

**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

BRIEF IN SUPPORT OF CITY’S MOTION TO CONTINUE HEARING

This motion concerns the hearing this Court scheduled for October 23, 2025, regarding the motion to dismiss and for other relief of the City of Virginia Beach and the other Defendants.¹ *See* ECF Nos. 341, 342. Counsel for the City are available and prepared to argue the City’s motion at that hearing should the Court choose to proceed. However, the City respectfully requests that the hearing be rescheduled for a date after November 4, 2025, election day, to avoid influencing the vote in the referendum regarding the City’s election system. To conduct the hearing after the election would both remove that risk and create the likelihood that further clarity concerning the upcoming steps in this litigation will be available to the parties and the Court when the hearing ultimately does occur. This request, if granted, would impose no harm because Plaintiffs will be able to prosecute their case unless and until the Court dismisses it, and they are in fact doing so. Alternatively, the Court may proceed to decide the City’s motion without argument, as the City initially suggested. *See* ECF No. 355. Counsel for the City has contacted counsel for Plaintiffs, who indicated that Plaintiffs oppose this motion.

¹ Because “an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity,” *Kentucky v. Graham*, 473 U.S. 159, 166 (1985) (citation omitted), this motion refers to the Defendants collectively as the “City.”

In support of this request, the City states as follows:

1. The prior memorandum supporting the City's motion to dismiss and for other relief describes the procedural background related to that motion. *See* ECF No. 342 at 3–9. In summary, after the Fourth Circuit remanded this action, the City attempted to adopt the 10-1 system this Court imposed before its order was vacated. However, the 10-1 system was challenged in Virginia state court as beyond the City's authority to implement. The City defended the suit, but the state court has rejected the City's effort to employ a 10-1 system without a charter change.

2. Anticipating that outcome, the City Council scheduled a referendum election for November 4, 2025, to permit the electorate to decide whether the City will request the necessary amendment to its Charter to implement the 10-1 system or alternatively adhere to the 7-3-1 framework commanded by the current Charter text, as modified by HB 2198 adopted by the Virginia General Assembly in 2021, through adoption of a new redistricting ordinance. The City does not stand on one side or the other of this question. Instead, it seeks to remain neutral and to preserve to the greatest extent possible the ability to attempt to implement whichever system is chosen by the voters in a manner that is consistent with both federal and state law.

3. In furtherance of its goal of neutrality, the City has moved the Court to either dismiss Plaintiffs' claims against the 7-3-1 framework as not cognizable unless and until a 7-3-1 plan is adopted or to stay this lawsuit unless and until a 7-3-1 plan is adopted. The City's ultimate goal is to defer litigation until after it receives direction from the public as to what course it should take. The City may, at voters' direction, pursue the charter change that would moot this action. Or, at voters' direction, it may attempt to configure a 7-3-1 plan that complies with all applicable legal obligations. But the City wishes to hear from the people before making this determination. In the meantime, the City believes the voting should proceed without undue influence arising from

statements made in the early stages of ongoing litigation. Consistent with that understanding, the City expressed that it was willing to submit its motion to the Court without oral argument. ECF No. 355.

4. The Court directed argument, which is scheduled for October 23. The Court has every right to conduct argument, and counsel for the City remain available and willing to advocate in support of the City's motion if the Court requires it to do so. However, the City is concerned that oral argument at this time may influence the referendum. The argument is likely to draw media coverage given the prominence of the City's election system in current discourse, and any number of statements at argument may impact voter impressions and choices on the referendum in ways that cannot be fairly predicted in advance. The City does not believe that state of affairs would serve the interests of justice in this case or the interest of a fair vote in the referendum.

5. Accordingly, the City requests that argument occur after the election or alternatively that the City's motion be decided on the papers as initially proposed. Either approach would eliminate the risk of undue influence on the referendum as voting is ongoing. And neither approach would impose harm on Plaintiffs, who are able to prosecute their case without hindrance unless and until the City's motion is granted. *See* ECF No. 354 (joint Rule 26(f) report). To reset the hearing for a later date would only delay resolution of the *City's* motion; it would not impinge on any of *Plaintiffs'* rights or interests. A brief deferral of the hearing would also create the incidental benefit of clarity concerning the City's likely position in this lawsuit. As the motion papers indicate, many of the City's arguments stem from the fact that it remains unknown which path the public will direct the City to take. Consequently, it may benefit both sides and the Court to conduct the hearing after the referendum results are known.

For the foregoing reasons, the City respectfully requests that the Court continue the October 23 hearing and reschedule it on a date after the November 4 election or, alternatively, decide the City's outstanding motion to dismiss and for other relief without argument.

DATE: October 9, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 9, 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

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Counsel for Defendant City of Virginia Beach