2 (E.D. Va. Dec. 22, 2021).

That same year, however, the General Assembly passed HB 2198, which provided that any City Council candidate subject to a district-based residency requirement, like in Virginia Beach, must "be elected by the qualified voters of that district . . . and not by the locality at large." Code § 24.2-222(A) (codifying HB 2198). This law meant that, going forward, "candidates for most City Council seats—the seven with residency requirements—would run for office in single-

member districts," while "candidates for only three seats—those without any residency requirement—would continue to be elected at-large." *Holloway*, 42 F.4th at 271; see also *id.* at 276 ("HB 2198 will allow the City to maintain at-large elections for three of its City Council seats.").

The City appealed this Court's ruling, and the Fourth Circuit held that HB 2198 mooted the case. See *Holloway*, 42 F.4th at 272. In July 2022, the Fourth Circuit therefore vacated this Court's order to implement a plan with ten single-member districts. The City did not, however, then implement a system compliant with both its charter and HB 2198—a system in which three councilmembers and the mayor were elected at-large, and seven councilmembers were elected by single-member districts. Instead, the City conducted its 2022 elections based on this Court's vacated order, where all ten councilmembers were elected as single members. See SAC ¶ 7. The City later enacted a redistricting ordinance in 2023 adopting a ten single-member redistricting plan. See *id.* ¶ 8.

Certain Virginia Beach voters brought a lawsuit in state court against the City, claiming, in relevant part, that the 2023 redistricting ordinance was void as an *ultra vires* act. See *Branch v. City of Virginia Beach*, No. CL24-322 (Va. Beach Cir. Ct.). The circuit court agreed, holding that the ordinance establishing a 10-1 system was void *ab initio*. ECF No. 342-1 at 54:17–20. This Court then reopened this case, see ECF No. 338, and Plaintiffs filed their SAC, ECF No. 340. In the SAC, Plaintiffs claim that the 7-3-1 system violates both the VRA and the VVRA by denying

voters in their proffered coalition "an equal opportunity to participate in the political process and to elect representatives of their choice by diluting their voting strength." SAC ¶¶ 219, 229.

ARGUMENT

The government violates Section 2 of the VRA when members of a racial, ethnic, or language minority group—a protected "class of citizens" under that section—are denied equal participation in elections. 52 U.S.C. § 10301(b); see also, *e.g.*, *Thornburg v. Gingles*, 478 U.S. 30, 35 (1986) (suing to enforce rights of "black citizens of North Carolina"); *Cross v. Fox*, 23 F.4th 797, 799 (8th Cir. 2022) (suing to enforce the rights of "Members of an Indian tribe"); *Gonzalez v. Arizona*, 677 F.3d 383, 406 (9th Cir. 2012) (addressing whether state law "disparately impacts Latino voters"). Similarly, the VVRA prohibits impairing the ability of "members of a protected class" from "elect[ing] candidates of its choice" or "influenc[ing] the outcome of an election." Va. Code § 24.2-130. These statutes do not contemplate "coalitions" formed from multiple minority groups putatively bringing suit as a single "class." Indeed, neither the Supreme Court nor any state court has never accepted such a coalition theory. See *Growe v. Emison*, 507 U.S. 25, 41 (1993) ("[a]ssuming (without deciding) that it was permissible for the [d]istrict [c]ourt to combine distinct ethnic and language minority groups for purposes of assessing compliance with § 2," and reversing on other grounds). This Court should reject the coalition theory: the text and structure of both the VRA and VVRA, as well as the consequences and constitutional difficulties engendered by the coalition theory, all require dismissal.

I. Coalition claims are not cognizable under Section 2 of the VRA

Section 2 of the VRA prohibits any "standard, practice, or procedure . . . which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or

color," or on account of "member[ship] [in] a language minority group."[1] 52 U.S.C. §§ 10301(a), 10303(f)(2). The statute requires a court to evaluate the "totality of circumstances" in order to determine whether "the political processes leading to nomination or election . . . are not equally open to participation by members of a class of citizens" described above, "in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." *Id.* § 10301(b). The text of Section 2 of the VRA thus forecloses the coalition theory. See *Petteway v. Galveston Cnty.*, 111 F.4th 596, 604 (5th Cir. 2024) (en banc) ("The text of Section 2 does not authorize coalition claims, either expressly or by implication.").

