

**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.

**PLAINTIFFS' RESPONSE IN
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS OR, IN THE
ALTERNATIVE, TO CERTIFY AN
INTERLOCUTORY APPEAL OR HOLD
THE CASE IN ABBEYANCE**

Civil Action No. 2:18-cv-0069

The City's Motion to Dismiss or, in the Alternative, to Certify an Interlocutory Appeal or Hold the Case in Abeyance ("Motion"), ECF No. 341, would delay this litigation and should be denied. To begin, Defendants do not satisfy the standard governing a motion to dismiss (which they omit from their motion). Plaintiffs' claims under both Section 2 of the federal Voting Rights Act ("Section 2") and the Virginia Voting Rights Act ("VAVRA") contain more than sufficient factual matter, accepted as true, to state claims for relief that are plausible on their face. Moreover, this Court should decline the City's request to certify an interlocutory appeal and reject the City's contention that there is a single-race limitation on the protections of Section 2. This Court already found that Section 2's text, history, and the judicial precedents applying it permit coalition claims, and Defendants' motion provides no persuasive arguments otherwise. Further, the Court should deny Defendants' attempt to evade responsibility for its admitted violation of the VAVRA. However, if the Court agrees with Defendants that this matter should be held in abeyance until the City adopts a specific 7-3-1 configuration, Plaintiffs ask that the Court obtain a date certain by which the City would adopt a 7-3-1 plan after the November 2025 referendum and, if a 7-3-1 plan is adopted, order an expedited discovery process and trial to follow that would ensure that Virginia Beach's 2026 City Council election is conducted under a lawful system.

LEGAL STANDARD

To survive a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* In assessing a 12(b)(6) motion, the Court must “accept[] the plaintiff’s allegations as true and draw[] all reasonable inferences in the plaintiff’s favor.” *Pub. Int. Legal Found., Inc. v. N.C. State Bd. of Elections*, 996 F.3d 257, 263 (4th Cir. 2021); *see also Giarratano v. Johnson*, 521 F.3d 298, 302 (4th Cir. 2008).

ARGUMENT

I. Plaintiffs’ claim on behalf of Virginia Beach’s cohesive Black, Latino, and AAPI coalition is cognizable under Section 2 of the VRA, and this Court should not certify an interlocutory appeal.

This Court has already considered, and rejected, the City’s arguments that there is a single-race limitation on the protections of Section 2 of the VRA. *Holloway v. City of Virginia Beach*, 531 F. Supp. 3d 1015, 1047-55 (E.D. Va. 2021). In the four years since the Court considered the issue, nothing has changed about the text or legislative history of Section 2. Nothing has changed in controlling case law, either in the Fourth Circuit or in the Supreme Court. And nothing has changed in the burden of proof that must be met by a protected class to demonstrate cohesion and a Section 2 violation. The only change is that the Fifth Circuit has departed from decades of its own precedent and has joined the Sixth in adopting an outlier interpretation of Section 2 that runs contrary to the language and purpose of the VRA. There is no reason for this Court to adopt that faulty interpretation or to certify an interlocutory appeal for the Fourth Circuit to consider it out of the normal appellate course.

A. There is no single-race limitation on the protections of Section 2.

The plain text of Section 2 authorizes vote dilution claims without imposing a single race threshold barrier to relief. Section 2(a) of the VRA prohibits any voting standard or practice that “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 language-minority status. 52 U.S.C. §§ 10301(a), 10303(f). Section 2(b) sets forth how a violation of Section 2(a) is established, and notes that it applies to “a class of citizens protected by subsection (a).” *Id.* § 10301(b). The “class of citizens” to which Section 2(b) refers is not a singular minority group, but rather those “protected by subsection (a)” —*i.e.*, “any citizen” subject to a denial or abridgment of voting rights “on account of race or color, or” language-minority status. *Id.* §§ 10301(a)-(b).

