IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

Latasha Holloway, et al., *Plaintiffs,* v. City of Virginia Beach, et al., *Defendants.*	Civil Action No. 2:18-cv-0069

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR CERTIFICATION OF APPEALABILITY

Plaintiffs Latasha Holloway and Georgia Allen respectfully submit this memorandum in opposition to Defendants' Motion for Certification of Appealability, ECF No. 127 ("Motion"). Defendants seek to pursue an interlocutory appeal arguing that their Motion for Summary Judgment should have been granted because—contrary to the overwhelming majority rule—they contend that Section 2 of the Voting Rights Act, 52 U.S.C. § 10301 ("Section 2" of the "VRA"), provides no avenue for a cohesive, multiracial community of color to challenge the dilution of its collective voting strength. However, Defendants fail to satisfy the required elements for an interlocutory appeal, and permitting their proposed appeal would be inefficient and unwise. The Court therefore should deny the Motion.

I. Legal Standard

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," and (3) "an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b). However, "[e]ven meeting all three requirements does not

strip the district court of its 'unfettered discretion to decline to certify an interlocutory appeal.'" *Midgett v. Hardcastle*, No. 2:17-cv-663, 2018 WL 4781178, at *4 (E.D. Va. Oct. 3, 2018) (Jackson, J.) (citation omitted).

Section 1292(b) "should be used sparingly," and "its requirements must be strictly construed." *Myles v. Laffitte*, 881 F.2d 125, 127 (4th Cir. 1989). Accordingly, "[c]ourts 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. 1:15cv1130 (JCC/IDD), 2015 WL 9273953, at *1 (E.D. Va. Dec. 17, 2015) (quoting *Eckert Int'l, Inc. v. Gov't of the Sovereign Democratic Republic of Fiji*, 834 F. Supp. 167, 174 (E.D. Va. 1993)). The party moving for certification under § 1292(b) bears the burden to show that "exceptional circumstances" justify that relief. *LaFleur v. Dollar Tree Stores, Inc.*, No. 2:12–cv–00363, 2014 WL 2121721, at *1 (E.D. Va. May 20, 2014) (Jackson, J.).

II. Argument

A. An interlocutory appeal would not materially advance the termination of this litigation.

Defendants cannot carry their burden to show that their proposed interlocutory appeal "may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b). The remote possibility that piecemeal appellate review "may serve to avoid a trial," Defs. Mem. at 6, is not sufficient to satisfy the material-advancement element of § 1292(b). The Court should therefore deny the Motion.

"Under the material-advancement prong, certification of an interlocutory appeal is appropriate only 'in exceptional situations in which doing so would avoid protracted and expensive litigation.'" *Estate of Alvarez v. Johns Hopkins Univ.*, No. TDC-15-0950, 2019 WL 1779339, at

*2 (D. Md. April 23, 2019) (quoting *Fannin v. CSX Transp., Inc.*, 873 F.2d 1438, 1989 WL 42583, at *2 (4th Cir. 1989)); *accord Medomsley Steam Shipping Co. v. Elizabeth River Terminals, Inc.*, 317 F.2d 741, 743 (4th Cir. 1963).

Under this standard, if most or all discovery is already complete, that is a factor weighing strongly against interlocutory appeal. *See Liberty Mut. Ins. Co. v. SBN V FNBC LLC*, 5:17-CV-82-BO, 2019 WL 7602242, at *2 (E.D.N.C. Apr. 5, 2019); *Hentosh v. Old Dominion Univ.*, No. 2:13cv290, 2014 WL 1513284, at *4 (E.D. Va. Apr. 16, 2014); *Navigators Specialty Ins. Co. v. Med. Benefits Adm'rs of MD, Inc.*, No. ELH–12–2076, 2014 WL 1418391, at *2 (D. Md. Apr. 10, 2014). Similarly, a mere possibility of avoiding trial does not suffice to justify interlocutory appeal, especially if that possibility is remote. *See, e.g.*, *Hinton v. Va. Union Univ.*, No. 3:15cv569, 2016 WL 3922053, at *8 (E.D. Va. July 20, 2016) (movant's "overoptimistic" prediction that interlocutory appeal would avoid a trial did not "counsel extraordinarily for certification"); *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"); *Washington Park Lead Comm., Inc. v. EPA*, No. 2:98CV421, 1999 WL 33518140, at *8 (E.D. Va. July 12, 1999) ("an interlocutory appeal in a case set forth [sic] trial within the next six months would simply burden the parties" during pretrial preparations, given that no stay pending appeal was sought).[1]