To begin, the text of Section 2 precludes a coalition theory because the statute's reference to "members of *a class* of citizens" cannot be stretched to allow a claim by a coalition of *multiple classes* of citizens. See *Petteway*, 111 F.4th at 604 (quoting 52 U.S.C. § 10301(b)); *Nixon v. Kent Cnty.*, 76 F.3d 1381, 1386–87 (6th Cir. 1996) (en banc). Rather, a minority group's claims under Section 2 must stand or fall on their own. Section 2 calls for a comparison of the "opportunit[ies]" afforded to members of a protected class to those afforded to "other members of the electorate"—necessarily *including* members of other minority groups. 52 U.S.C. § 10301(a). By instead subsuming the members of virtually every other sizable minority group in Virginia into their coalition, Plaintiffs twist the VRA's text to create a comparison between the aggregate membership of *every* minority group against a single comparator: white citizens. But if the VRA

[1] "'[L]anguage minorities' or 'language minority group' means persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage." 52 U.S.C. § 10310(c)(3).

had intended such a comparison, Congress would have said so. See *Petteway*, 111 F.4th at 604–07; *Nixon*, 76 F.3d at 1390–91.

The coalition theory is further undermined by Section 2's separate identification of each group of protected language minorities. See 52 U.S.C. § 10310(c)(3) ("American Indian, Asian American, Alaskan Natives or of Spanish Heritage"). Congress's careful identification of these protected classes indicates that "Congress considered members of each group and the group itself to possess homogeneous characteristics [and] . . . did not envision that each defined group might overlap with any of the others or with [other racial minorities]." *League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 999 F.2d 831, 894 (5th Cir. 1993) (en banc) ("*LULAC II*") (Jones, J., concurring).

If the textual basis for rejecting the coalition theory were not enough, the Court must also consider that coalition claims are "fraught with risks." *League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 986 F.2d 728, 785 n.43 (5th Cir. 1993) ("*LULAC I*"). Treating "a group composed of . . . minorities" as "itself a protected minority" will ensnare the courts in a guessing game of racial assumptions. *Campos v. City of Baytown*, 849 F.2d 943, 945 (5th Cir. 1988) (Higginbotham, J., dissenting from denial of rehearing en banc). "Once the courts plunge into the business of apportioning representation among racial or ethnic coalitions, a host of difficult and potentially divisive social questions rear their heads." *LULAC II*, 999 F.2d at 897 (Jones, J., concurring); see also *id.* at 897 & n.9 (Jones, J.) ("[S]ociological literature . . . demonstrates 'social distance' between minority groups."). By glossing over strong and genuine disagreements between members of different minority groups, Plaintiffs ask this Court to "fashion[] [relief] only because of the groups' joint minority status"—which, perversely, is itself a form of discrimination, and "a

cruel hoax upon those who are not cohesive with self-styled minority spokesmen." *Id.* at 896–97 (Jones, J.).

As the Fourth Circuit has already recognized, "any construction of Section 2 that authorizes the vote dilution claims of multiracial coalitions would transform the Voting Rights Act from a law that removes disadvantages based on race, into one that creates advantages for political coalitions that are not so defined." *Hall v. Virginia*, 385 F.3d 421, 431 (4th Cir. 2004). In *Hall*, plaintiffs alleged a "crossover" theory that, in a newly drawn congressional district, "blacks are too small in number to form the same winning coalition with 'crossover' white voters that existed before" the creation of the new district. *Id.* at 425. Similarly, the coalition members here allegedly have no "potential to elect a candidate *on the strength of their own ballots*." *Id.* at 429. Plaintiffs instead may elect their preferred candidates only by "join[ing] their political hands" with other groups. *League of United Latin Am. Citizens, Council No. 4386 v. Midland Indep. Sch. Dist.*, 812 F.2d 1494, 1505 (5th Cir. 1987) (Higginbotham, J., dissenting), *opinion vacated on reh'g*, 829 F.2d 546 (5th Cir. 1987).

Permitting Plaintiffs' coalition claims would transform the "ability to form a political coalition with other racial or ethnic groups," *Hall*, 385 F.3d at 431, into "a right to preserve their strength for the purposes of forging an advantageous political alliance," *Bartlett v. Strickland*, 556 U.S. 1, 14–15 (2009) (plurality opinion) (quoting *Hall*, 385 F.3d at 431). But "Section 2 does not create an *entitlement* for minorities to form an alliance with other voters in a district who do not share the same statutory disability as the protected class." *Hall*, 385 F.3d at 431 n.13; see also *Campos*, 849 F.2d at 945 (Higginbotham, J., dissenting from denial of rehearing en banc) ("A group tied by overlapping political agendas but not tied by the same statutory disability is no more

than a political alliance or coalition."). The same difficulty that caused the Fourth Circuit to reject the crossover claim in *Hall* should cause this Court to reject Plaintiffs' coalition claim in this case.