Nothing in the text of Section 2 requires that every member of the “class of citizens” share the same race, but rather Section 2’s text requires that members of the class share the same experience of being politically excluded “on account of race” or membership in a language minority group, whatever their race or language minority status is. *Id.* This is the common legal usage of “class”—a reference to those suffering the same injury caused by the defendant. *See, e.g.*, Fed. R. Civ. P. 23. And reading “class of citizens” to include a combination of protected minority citizens also accords with the last antecedent grammatical rule. *See Barnhart v. Thomas*, 540 U.S. 20, 26 (2003). Accordingly, “class of citizens” means the class members must merely share the common characteristic of being a Section 2 protected racial, ethnic, or language minority voter experiencing vote dilution. Section 2 thus protects all minority voters, and where they are cohesive with other minority voters, the Act protects them together. This reading is consistent with Congress’s “broad remedial purpose of ‘rid[ding] the country of racial discrimination in voting’” through passage of the Voting Rights Act, and this Court’s obligation to interpret Section 2 “in a

manner that provides ‘the broadest possible scope’ in combating racial discrimination,” *Chisom v. Roemer*, 501 U.S. 380, 403 (1991) (citation omitted).

Amicus Commonwealth of Virginia claims that permitting coalition claims brought by a multiracial class would “ensnare the courts in a guessing game of racial assumptions.” ECF No. 349 at 10. However, *prohibiting* those claims is what truly requires faulty racial assumptions. As Judge Keith explained in his dissent from the Sixth Circuit’s *Nixon* decision, a blindered analysis that assumes every Section 2 plaintiff must be of a single race is “most disturbing,” because it “requires the adoption of some sort of racial purity test.” *Nixon v. Kent County*, 76 F.3d 1381, 1401 (6th Cir. 1996) (Keith, J., dissenting). What of a plaintiff like Ms. Boehm who is both AAPI and Latina? Under the “single race” theory advanced by the City and Commonwealth, Ms. Boehm would seemingly be required to satisfy the *Gingles* preconditions for a class of voters who are all both AAPI and Latino. Or perhaps she would be forced to choose in her complaint; she could plead herself to be AAPI or Latina but not both—even though she *is* both and even though her ability to participate equally in the political process is undermined on account of *both* her AAPI and Latino heritage.¹

The Fifth Circuit’s recent decision to adopt this racial purity test, irreconcilable with the text of Section 2 and the Supreme Court’s command to interpret the VRA in the broadest possible terms, does not require this Court to reconsider its previous, correct ruling that there is no single-

¹ The Commonwealth’s *amicus* brief applies the same faulty textual interpretation to claim that the VAVRA also contains a single-race limitation. That argument is as unavailing for the VAVRA as it is for the federal VRA. And the Commonwealth’s baseless assertions that the Black, Latino, and AAPI coalition in Virginia Beach is not cohesive are both incorrect (as reflected in the voluminous record in this case demonstrating cohesion) and irrelevant for the consideration of Defendants’ Motion to Dismiss for which Plaintiffs’ factual allegations, including those regarding cohesion, must be accepted as true. The same is also true for the Attorney General’s individual political preferences; they are irrelevant and prove nothing about the existence of a cohesive coalition in Virginia Beach.

race limitation on Section 2. The *reasoning* underlying the Fifth Circuit’s earlier decisions remains sound, and it remains true that the majority of circuits to consider the issue have found that Section 2 prohibits vote dilution of minorities, whether alone or combination. Specifically, courts in the First, Second, Ninth, and Eleventh Circuits have found that Section 2 protects minority coalitions. *See, e.g., Huot v. City of Lowell*, 280 F. Supp. 3d 228, 235-36 (D. Mass. 2017) (applying *Latino Political Action Comm., Inc. v. City of Boston*, 784 F.2d 409 (1st Cir. 1986)) (assessing the minority view, majority view, First Circuit precedent, and remedial purpose of the VRA to ultimately conclude that “minority coalition claims are cognizable under Section 2); *NAACP, Spring Valley Branch v. E. Ramapo Cent. Sch. Dist.*, 462 F. Supp. 3d 368, 379-80 (S.D.N.Y. 2020) (applying *Bridgeport Coal. for Fair Representation v. City of Bridgeport*, 26 F.3d 271 (2d Cir. 1994)); *aff’d sub nom. Clerveaux v. E. Ramapo Cent. Sch. Dist.*, 984 F.3d 213 (2d Cir. 2021); *Badillo v. City of Stockton, Cal.*, 956 F.2d 884 (9th Cir. 1992) (holding that factual record did not demonstrate the coalition’s cohesion); *Concerned Citizens of Hardee Cnty. v. Hardee Cnty. Bd. of Comm’rs*, 906 F.2d 524, 526 (11th Cir. 1990) (same).²