[1] Defendants quote *In re Trump*, 928 F.3d 360, 371 (4th Cir. 2019), for the proposition that an interlocutory appeal satisfies the material-advancement prong if it "would serve to avoid a trial or otherwise substantially shorten the litigation." Defs. Mem. at 5. Defendants fail to note that the opinion they cite has been vacated. *See In re Trump*, 780 Fed. App'x 36 (Oct. 15, 2019) (granting rehearing *en banc*); Fourth Circuit Local Rule 35(c) ("Granting of rehearing en banc vacates the previous panel judgment and opinion"). In any event, the panel opinion in *Trump* is consistent with prior Fourth Circuit law on § 1292(b). An interlocutory appeal that certainly "*would* serve to avoid

In this case, discovery is almost entirely complete. The Court has issued an order denying Defendants' Motion for Summary Judgment in its entirety, ECF No. 126 (the "Order"), and no further dispositive pretrial motions are anticipated. Plaintiffs understand that the Court intends to schedule a bench trial for September or October 2020—approximately six months from the date of this filing. *See* Ex. 1, Email from Courtroom Deputy Thompson to Gerry Hebert et al. (indicating that "the Court will schedule trial on one of the following dates: 9/29/20[,] 10/6/20[,] 10/13/20"). Here as in *Washington Park Lead Comm.*, 1999 WL 33518140, at *8, Defendants explicitly do not seek any stay of trial and pretrial proceedings during interlocutory appeal. Defs. Mem. at 3.

Under these circumstances, certifying the Order for interlocutory appeal will not "avoid protracted and expensive litigation." *Fannin*, 1989 WL 42583, at *2. To begin, completing the remaining pretrial litigation and a bench trial in this case does not rise to the level of protracted or expensive litigation. Moreover, at most, there is a *possibility* that Defendants' proposed interlocutory appeal, if successful, could render trial unnecessary. However, that possibility is remote. 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.[2] The earliest the appeal could realistically be heard is during the Fourth Circuit's oral argument session scheduled for September 9-11, 2020—if that session is

---

trial," *Trump*, 928 F.3d at 371 (emphasis added), satisfies the material-advancement prong; one that merely *could* avoid trial does not.

[2] 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.

not cancelled or postponed due to the global COVID-19 pandemic.[3] After hearing argument, the Fourth Circuit would likely invest time to write a thorough opinion for publication on this important issue. Then, the losing side might petition for en banc review.

All told, "it is likely that this case will be fully litigated in the district court before the conclusion of any interlocutory appeal." *Difelice*, 404 F. Supp. 2d at 910. Thus, Defendants' proposed excursion to the Fourth Circuit would not advance the ultimate termination of this litigation, even if the appeal were likely to succeed on the merits (which it is not).[4] Instead, an interlocutory appeal probably would make this litigation *more* protracted and expensive by "burden[ing] the parties during a time where resources might be better expended on other trial preparation." *Washington Park Lead Comm.*, 1999 WL 33518140, at *8.

At bottom, Defendants' argument for an interlocutory appeal seems to be that without one, Plaintiffs might win at trial, only to later lose on a legal issue on appeal. *See* Defs. Mem. at 4-6. But the presence of this risk cannot make this case "exceptional," *Fannin*, 1989 WL 42583, at *2, because the same risk arises *every time* a district court rejects a party's position on a point of law and therefore denies that party's dispositive pretrial motion. Congress is aware of this risk, yet has adopted a "policy against piecemeal appeals" with only narrow exceptions. *Switzerland Cheese Ass'n, Inc. v. E. Horne's Market, Inc.*, 385 U.S. 23, 25 (1966); *see also Hinton*, 2016 WL 3922053, at *8. The Court should uphold that congressional policy by denying the Motion.