Judicially enlarging Section 2 to authorize coalition claims would also raise constitutional concerns. Congress "retained the statutory language restricting relief under [Section] 2 to 'denials or abridgements of the right to vote on account of race or color.'" *LULAC II*, 999 F.2d at 854 (alterations omitted) (quoting 42 U.S.C. § 1973 (1982)). "This limitation was not so much the product of legislative discretion as constitutional imperative, given that the scope of Congress' remedial power under the Civil War Amendments is defined in large part by the wrongs they prohibit." *Ibid.* At bottom, coalition claims are problematic because they loosen the ties between Section 2 and race or color, risking the possibility of plaintiffs using Section 2 to prosecute grievances beyond what is permitted by the Constitution or the VRA.

II. Coalition claims are not authorized by the VVRA

For similar reasons, coalition claims are not authorized by the VVRA. The VVRA refers to "members of a protected *class*" electing "candidates of *its* choice or *its* ability to influence the outcome of an election." Va. Code § 24.2-130 (emphasis added). Like the federal VRA, nowhere does the VVRA "indicate that two minority groups may combine forces to pursue a vote dilution claim"; "[o]n the contrary, the statute identifies the subject of a vote dilution claim as 'a class,' in the singular, not the plural." *Petteway*, 111 F.4th at 604. Had the General Assembly "chosen explicitly to protect minority coalitions it could have done so by defining . . . in terms of protected *classes* of citizens. It did not." *Ibid.* (quotation marks omitted). Indeed, like in the VRA, the VVRA uses the phrase "protected class." "In discrimination law, this phrase is typically used to acknowledge membership in a particular racial or ethnic group, when racial discrimination is

alleged." *Id.* at 605. "It is membership in the discrete racial or ethnic group that triggers protection and guides analysis of whether the plaintiff has been discriminated against. So too here." *Ibid.*

* * *

Many racial or ethnic categorizations lump individuals into "plainly overbroad," "arbitrary or undefined," or "underinclusive" groups. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.,* 600 U.S. 181, 216 (2023). Agglomerating a diverse set of "non-white" communities, see SAC ¶ 63, into a single racial "class" is much worse. And for purposes of the VRA or VVRA, such an ungainly grouping demonstrates the obvious danger of stretching the text of these statutes beyond what the legislatures intended. Virginia Beach, like the rest of the Commonwealth and the country, is composed of diverse ethnic, racial, religious, and linguistic communities. They are distinct from each other. They are shaped by their respective heritages, experiences, and traditions. Communities of recently arrived immigrants, for example, have a different American experience than communities that have been in North America for centuries. Bilingual communities have a different American experience than those who speak primarily English. And communities who practice a minority religion, like Roman Catholicism, have a different American experience than those who do not. Those experiences inform and shape the "distinctive minority group interests" of those communities. *Gingles*, 478 U.S. at 51. The rich diversity across minority communities in Virginia Beach and the Commonwealth weighs heavily in favor of honoring the legislatures' expressed intention to limit voting rights claims only to those brought by individual minority groups.

A contrary approach would be dangerous. The Supreme Court explained nearly thirty years ago that combining "in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common

with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid." *Shaw v. Reno*, 509 U.S. 630, 647 (1993). Doing so "reinforces . . . impermissible racial stereotypes" that "members of the same racial group—regardless of their age, education, economic status, or the community in which they live—think alike, share the same political interests, and will prefer the same candidates at the polls." *Ibid.* Yet the SAC invites this Court to treat diverse groups of "non-white" voters—regardless of age, education, economic status, heritage, language, or religion—as thinking alike, sharing the same political interests, and preferring the same candidates merely because they are not white. This Court should follow *Shaw*'s exhortation and decline to perpetuate Plaintiffs' "offensive and demeaning assumption." *Miller*, 515 U.S. at 912.

"It is a sordid business, this divvying us up by race." *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part, concurring in the judgment in part, and dissenting in part). Accepting Plaintiffs' coalition theory would make this sordid business much worse. This Court should reject it.

CONCLUSION

For the foregoing reasons, this Court should grant the motion to dismiss.

Dated: September 2, 2025

Respectfully submitted,

COMMONWEALTH OF VIRGINIA

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on September 2, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all parties of record.

/s/ Kevin M. Gallagher
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