Rejecting a single-race limitation on Section 2 is also consistent with the Fourth Circuit’s reasoning in *Hall v. Virginia*, 385 F.3d 421 (4th Cir. 2004). *Cf.* ECF No. 349 at 11-12. *Hall* concerned only an alleged crossover district including “black and white voters.” 385 F.3d at 430. Far from limiting Section 2 minority coalitions, the *Hall* court “noted that “[t]here are communities in which minority citizens are able to form coalitions with voters from other racial and ethnic groups”” and seek to enforce their rights. *Id.* at 431 n.13 (quoting *Georgia v. Ashcroft*, 539 U.S.

² The City notes that a subsequent three-judge district court within the Eleventh Circuit “has found” that the *Concerned Citizens of Hardee County* court’s “assertion about coalition districts was dicta.” ECF No. 342 at 11 (quoting *Georgia State Conf. of the NAACP v. Georgia*, No. 121-cv-05338-ELB-SCJ-SDG, 2023 WL 7093025, at *16 (N.D. Ga. Oct. 26, 2023)). But that “finding” is itself dicta in an unreported opinion of a lower court.

461, 483 (2003)). The court’s nuanced discussion of coalitions simply concluded that Section 2 does not “create an entitlement for minorities to form an alliance with [white crossover] voters in a district who do not share the same statutory disability as the protected class.” *Id.* But the inverse of this observation is that Section 2 does recognize a claim when minority voters can prove they “form an alliance with other voters” who do “share the same statutory disability” of discriminatory vote dilution. *See id.* *Hall* reinforces that a coalition must be composed of cohesive, statutorily protected minority groups; it “does not stand for the proposition that minority groups cannot be combined.” *See NAACP, Spring Valley Branch*, 462 F. Supp. 3d at 379 n.11, *aff’d sub nom. Clerveaux v. East Ramapo Central School District*, 984 F.3d 213 (2d Cir. 2021).

Congress does not “hide elephants in mouseholes,” *Whitman v. Am. Trucking Ass’n*, 531 U.S. 457, 468 (2001), and Congress did not sanction racial discrimination in voting by omitting the letters “-es” in Section 2. This Court should deny the City’s attempt to dismiss this case merely because Plaintiffs have brought their claim to vindicate the voting rights of a cohesive Black, Latino, and AAPI class sharing the common experience of discrimination in Virginia Beach.

B. The City has not demonstrated the exceptional circumstances necessary for the certification of an interlocutory appeal.

The City has not met their burden to justify the certification of an interlocutory order for immediate appeal. A district court may certify an interlocutory order for immediate appeal if (1) “[the] order involves a controlling question of law,” (2) “there is substantial ground for difference of opinion,” (3) “*and* an immediate appeal from the order may materially advance the ultimate termination of the litigation.” 28 U.S.C. § 1292(b) (emphasis added). “Even if all requirements [under 28 U.S.C. § 1292(b)] are met, however, the decision to certify issues for interlocutory appeal rests solely within the district court’s discretion.” *Holloway v. City of Virginia Beach, Virginia*, No. 2:18-cv-69, 2020 WL 1891863, at *1 (E.D. Va. Apr. 16, 2020) (citing *Myles v.*

Laffitte, 881 F.2d 125, 127 (4th Cir. 1989)). Section 1292(b) “should be used sparingly,” and “its requirements must be strictly construed.” *Myles*, 881 F.2d at 127. “Courts in this district have read § 1292(b) narrowly, finding it a narrow exception to the final judgment rule of [28 U.S.C.] § 1291, to be used only in extraordinary cases to avoid protracted and expensive litigation.” *Hayes v. Sotera Def. Sols., Inc.*, No. 1:15-cv-1130 (JCC/IDD), 2015 WL 9273953, at *1 (E.D. Va. Dec. 17, 2015) (internal quotation omitted).