---

[3] *See* Oral Argument Calendar, U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT, http://www.ca4.uscourts.gov/oral-argument/oral-argument-calendar (last visited March 24, 2020). The Fourth Circuit has cancelled the oral argument sessions previously scheduled for March 17-20 and April 7, 2020. *Public Advisory Regarding Operating Procedures in Response to COVID-19*, U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT (March 17, 2020), http://www.ca4.uscourts.gov/docs/pdfs/publicadvisorycovidoperatingprocedures.pdf?sfvrsn=4.

[4] See Section II.B, *infra*, for explanation of why Defendants' position on the merits lacks substantial grounds.

B. No substantial grounds support a categorical bar to Section 2 coalition claims.

Defendants fail to demonstrate that "there is substantial ground for difference of opinion," 28 U.S.C. § 1292(b), on whether Section 2 categorically forbids multiracial minority communities from obtaining relief as a single class. In attempting to satisfy this element of § 1292(b), Defendants rely on one Sixth Circuit decision, which is an outlier in the relevant case law; inapposite dictum in one Fourth Circuit opinion; and the absence of Supreme Court precedent directly on point. Mot at. 6-7. This showing is not sufficient to establish *substantial* grounds supporting Defendants' inherently weak interpretation of Section 2.

As an initial matter, the mere existence of a circuit split, combined with a lack of controlling Fourth Circuit or Supreme Court authority, does not automatically create a substantial ground for difference of opinion. *See U.S. ex rel. A1 Procurement, LLC v. Thermcor, Inc.*, 173 F. Supp. 3d 320, 323 (E.D. Va. 2016) ("[T]he mere fact that . . . there is a lack of unanimity is not enough to meet this prong."). At most, the existence of a circuit split is a non-dispositive factor that "*tend[s]* to show that there is substantial basis for difference of opinion." *Jimenez-Orozco v. Baker Roofing Co.*, No. 5:05-CV-34-FL, 2006 WL 8438693, at *7 (E.D.N.C. March 28, 2006) (emphasis added); *see also In re Willis Towers Watson Plc Proxy Litigation*, 2020 WL 923331 (E.D. Va. Feb. 26, 2020) ("a substantial ground for disagreement *may arise*…if there is a circuit split") (emphasis added). The fact that only one circuit has agreed with Defendants makes this factor bear even less weight. *See Thermcor*, 173 F. Supp. 3d at 324_("[A] disagreement with one circuit . . . [is] not enough to meet the high standard for a substantial ground for difference of opinion").

When faced with a circuit split, courts do not end the substantial-ground-for-difference analysis there, but make an independent assessment of whether there "appear to be principled legal arguments, as well as meaningful factual and policy considerations, that favor" the movant's legal

position. *Moore v. Capitol Finishes, Inc.*, 699 F. Supp. 2d 772, 786 (E.D. Va. 2010); *see also Ryan, Beck & Co., LLC v. Fakih*, 275 F. Supp. 2d 393, 398 (E.D.N.Y. 2003) (quoting *SEC v. Credit Bancorp, Ltd.*, 103 F. Supp. 2d. 223, 228 (S.D.N.Y. 2000) (where "the cases cited are…of 'no persuasive authority,' . . . no substantial ground for difference of opinion exists.")).

In this case, no principled legal arguments, factual circumstances, or policy considerations favor a categorical bar on Section 2 coalition claims. Indeed, the text and purpose of the VRA compel the conclusion that cohesive multi-minority groups may challenge dilution of their combined voting strength. By its terms, Section 2 protects "any citizen" against denial or abridgement of voting rights on account of race, color, or membership in a language minority. 52 U.S.C. 10301(a). With this inclusive language, Congress recognized that discrimination in voting is not a problem limited to any one race, but a legacy of white supremacy that can affect and has affected all people of color. It would be contrary to the public policy underlying the VRA to conclude that Congress's chosen safeguard would be powerless to protect from discrimination a group of voters whose common experience of prior discrimination leads them to engage in inter-minority collective action.[5]