Once again, the City has “not met its burden of establishing that exceptional circumstances justify an interlocutory appeal.” *Holloway*, 2020 WL 1891863, at *1. While the City’s proffered question is a controlling question of law and, arguably, has substantial ground for difference of opinion, the City has failed to meet the material-advancement requirement. “[T]he material-advancement requirement is met in exceptional circumstances that will avoid protracted and expensive litigation.” *Id.* If this case continues in the usual course, it is unlikely that there will be protracted and expensive litigation, because a substantial portion of the relevant evidence to assess the *Gingles* factors and totality of the circumstances has already been considered by this Court, and the parties are poised for expedited discovery and a limited trial for rapid resolution of this matter.

Conversely, if Defendants are permitted to pursue an interlocutory appeal, protracted and expensive litigation will almost certainly ensue. If the Court grants the Motion, Defendants then must file a petition for interlocutory review, which the Fourth Circuit will need time to consider. *See* 28 U.S.C. § 1292(b). Assuming the Fourth Circuit grants interlocutory review, it will likely take months for the case to be fully briefed and ready for oral argument.³ It is unlikely the Fourth

³ Federal Rule of Appellate Procedure 31(a) provides forty days from the filing of the record for the appellant to file and serve the opening brief; another thirty days for filing and service of the appellee’s brief; and another 21 days for filing and service of the appellant’s reply brief.

Circuit could resolve the question in time for Plaintiffs to obtain relief before the 2026 election. That would severely prejudice Plaintiffs, who instead seek expeditious relief to ensure the 2026 election occurs under a lawful electoral system. *See, e.g., Difelice v. U.S. Airways, Inc.*, 404 F. Supp. 2d 907, 910 (E.D. Va. 2005) (concluding, about five months before scheduled trial, that the material-advancement prong was not satisfied because “it is likely that this case will be fully litigated in the district court before the conclusion of any interlocutory appeal”). Having failed to demonstrate exceptional circumstances, Defendants’ Motion must be denied.

II. Plaintiffs have sufficiently stated their VRA and VAVRA claims against the 7-3-1 system of election.

A. Plaintiffs have sufficiently stated that the 7-3-1 system dilutes the votes of the coalition in violation of the VRA.

Plaintiffs have alleged that the 7-3-1 system would necessarily dilute the votes of the Black, Latino, and AAPI coalition (“the coalition”) in violation of the VRA, regardless of the configuration of the districts within that system. *See, e.g.*, ECF 340 ¶¶ 25, 106, 122, 219-21. These allegations are consistent with and, indeed, rely in part on this Court’s opinion regarding the particularly dilutive nature of at-large elections in Virginia Beach, *see, e.g.*, ECF 281-1 at 12 n.14, 22, 25, *Holloway v. City of Virginia Beach*, 531 F. Supp. 3d 1015, 1033, 1084 (E.D. Va. 2021), and, as discussed *infra*, the City itself has made similar arguments. Regardless, for the purpose of assessing the City’s Motion, Plaintiffs’ allegations must be accepted as true, and the Court must draw all reasonable inferences arising from them in Plaintiffs’ favor. *Public Interest Legal Found., Inc. v. N. Carolina State Bd. Of Elections*, 996 F.3d 257, 263 (4th Cir. 2021). This alone should start and end this Court’s consideration of the City’s claims that Plaintiffs have not sufficiently alleged a claim against the 7-3-1 system.

It is, however, worth addressing the City’s misconstruction of the Fourth Circuit’s remand. The Fourth Circuit noted that “plaintiffs maintain that they still may have viable challenges to

whatever post-HB 2198 electoral system the City adopts” and ordered that, “[o]n remand, the plaintiffs may raise any claims they have against the City’s system going forward.” *Holloway v. City of Virginia Beach*, 42 F.4th 266, 277 (4th Cir. 2022). Defendants contend that “[t]he SAC fails to state a claim because it challenges no such *plan*.” ECF No. 342 at 18 (emphasis added). But the Fourth Circuit did not say that Plaintiffs could challenge a “*plan*.” Rather, the Fourth Circuit said that Plaintiffs could challenge “the City’s *system* going forward.” *Holloway*, 42 F.4th at 277. Plaintiffs are not challenging just *any* HB 2198-compliant electoral system in the abstract—nor could they. For example, the 10-1 system that governed the last two City Council elections complied with the law, and Plaintiffs lodged no challenge against it. Now, however, as the Fourth Circuit anticipated, Plaintiffs are raising claims against the 7-3-1 system that is currently set to govern Virginia Beach’s elections going forward. Allowing this challenge to move forward is consistent with, not in contravention of, the Fourth Circuit’s remand.

B. Plaintiffs have sufficiently stated that the 7-3-1 system dilutes and retrogresses the coalition’s voting power in violation of the VAVRA.

1. This Court can properly exercise supplemental jurisdiction over Plaintiffs’ VAVRA claim.

It is proper for this Court to exercise supplemental jurisdiction over Plaintiffs’ VAVRA claim. Under 28 U.S.C. § 1367(a), “the federal court has supplemental jurisdiction over state-law claims sharing a ‘common nucleus of operative fact’ with the federal-law ones.” *Royal Canin U.S. A., Inc. v. Wullschleger*, 604 U.S. 22, 31 (2025) (quoting *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966); see also, e.g., *Wis. Dep’t of Corr. v. Schacht*, 524 U.S. 381, 387 (1998); *White v. Cnty. of Newberry, S.C.*, 985 F.2d 168, 171 (4th Cir. 1993). There can be no doubt that there is a common nucleus of fact between Plaintiffs’ federal VRA and VAVRA claims against the

7-3-1 system.⁴ The city admits this is so in their Motion several times over. *See, e.g.*, Motion at 25-26 (stating that the VAVRA “works from the same basic concepts as Section 2” and is “very similar to the VRA”) (citation and internal quotation marks omitted). And while § 1367(c) provides that “district courts *may* decline to exercise supplemental jurisdiction over a claim” under some circumstances, it does not *require* district courts to decline to exercise jurisdiction (emphasis added). The Court should not elect to do so here.

Even if Plaintiffs’ VAVRA claim raises novel or complex issues of state law as the City contends, ECF No. 342 at 21, the exercise of supplemental jurisdiction in this case is proper. The Supreme Court recently summarized the exceptions of § 1367(c) as applying to contexts in which “federal law is not where the real action is. So although supplemental jurisdiction persists, the district court need not exercise it.” *Royal Canin U. S. A., Inc.*, 604 U.S. at 32. Here, there is no question that “the real action” is not just with the VAVRA claim but with Plaintiffs’ Section 2 claim. The instant case is not, therefore, one in which it makes sense for the district court to decline to exercise supplemental jurisdiction.

The cases cited by Defendants are unavailing. In *Arrington v. City of Raleigh*, “[t]he plaintiff voluntarily dismissed her federal claims a mere thirteen days after the case was removed from state court.” 369 F. App’x 420, 422 (4th Cir. 2010). In *Richardson v. Clarke*, the district court used its discretion to decline to exercise supplemental jurisdiction over a claim brought under the state constitution, but it also *did* exercise supplemental jurisdiction over a claim brought under a

⁴ The City, when seeking to defend its attempted joinder of the *Holloway* Plaintiffs as involuntary defendants in the *Branch* matter, argued that it was “entirely rational for the City to desire that all claims against it from all directions be resolved in one proceeding.” ECF No. 327 at 11. If that was the City’s position regarding two different claims with two different nuclei of facts (a Dillon’s Rule claim and a federal VRA claim), certainly the same logic applies to a federal VRA and VAVRA claim both challenging the 7-3-1 system for impermissible vote dilution.

Virginia statute even where Defendants claimed that the statute’s language prohibited suits against Virginia in federal court. No. 3:18-cv-23-HEH, 2020 WL 4758361, at *7-8 (E.D. Va. Aug. 17, 2020). And in *Lansdowne on the Potomac Homeowners Ass’n, Inc. v. OpenBand at Lansdowne LLC*, the district court chose not to exercise supplemental jurisdiction over six state law claims not just because the claim would involve “several complex and novel issues under Virginia law” but also because the court dismissed four complicated federal claims leaving just one claim “which would appear to require very little, if any discovery to adjudicate” in contrast to the state law claims which would “likely involve extensive discovery into issues irrelevant to” the remaining federal claim and which “would likely predominate over the only claim over which this Court has original jurisdiction.” No. 1:11-cv-872-AJT/TCB, 2011 WL 5872885, at *11 (E.D. Va. Nov. 22, 2011).