[5] Further, it would defy logic for a remedial civil rights statute to treat the "white" voters as a unified whole, but to deny such treatment to minorities, even if they demonstrate cohesiveness and a consistent disadvantage. Like non-white voters, the white voting bloc is made up of a variety of ethnicities. For example, the population of Virginia Beach is approximately 12 percent German-American, 0.4 percent Arab-American, and 6 percent Italian-American—all components of the city's "white" population. *See* American Community Survey Five-Year Estimates Detailed Tables (2014-18), People Reporting Ancestry, Virginia Beach city, Virginia, U.S. CENSUS BUREAU. Yet, no one disputes that when it comes to proving Section 2's white-bloc-voting precondition, it is appropriate to aggregate these different ethnic groups and analyze whether they vote together. *See Thornburg v. Gingles*, 478 U.S. 30, 51 (1986) ("[T]he minority must be able to demonstrate that *the white majority* votes sufficiently as a bloc to enable it—in the absence of special circumstances, such as the minority candidate running unopposed—usually to defeat the minority's preferred candidate.") (emphasis added). It is only sensible to analyze minority political cohesion the same way: examine the allegedly discriminated-against community of color as a whole, and let the

Consistent with this reasoning, the Second, Fifth, and Eleventh Circuits have each explicitly held that coalition claims are cognizable under Section 2. *See Bridgeport Coal. for Fair Representation v. City of Bridgeport*, 26 F.3d 271, 276–77 (2d Cir. 1994), *vacated on other grounds*, 512 U.S. 1283 (1994); *Concerned Citizens of Hardee Cty. v. Hardee Cty. Bd. of Comm'rs*, 906 F.2d 524, 526 (11th Cir. 1990); *Campos v. City of Baytown, Tex.*, 840 F.2d 1240, 1244 (5th Cir. 1988). Additionally, the Ninth Circuit has implicitly agreed. *See Badillo v. City of Stockton, Cal.*, 956 F.2d 884, 891 (9th Cir. 1992) ("Plaintiffs must be able to show that minorities have in the past voted cohesively for minorities and have the potential to elect minority representatives.").

To the extent the Sixth Circuit's opinion in *Nixon v. Kent County*, 76 F.3d 1381 (6th Cir. 1996) (en banc), would impose a categorical bar on VRA coalition claims, there is no substantial reason to follow it. The Sixth Circuit's textual analysis of Section 2 is erroneous. *Nixon* misinterprets the text of the statute by holding that the inclusion of the term "a class" necessarily excludes coalition claims. 76 F.3d at 1386-87. Nothing in the statute, however, requires that every member of such a "class" share the same race; rather, members of the class must share the same experience of being politically excluded on account of race.[6]

The Sixth Circuit's erroneous interpretation would produce perverse results in cases such as this one by denying equal political opportunity to the minority community, simply because there

---

evidence determine whether that community is cohesive enough to suffer a common vote-dilution injury.

[6] Indeed, Section 2(b) defines the class of citizens who can sue as a class in which the "members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 52 U.S.C. 10301(b). The text therefore demonstrates that the shared disadvantage based on "race or color" defines the protected class, not the racial or ethnic commonality of the group. If Congress had intended to limit the class to one race or ethnicity, it easily could have put such a limitation in the text.

is not "enough" housing segregation for any single-race component of the community to satisfy Section 2's geographic compactness requirement on its own. *See Thornburg v. Gingles*, 478 U.S. 30, 50 (1986). Such a ruling clearly would not be in line with the Supreme Court's teaching that the VRA "should be interpreted in a manner that provides 'the broadest possible scope' in combatting racial discrimination." *Chisom v. Roemer*, 501 U.S. 380, 403 (1991); *see also Gingles*, 478 U.S. at 45 n.10 (1986) ("Section 2 prohibits *all forms* of voting discrimination . . . . ." (emphasis added)); *Allen v. State Bd. of Elections*, 393 U.S. 544, 565-66 (1969) (explaining that the VRA "gives a broad interpretation to the right to vote").

Tellingly, Defendants do not even try to defend *Nixon* on the merits, but simply cite the case without discussion to show a circuit split. Defs. Mem. at 6-7. Because *Nixon* does not offer any "principled legal arguments," *Moore*, 699 F. Supp. 2d at 786, it cannot create a substantial ground for difference of opinion.