None of these situations mirror this case. Here, the district court has not dismissed Plaintiffs’ federal claim⁵ and Plaintiffs have neither dismissed their federal claim, nor brought a state constitutional claim, nor brought a state claim which will involve discovery irrelevant to or predominate over the federal claim. Indeed, Defendants have already admitted that a 7-3-1 system would violate the VAVRA. *See, e.g.*, ECF No. 322-2 at 27-28. Defendants have, therefore, failed to provide a sufficient reason why this Court should not exercise supplemental jurisdiction over Plaintiffs’ VAVRA claim.

⁵ Indeed, *even if* this Court were to dismiss Plaintiffs’ federal claim, it would *still* be within this Court’s discretion to maintain supplemental jurisdiction over the state law claim. 28 U.S.C. § 1367(c). This was recently reaffirmed by the Fourth Circuit in *Shumate v. City of Lynchburg*, No. 24-1428, 2025 WL 2409059, at *4 (4th Cir. Aug. 20, 2025). In *Shumate*, the Fourth Circuit affirmed the district court’s grant of summary judgment against all of the plaintiffs’ federal claims and quoted § 1367(c)(1)’s authorization for district courts to decline to exercise supplemental jurisdiction if “the claim raises a novel or complex issue of State law,” but noted that the district court nonetheless “could allow the state law claim to continue in federal court.” *Id.* at *4; *see also, e.g., Shanaghan v. Cahill*, 58 F.3d 106, 110 (4th Cir. 1995) (“[T]rial courts enjoy wide latitude in determining whether or not to retain jurisdiction over state claims when all federal claims have been extinguished.”).

2. Plaintiffs have sufficiently stated a VAVRA vote dilution claim.

Plaintiffs have alleged sufficient facts to support a finding that the 7-3-1 system violates the VAVRA's prohibition on vote dilution. The VAVRA prohibits any "governing body of any locality" from "impos[ing] or appl[ying]" an at-large method of election, including one that combines at-large elections with district-based elections, "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, as a result of the dilution or the abridgement of the rights of voters who are members of a protected class." Va. Code Ann. § 24.2-130(A). VAVRA's vote dilution prohibition applies to the 7-3-1 system set to govern future Virginia Beach City Council elections, because it will be imposed or applied by the City, it constitutes a "method of election," and Plaintiffs allege that it will inevitably dilute the votes of the coalition.⁶

First, Plaintiffs challenge the 7-3-1 system of election that is currently "imposed" by the City's Charter, *id.*; *see* City Charter of Virginia Beach, § 3.01 [hereinafter, the "City Charter"], and that is set to be "applied" *by the City* in future Virginia Beach City Council elections. Va. Code Ann. § 24.2-130. The fact that the City Charter and HB2198 codified the 7-3-1 system does not insulate the City from liability, because the City is the entity that implements and will conduct elections under this system.

Second, Plaintiffs' claim properly targets the City's 7-3-1 system as a dilutive "method of election" under the VAVRA. Va. Code Ann. § 24.2-130(A). The fact that the precise district lines

⁶ The City also admitted in *Branch* that a 7-3-1 system would dilute the voting strength of Black voters in Virginia Beach. The City stated that it "has dispositive evidence that voting is 'racially polarized,'" that Black voters in Virginia Beach are cohesive, and that white bloc voting usually overwhelms the preferences of Black voters in recent elections, and that "the at-large system, if maintained, would 'dilute[] the voting strength of members of a protected class.'" ECF No. 322-2 at 27-28 (quoting Va. Code Ann. § 24.2-130(B)). Plaintiffs pleaded these facts in their amended complaint. *See* ECF 340 ¶¶ 208-09.

have not yet been drawn is immaterial: the VAVRA challenge lies in the “method of election” itself, which is already fixed in the City Charter and set to govern all future Virginia Beach City Council elections. The City’s current effort to recast the 7-3-1 system as an unchallengeable “election concept” or “framework[],” ECF No. 342 at 26, is inconsistent with both the statute’s text and their own prior representations. In the *Branch* litigation, the City asserted that “the gateway to VAVRA liability is ‘[a]n at-large method of election,’ which is defined to include ‘one that combines at-large elections with district- or ward-based elections.’ . . . The 7-3-1 system [*Branch*] Plaintiffs allege the City is required to use clearly qualifies for this predicate, *as the at-large seats are as an at-large method of election under VAVRA.*” ECF No. 322-2 at 27 (citing Va. Code Ann. § 24.2-130(A)) (emphasis added) (typo in original). Although Defendants now attempt to disclaim their prior admissions in *Branch*, their prior acknowledgment that the 7-3-1 system is itself a “method of election” under the VAVRA remains true. Accordingly, Defendants cannot now evade VAVRA liability by attempting to reframe the 7-3-1 system as beyond the statute’s reach when they have already conceded, correctly, that it falls squarely within the type of action the statute prohibits and is in fact dilutive under the VAVRA.

Third, as noted above, Plaintiffs have alleged that the 7-3-1 system will necessarily result in vote dilution, and those allegations must be taken as true. *Supra* II.A. The City has previously made the same argument that any configuration of the 7-3-1 system of election creates liability under the VAVRA. Indeed, the City admitted that “[e]vidence and findings, including in [Dr. Grofman’s] special master’s report, indicated that a 7-3-1 system could not yield three Black minority (or coalition minority) opportunity districts.” ECF No. 322-2 at 4. Further, the City repeatedly argued that the imposition of a 7-3-1 system—not a specific 7-3-1 plan—“flatly contradicts the requirements of [the VAVRA].” ECF No. 322-2 at 12; *id.* at 9, 12 (describing a 7-

3-1 system as “contraven[ing] Virginia’s Voting Rights Act”). Having already acknowledged that the 7-3-1 framework itself contravenes the VAVRA regardless of district configuration, the City cannot now disavow its own admissions to avoid this litigation.

3. Plaintiffs have sufficiently stated a VAVRA retrogression claim.

Plaintiffs have alleged sufficient facts to support a finding that the 7-3-1 system violates the VAVRA’s prohibition on retrogression. The VAVRA prohibits covered practices which “result in the retrogression in the position of members of a racial or ethnic group with respect to their effective exercise of the electoral franchise.” Va. Code Ann. § 24.2-129. Covered practices include:

“*[a]ny change to the method of election of members of a governing body or an elected school board by adding seats elected at large or by converting one or more seats elected from a single-member district to one or more at-large seats or seats from a multi-member district*” and “*[a]ny change to the boundaries of election districts or wards in the locality, including changes made pursuant to a decennial redistricting measure.*”

Id. (emphasis added). There can be no doubt that there has been a change to the method of election of the Virginia Beach City Council—where a 10-1 system previously governed, a 7-3-1 system is now set to control moving forward and it will be the City which administers elections under that system. The fact that there is not yet a redistricting ordinance is not dispositive of this reality. Indeed, the phrase “*including changes made pursuant to a decennial redistricting measure*” necessarily suggests that covered practices also include changes to the boundaries of election districts or wards *not* made pursuant to a decennial redistricting measure. *See, e.g., Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts* 132 (2012); *Fed. Land Bank of St. Paul v. Bismarck Lumber Co.*, 314 U.S. 95, 100 (1941) (“the term ‘including’ is not one of all-embracing definition, but connotes simply an illustrative application of the general principle”). And Plaintiffs have included sufficient factual allegations, including concessions from the City

itself, that the change from the 10-1 system to the 7-3-1 system will necessarily result in the retrogression of the voting strength of the coalition.⁷ *See, e.g.*, ECF No. 340 ¶¶ 210, 212, 230-232.

It is true that there has been no adoption of a particular 7-3-1 configuration and, therefore, there has been no attendant 30-day waiting period or certification of no objection. However, consideration of Plaintiffs' VAVRA claims, including the claim that the 7-3-1 system results in retrogression, in conjunction with Plaintiffs' federal VRA claims, promotes judicial economy and a streamlined adjudication to guarantee Virginia voters' rights are protected as required by both federal and state law.

III. If the Court holds any of Plaintiffs' claims in abeyance, it should ensure expeditious adjudication such that the 2026 election is conducted under a lawful system.