Nor does the cited dictum from *Hall v. Virginia*, 385 F.3d 421 (4th Cir. 2004), provide substantial grounds for Defendants' position. As Defendants note, the *Hall* Court stated that "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." *Id*. at 431. This dictum needs to be understood in the context of the issue actually presented in *Hall*. The case did not involve multi-minority coalition claims, but rather concerned "crossover" districts where Black voters could exercise power only in combination with likeminded White voters. *Id.* at 425; *see also Bartlett v. Strickland*, 556 U.S. 1, 13 (2009) (explaining why crossover claims are analytically distinct from coalition claims). The Court surely had these Black-White "crossover" coalitions in mind when it cautioned against granting Section 2 relief to coalitions "not . . . defined" by common

"disadvantages based on race." *Hall*, 385 F.3d at 431. The primary principle at work in *Hall*—that protected VRA classes should be composed entirely of groups that actually suffer racial discrimination—says nothing about whether Section 2 authorizes relief for cohesive multi-minority groups whose shared preferences are submerged by an inequitable system.[7]

Defendants are thus left without principled legal arguments supporting a categorical bar on coalition claims under Section 2. Accordingly, they fail to show a substantial ground for difference of opinion.

C. Even if Defendants had satisfied every statutory requirement, the proposed appeal would be a poor vehicle for resolving the controlling issue in dispute.

As explained above, Defendants cannot carry their burden to demonstrate the mandatory elements of appealability under § 1292(b). However, even if the Court concludes that Defendants did satisfy all three elements, the Court should still exercise its "unfettered discretion to decline to certify an interlocutory appeal." *Midgett*, 2018 WL 4781178, at *4. Defendants' proposed interlocutory appeal would make a poor vehicle for Fourth Circuit review of the validity of coalition claims under Section 2.

1. The Fourth Circuit should judge the viability of VRA coalition claims with the benefit of a trial record and a memorandum opinion from this Court.

An interlocutory appeal would force the Fourth Circuit to decide on the viability of VRA coalition claims without a trial record or a memorandum opinion from this Court to focus review.

[7] If anything, *Hall* provides *support* for coalition claims. The Fourth Circuit in *Hall* concluded that "[a] coalition of black and white voters can certainly join forces to elect a candidate, 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*." 385 F. 3d at 431 n.13 (emphasis added). By using this language, the Fourth Circuit specifically left the door open to a claim by an alliance of minority voters who *do* share the relevant "statutory disability" under Section 2—i.e., a shared experience of discrimination.

This is far from an ideal posture for appellate consideration of an important issue with long-term implications throughout the circuit.

At this time, this Court has not heard trial testimony or made findings of fact. The Court has denied Defendants' Motion for Summary Judgment, ECF No. 126, but has not issued—and is not required to issue—a memorandum opinion detailing its reasons for rejecting Defendants' argument that all Section 2 coalition claims fail as a matter of law.

A full trial record would put the Fourth Circuit in a better position to consider whether coalition claims are cognizable under Section 2. *Cf. Difelice*, 404 F. Supp. 2d at 910 (declining to permit interlocutory appeal because "the full factual record developed at trial will greatly enhance the ultimate review of all the issues in the Court of Appeals"). Plaintiffs' position (and the position of at least the Second, Fifth, and Eleventh Circuits) is that Congress authorized relief under Section 2 when a voting practice or procedure deprives a cohesive, multiracial minority community of equal political opportunity. This argument will be strengthened to the extent the Fourth Circuit is persuaded that cohesive, discriminated-against multi-minority communities are a real-world phenomenon that Congress would have cared about, not a myth invented by plaintiffs' lawyers to expand VRA liability. If Plaintiffs successfully prove their claims, the trial record in this case will offer the Fourth Circuit a useful illustration of how multiracial communities of color continue to suffer community-wide vote dilution—a reality that supports Plaintiffs' statutory interpretation.

Similarly, the Fourth Circuit would benefit from having a memorandum opinion from this Court to consult before deciding on the viability of coalition claims. Equipped with a full account of this Court's reasons for finding coalition claims cognizable, the Fourth Circuit will be better situated to decide whether it finds those reasons persuasive. *See Fannin*, 1989 WL 42583, at *2 (denying petition for interlocutory review where "the precise grounds on which the district court

denied the parties' cross-motions for summary judgment are not at all clear on the available record").