Given Plaintiffs' allegations and Defendants' admission that any implementation of the 7-3-1 system would violate the VAVRA, *see* ECF No. 340 ¶¶ 77-106, delaying this litigation until the City formally adopts a redistricting plan pursuant to the 7-3-1 system may undermine the purpose of the Act and hinder Plaintiffs' ability to vindicate their rights. The VAVRA seeks to prevent vote dilution and ensure that protected class members have an opportunity to participate in the political processes or to elect representatives of their choice. *See* Va. Code Ann. § 24.2-126. Allowing a concededly unlawful method of election to hover over future elections would invert

⁷ The City's contention that a single election "where a Black candidate endorsed by the Democratic Party lost in District 7 by nearly eight percentage points, even though Dr. Grofman proposed that District 7 is an opportunity district," ECF No. 342 at 28, calls into question this Court's findings regarding cohesion of the coalition is incorrect as both a legal and factual matter. Determining the coalition's candidate of choice for any election requires expert statistical analysis, not mere assumptions from election results alone. Nor can one election outweigh this Court's expansive findings, based on expert testimony, that Black, Latino, and AAPI voters cohesively prefer the same candidates, and that those candidates are continually defeated by white bloc voting over many years of elections in the region. *Thornburg v. Gingles*, 478 U.S. 30, 57 (1986) ("a pattern of racial bloc voting that extends over a period of time is more probative of a claim that a district experiences legally significant polarization than are the results of a single election"). Moreover, it is Plaintiffs' allegations, not Defendants', which matter for the consideration of this Motion to Dismiss.

that mandate and frustrate the Legislature's intent to provide proactive and timely protections against vote dilution. Such a delay risks prolonging the ongoing harm to Plaintiffs' rights and impeding an expedient resolution of their claims before the 2026 City Council elections.

Courts have long recognized that timely adjudication of election-related cases is essential to preventing voter confusion and administrative disruption. *See Purcell v. Gonzalez*, 549 U.S. 1, 5-6 (2006) (recognizing that court-ordered changes to election procedures close to an election can result in voter confusion and undermine electoral integrity); *Merrill v. Milligan*, 142 S. Ct. 879, 880-81 (2022) (Kavanaugh, J., concurring). The opening of the candidate filing window for the next scheduled City Council election is in six months, on March 16, 2026. Va. Code Ann. § 24.2-503. Any delay in resolving Plaintiffs' claim risks leaving the VRA and VAVRA violations unremedied, depriving Virginia Beach voters of their rights during the 2026 elections. Expedient adjudication is therefore necessary to give meaningful relief under the VAVRA and to ensure that the 2026 elections are conducted in a manner consistent with the Act.

Should this Court hold either the VAVRA vote dilution or retrogression claims, or even the VRA claim, in abeyance until such time as the City adopts a particular 7-3-1 plan, Plaintiffs request (1) that Defendants must be ordered to provide a date certain by which they would adopt a 7-3-1 plan after the November 2025 referendum,⁸ (2) that the Court order a schedule for expedited discovery to occur after the adoption of a 7-3-1 plan, if it occurs, and (3) that the Court schedule

⁸ As it currently stands, the City *will* adopt a particular 7-3-1 configuration before the next election to conduct an election that complies with the City Charter. The City cannot simultaneously claim Plaintiffs cannot challenge the 7-3-1 system absent a specific electoral map and delay in creating such a map until Plaintiffs run out of time to challenge it and receive a remedy. Even if a 7-3-1 plan were to be imposed by order of the *Branch* court pending the results of the referendum, the City can, at any point, create a specific 7-3-1 plan.

an expedited trial such that Plaintiffs' case will be adjudicated and relief can be afforded well prior to the March 16, 2026 opening of candidate filing for the 2026 City Council elections.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendants' Motion in its entirety. If this Court determines that it is appropriate to hold any of Plaintiffs' claims in abeyance until such time as the City adopts a particular 7-3-1 plan, Plaintiffs request a hearing to ensure Plaintiffs' case will nonetheless be adjudicated and relief can be afforded well prior to the March 16, 2026 opening of candidate filing for the 2026 City Council elections.

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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of September 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing to the following:

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