In short, an appeal from the post-trial judgment in this case—not an interlocutory appeal at the present stage—will present the best opportunity for the Fourth Circuit to review the legal issue Defendants raise.

2. *Because Defendants conflate separate legal issues, interlocutory appeal may not resolve the controlling issue.*

While Defendants purport to offer a single legal issue that "can be decided 'quickly and cleanly' by the Fourth Circuit" on interlocutory appeal, Defs. Mem. at 5, the Motion suggests that Defendants' proposed appeal might actually present two distinct legal questions. Defendants' apparent conflation of separate issues provides an additional reason to deny the Motion.

Several times in the Motion, Defendants frame the disputed legal issue as "whether *tri-minority* coalition claims may serve as the basis of a Section 2 claim." Defs. Mem. at 4 (emphasis added); *see also id.* at 5 ("any factual disputes between the parties can only be relevant if, as a matter of law, tri-minority cohesive coalition claims are cognizable"); *id.* at 7 (referring to "[t]he question of law presented by Plaintiffs' tri-partite coalition claim under Section 2"). Elsewhere, Defendants identify the broader issue of whether *any* coalition claim (including, for example, a coalition of two racial groups) is cognizable under Section 2. *See, e.g.*, *id.* at 2, 3.

Only the latter of these two issues is controlling in this case. While Plaintiffs do seek to replace the Virginia Beach City Council's current voting scheme with "a system in which Black, Hispanic or Latino, and Asian American voters are together able to elect their preferred candidates of choice," Am. Compl. ¶ 1, ECF No. 62 at 2, Plaintiffs have never conceded that to obtain this result, all three racial groups must be counted for purposes of satisfying the preconditions for Section 2 liability under *Thornburg v. Gingles*. To the contrary, Plaintiffs have *specifically*

disputed that suggestion. *See* Pls. Opp. to MSJ, ECF No. 118 at 1 (noting that Plaintiffs' expert Anthony Fairfax "offered opinions on . . . the possibility of drawing at least one district with a majority Black and Hispanic Citizen Voting Age Population"). Thus, a Fourth Circuit ruling that Section 2 forbids *tri*-minority coalition claims would not dispose of this case, because Plaintiffs could still win relief premised on a *bi*-minority coalition.[8]

By using an interlocutory appeal to attack tri-minority coalition claims specifically, as well as coalition claims generally, Defendants would invite the risk of a Fourth Circuit decision that does not resolve the controlling issue of law (i.e., the general viability of coalition claims). Such a decision would not materially advance the termination of this litigation.

III. Conclusion

For the foregoing reasons, Plaintiffs respectfully request that the Court deny the Motion.

---

[8] A remedial district where Black and Hispanic residents comprise the majority would have the effect of improving political opportunity for Asian residents of the district as well. That is so because, as Plaintiffs have alleged, the Hispanic, Black, and Asian populations of Virginia Beach are politically cohesive as a matter of fact. *See* Am. Compl. ¶¶ 52-53.

Dated: March 31, 2020

Respectfully submitted:

/s/ J. Gerald Hebert

CAMPAIGN LEGAL CENTER
J. Gerald Hebert (State Bar No. 38432)
Paul M. Smith*
Danielle Lang*
Christopher Lamar*
1101 14th Street NW, Suite 400
Washington, DC 20005
ghebert@campaignlegalcenter.org
(202) 736-2200

Ruth Greenwood*
125 Cambridgepark Drive
Cambridge, MA 02140
rgreenwood@campaignlegalcenter.org
(202) 560-0590

Annabelle E. Harless*
55 W. Monroe St., Ste. 1925
Chicago, IL 60603
(312) 312-2885
aharless@campaignlegalcenter.org

Attorneys for Plaintiff

**Admitted* Pro Hac Vice

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of March 2020, I will electronically file 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:

Mark D. Stiles (VSB No. 30683)
Christopher S. Boynton (VSB No. 38501)
Gerald L. Harris (VSB No. 80446)
Joseph M. Kurt (VSB No. 90854)
Office of the City Attorney
Municipal Center, Building One, Room 260 2401 Courthouse Drive
Virginia Beach, Virginia 23456
(757) 385-8803 (Office)
(757) 385-5687 (Facsimile)
mstiles@vbgov.com
cboynton@vbgov.com
glharris@vbgov.com
jkurt@vbgov.com

/s/ Christopher Lamar

Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

Latasha Holloway, *et al.*, **Plaintiffs,** **v.** **City of Virginia Beach, *et al.*,** **Defendants**	**Civil Action No. 2:18-cv-0069**

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR CERTIFICATION OF APPEALABILITY

PLAINTIFFS' EXHIBIT 1

March 12, 2020 Email from Patrice Thompson to Gerry Hebert

From: Patrice Thompson <Patrice_Thompson@vaed.uscourts.gov>
Date: March 12, 2020 at 3:53:07 PM EDT
To: Gerry Hebert <ghebert@campaignlegalcenter.org>
Cc: "glharris@vbgov.com" <glharris@vbgov.com>, "cboynton@vbgov.com" <cboynton@vbgov.com>, "jkurt@vbgov.com" <jkurt@vbgov.com>, "cwright@campaignlegal.org" <cwright@campaignlegal.org>
Subject: RE: 2:18cv69 Holloway, et. al. v. City of Virginia Beach, Virginia, et. al. - **16(b) Scheduling Conference**

Thank you both for the phone call. I have scheduled the 16(b) scheduling conference on Thur., 4/16/20 at 1:30pm in Norfolk. As discussed on the call, the Court will schedule the trial on one of the following dates:

9/29/20
10/6/20
10/13/20

Along with scheduling the trial date, the court will also schedule pretrial deadlines [26(a)(3), attorneys conference, final pretrial conference, etc.] as all other deadlines have been satisfied. Should you desire additional deadlines in the order, please let me know via email by end of business on 4/13/20.

The Court VACATES the deadlines as set in the Order entered on November 22, 2019 by Judge Allen.

Please let me know if you have any questions.

Thank you,
Patrice

Patrice L. Thompson, Courtroom Deputy
to the Honorable Raymond A. Jackson
United States District Judge, EDVA
600 Granby Street
Norfolk, VA 23510
757-222-7218
757-222-7236 (Fax)
Patrice_Thompson@vaed.uscourts.gov

**This e-mail may contain PRIVILEGED and CONFIDENTIAL information intended only for the addressees named above. If you are not the intended recipient of this e-mail, or an authorized employee or agent responsible for delivering it to the intended recipient, you are hereby notified that dissemination or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please notify us by reply e-mail. Thank you for your cooperation.

From: Gerry Hebert <ghebert@campaignlegalcenter.org>
Sent: Thursday, March 12, 2020 1:06 PM
To: Patrice Thompson <Patrice_Thompson@vaed.uscourts.gov>
Cc: glharris@vbgov.com; cboynton@vbgov.com; jkurt@vbgov.com; cwright@campaignlegal.org
Subject: Re: 2:18cv69 Holloway, et. al. v. City of Virginia Beach, Virginia, et. al. - **16(b) Scheduling Conference**

Thank you, Ms. Thompson. We'll communicate with opposing counsel and be back in touch (hopefully today). Gerry Hebert

Sent from my iPhone
Please excuse typos & Autocorrect errors

> On Mar 12, 2020, at 11:12 AM, Patrice Thompson <Patrice_Thompson@vaed.uscourts.gov> wrote:
>
> Good Morning Counsel,
>
> I am emailing to schedule a Rule 16(b) Scheduling Conference for the above referenced case as Summary Judgment has been ruled on. The Court will schedule the conference on Thur., 4/16 or Fri., 4/17 at 1:30pm in Norfolk and will require lead counsel to appear. Please let me know which of the dates will work with your calendar.
>
> Thank you,
> Patrice
>
> Patrice L. Thompson, Courtroom Deputy
> to the Honorable Raymond A. Jackson
> United States District Judge, EDVA
> 600 Granby Street
> Norfolk, VA 23510
> 757-222-7218
> 757-222-7236 (Fax)
> Patrice_Thompson@vaed.uscourts.gov
>
> **This e-mail may contain PRIVILEGED and CONFIDENTIAL information intended only

for the addressees named above. If you are not the intended recipient of this e-mail, or an authorized employee or agent responsible for delivering it to the intended recipient, you are hereby notified that dissemination or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please notify us by reply e-mail. Thank you for your cooperation.